TRACK ACCESS CONTRACT (FREIGHT SERVICES)

Dated

05 September 2018

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

- and -

VINTAGE TRAINS LIMITED

As amended by:

1st Supplemental dated 14th December 2018, approved by ORR on 25th January 2019

2nd Supplemental dated 27th March 2019, relating to PR18

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THIS CONTRACT is made the 5th day of September 2018

BETWEEN:

(1) Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN ("Network Rail"); and

(2) Vintage Trains Limited, a company registered in England under number 10436785 having its registered office at 670 Warwick Road, Tyseley, Birmingham, B11 2HL (the "Train Operator").

WHEREAS:

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

(B) Network Rail grants to the Train Operator permission to use the Network on the terms and conditions of this contract.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this contract, unless the context otherwise requires:

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

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

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

"**Act**" means the Railways Act 1993;

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

"**Affiliate**" means, in relation to any company:

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

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

and for these purposes "**holding company**" and "**subsidiary**" have the meanings ascribed to them in section 736 of the Companies Act 1985;

"**Alternative Train Slot**" means, in relation to any Train Slot in the Working Timetable which becomes unavailable, an alternative Train Slot established under paragraphs 4 or 5 of Schedule 4;

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

"**Applicable System**" means any system other than Railway Code Systems which the parties may agree to use for the safe planning and operation of Train Slots over the Network;

"**associate**" has the meaning ascribed to it in section 17 of the Act;

"**Cancellation**" has the meaning ascribed to it in paragraph 8.1 of Schedule 8;

"**Cancellation Sum**" means the Cancellation Sum specified in Appendix 1 to Schedule 8, as adjusted under paragraph 2.7.2 of Schedule 7;

"**Charging Period**" means each period of 28 days which coincides with a Network Rail accounting period save that:

(a) the first period and the last period may be of less than 28 days if:

  (i) the date of signature of this contract does not coincide with the first day of one of Network Rail's accounting periods; or

  (ii) the Expiry Date does not coincide with the last day of one of Network Rail's accounting periods; and

(b) the duration of the first and last such period in any Financial Year may be varied so as to coincide with the duration of Network Rail's accounting periods by notice from Network Rail to the Train Operator;

"**Claims Allocation and Handling Agreement**" means the agreement of that name approved by ORR;

"**Class A Local Output**" has the meaning ascribed to it in Part L of the Network Code;

"**Collateral Agreements**" means the agreements and arrangements listed in Schedule 3;

"**Confidential Information**" means information relating to the affairs of one party to this contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this contract, or any matter or thing contemplated by this contract or to which this contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

"**contract**" means this document including all schedules and appendices to it, the Network Code and the Traction Electricity Rules;

"**Contract Year**" means each yearly period commencing on 1st September 2018 and subsequently on each anniversary of such date;

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

"**Decision Criteria**" has the meaning ascribed to it in Part D of the Network Code;

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

"**Destination**" means, in relation to a Service:

(a) the location on the Network at which that Service is Planned to terminate; or

(b) if the location at which that Service is Planned to terminate is not on the Network, the location on the Network which:

(i) will enable the train operating that Service to leave the Network; and

(ii) is the most appropriate location for such train to use to terminate that Service on the Network;

"**Diverted Service**" means a Service, as such term is defined in paragraph 1.2 of Schedule 4, operated using an Alternative Train Slot established under paragraphs 4 or 5 of Schedule 4;

"**Empty Service**" means a Service which does not convey:

(a) loaded wagons; or

(b) empty passenger rolling stock;

"**Engineering Access Statement**" means the Engineering Access Statement in force in respect of the Network on 1st September 2018 as from time to time amended or replaced under Part D of the Network Code;

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

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

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

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

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

"**Expiry Date**" means 31st December 2022;

"**Financial Year**" means a year commencing at 0000 hours on 1 April and ending immediately before 0000 hours on the next succeeding 1 April save that:

(a) the first such period shall commence on the date upon which all the provisions of this contract come into effect in accordance with Clause 3; and

(b) the last such period shall end on the Expiry Date;

"**Force Majeure Event**" has the meaning ascribed to it in Clause 17.1;

"**Force Majeure Notice**" has the meaning ascribed to it in Clause 17.1;

"**Force Majeure Report**" has the meaning ascribed to it in Clause 17.1;

"**Incident Cap Access Charge Supplement**" means the charge calculated in accordance with paragraph 2.6 of Schedule 7;

"**Incident Cap Access Charge Supplement Rate**" means, in relation to any Financial Year, the rate determined in accordance with paragraph 11.1 of Schedule 8, as adjusted under paragraph 2.7.2 of Schedule 7;

"**Indemnity Incident Cap**" means the sum calculated in accordance with Clause 11.6.5;

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

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

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

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

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

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

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

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

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

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

unless:

(i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under

section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or

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

"**Intermediate Point**" means, in relation to a Service:

(a) a location on the Network at which that Service is Planned to call; or

(b) if the location at which that Service is Planned to call is not on the Network, a location on the Network which:

(i) will enable the train operating that Service to be accepted off and presented onto the Network; and

(ii) is the most appropriate location for such train to use to move onto the Network to reach the Destination of that Service;

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

"**Local Output**" has the meaning ascribed to it in Part L of the Network Code;

"**Longstop Date**" means 31st December 2018;

"**Network**" means the network of which Network Rail is the network operator and which is situated in England, Wales and Scotland;

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

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

"New Working Timetable" has the meaning ascribed to it in Part D of the Network Code;

"**Nominated Location**" means, in relation to a Service, any of the Origin, Destination, Intermediate Point and such other location where railway vehicles operating that Service under the control of the Train Operator will move onto and off the Network;

"**Non-affected Party**" has the meaning ascribed to it in Clause 17.1;

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

"**Office of Rail and Road's LOC Criteria**" has the meaning ascribed to it in Part L of the Network Code;

"**Operating Constraints**" means:

(a) the Engineering Access Statement;

(b) the Timetable Planning Rules; and

(c) the Working Timetable and all appendices to the Working Timetable including the sectional appendices as defined in the Working Timetable and all supplements to the sectional appendices;

"**Origin**" means, in relation to a Service:

(a) the location on the Network at which that Service is Planned to commence; or

(b) if the location at which that Service is Planned to commence is not on the Network, the location on the Network which:

(i) will enable the train operating that Service to be presented onto the Network; and

(ii) is the most appropriate location for such train to use to move onto the Network to reach the Destination of that Service;

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

"**Performance Monitoring System**" has the meaning ascribed to it in Part B of the Network Code;

"**Planned**" means entered in the Working Timetable;

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

"**regulated access agreement**" means an access agreement as that term is defined in section 83 of the Act;

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

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

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

"**Relevant Losses**" means, in relation to:

(a) a breach of this contract; or

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

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

"**Relevant Obligation**" has the meaning ascribed to it in Clause 17.1;

"**Restriction of Use**" means any restriction of use of all or any part of the Network for the purposes of, or in connection with, inspection, maintenance, renewal or repair of the Network or any other works carried out in relation to the Network or any other railway asset or any other works in relation to it;

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

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

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

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

"**Service Characteristics**" means, in relation to a Service, the characteristics of that Service:

(a) specified in the Rights Table (as defined in Schedule 5); or

(b) where not specified in the Rights Table, specified in an Access Proposal, Rolled Over Access Proposal, Train Operator Variation Request, or in a proposal by the Train Operator of an Alternative Train Slot under paragraphs 4 or 5 of Schedule 4, and accepted by Network Rail;

"**Service Variation Sum**" means the Service Variation Sum of £665, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7;

"**Services**" means the services for the carriage of goods by railway specified in paragraph 4.1 of Schedule 5;

"**Short Notice Service**" means a Service in respect of which the Train Operator Variation Request for the Train Slot to which it relates is made to Network Rail later than 1000 hours on day A and which would, if the request were accepted, be planned to operate between 1000 hours on day A and 0001 hours on day C; for the purposes of this definition:

(a) day A is the first day (excluding Saturdays and Sundays);

(b) day B is the second day (excluding Sundays); and

(c) day C is the third day,

of any three consecutive days from (and including) the day on which the request is made;

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

"**Specified Equipment**" means the railway vehicles which the Train Operator is entitled to use in the provision of Services on the Network, as specified in paragraph 4 of Schedule 5;

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

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

"**Systems Code**" means the Code of Practice relating to the Management and Development of Railway Information Systems as from time to time approved by ORR under Network Rail's network licence;

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

"**Timetable Participant**" has the meaning ascribed to it in Part D of the Network Code;

"**Timetable Planning Rules**" means the Timetable Planning Rules in force in respect of the Network on 1st September 2018, as from time to time amended or replaced under Part D of the Network Code;

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

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

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

"**Train Operator Variation**" has the meaning ascribed to it in Part D of the Network Code;

"**Train Operator Variation Request**" has the meaning ascribed to it in Part D of the Network Code;

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

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

"**Week**" means a period of seven days commencing at 0000 hours on Sunday and ending immediately before 0000 hours on the next succeeding Sunday;

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

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

1.2 Interpretation

In this contract, unless the context otherwise requires:

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

(b) any one gender includes the other;

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

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

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

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

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

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

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

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

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

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

(m) any reference to the term “possession”, either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use;

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

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

(p) references to “the Agreement” or “this Agreement” shall be construed as references to “the contract” or “this contract”;

(q)

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

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

1.3 Indemnities

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

1.4 Schedules

The Schedules 1 and 3 to this contract shall have effect.

2. NETWORK CODE AND THE TRACTION ELECTRICITY RULES

2.1 Incorporation

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

2.2 Modification to the Network Code or the Traction Electricity Rules

If either the Network Code or the Traction Electricity Rules or both are modified at any time, Schedule 10 shall have effect.

2.3 Compliance by other operators

Except where ORR has directed otherwise in the exercise of its powers under the Act or the Network Code, and except in relation to London Underground Limited and Heathrow Express Operating Company Limited to the extent that such persons are not party to the Network Code, Network Rail shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the Network Code.

3. CONDITIONS PRECEDENT AND DURATION

3.1 Effective date

The provisions of this contract, other than Clause 5, take effect from the later of the signature of this contract and 1st September 2018.

3.2 Conditions precedent to Clause 5

Clause 5 shall take effect when the following conditions precedent have been satisfied in full:

(a) to the extent required by the Act and/or the Railways (Licensing of Railway Undertakings) Regulations 2005, the Train Operator is authorised to be the operator of trains for the provision of the Services by:

(i) a licence granted under section 8 of the Act; and/or

(ii) a European licence and corresponding SNRP;

(b) Network Rail is authorised by a licence granted under section 8 of the Act to be the operator of the Network or is exempt from the requirement to be so authorised under section 7 of the Act;

(c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);

(d) each of the parties has, as necessary, a valid safety certificate or safety authorisation as required by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and has established and is maintaining a safety management system which meets the requirements of those Regulations; and

(e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 Obligations to satisfy conditions precedent to Clause 5

Each party shall use all reasonable endeavours to secure that the following conditions precedent are satisfied as soon as practicable, and in any event not later than the Longstop Date:

(a) in the case of Network Rail, the conditions precedent contained in Clause 3.2(b) and, insofar as within its control, Clauses 3.2(c) and 3.2(d); and

(b) in the case of the Train Operator, the conditions precedent contained in Clause 3.2(a) and, insofar as within its control, Clauses 3.2(c) and 3.2(d).

3.4 Consequences of non-fulfilment of conditions precedent to Clause 5

If the conditions precedent set out in Clause 3.2 have not been satisfied in full on or before the Longstop Date:

(a) this contract shall lapse save for the obligations of confidence contained in Clause 14 which shall continue in force; and

(b) neither party shall have any liability to the other except in respect of any breach of its obligations under this contract.

3.5 Expiry

This contract shall continue in force until the earliest of:

(a) lapse under Clause 3.4;

(b) termination under Schedule 6; and

(c) 2359 hours on the Expiry Date.

3.6 Suspension and termination

Schedule 6 shall have effect.

4. STANDARD OF PERFORMANCE

4.1 General standard

Without prejudice to all other obligations of the parties under this contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

(a) network owner and operator (in the case of Network Rail); and

(b) train operator (in the case of the Train Operator).

4.2 Good faith

The parties to this contract shall, in exercising their respective rights and complying with their respective obligations under this contract (including when conducting any discussions or negotiations arising out of the application of any provisions of this contract or exercising any discretion under them), at all times act in good faith.

5. PERMISSION TO USE

5.1 Permission to use the Network

Network Rail grants the Train Operator permission to use the Network.

5.2 Meaning

References in this contract to permission to use the Network shall, except where the context otherwise requires, be construed to mean permission:

(a) to use the track comprised in the Network for the provision of the Services using the Specified Equipment;

(b) to use the track comprised in the Network in order to implement any plan established under Part H of the Network Code;

(c) to make Ancillary Movements;

(d) to Stable, which shall be treated, for the purposes of Part D of the Network Code, as the use of a Train Slot;

(e) for the Train Operator and its associates to enter upon the Network with or without vehicles; and

(f) for the Train Operator and its associates to bring things onto the Network and keep them there,

and such permission is subject, in each case and in all respects to:

(i) the Network Code; and

(ii) the Operating Constraints.

5.3 Permission under Clauses 5.2(e) and 5.2(f)

In relation to the permissions specified in Clauses 5.2(e) and 5.2(f):

(a) the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of Network Rail, which consent shall not be unreasonably withheld or delayed;

(b) the Train Operator shall remove any vehicle or other thing so brought onto any part of the Network when reasonably directed to do so by Network Rail; and

(c) whilst exercising any rights conferred by Clauses 5.2(e) and 5.2(f), the Train Operator shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as Network Rail shall specify.

5.4 Changes to Engineering Access Statement and Timetable Planning Rules

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

5.5 Variations to Services

Schedule 4 shall have effect.

5.6 Services

Schedule 5 shall have effect.

5.7 Performance

Schedule 8 shall have effect.

5.8 Stabling

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

5.9 Information to assist submitting an Access Proposal or Train Operator Variation Request

Schedule 2 shall have effect.

6. OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

6.1 General

Without prejudice to the other provisions of this contract:

(a) the Train Operator shall maintain and operate the Specified Equipment used on the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Network in accordance with the permission to use under this contract; and

(b) Network Rail shall maintain and operate the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Network using the Specified Equipment in accordance with the permission to use under this contract.

6.2 Trespass, vandalism and animals

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

(a) trespass;

(b) vandalism; and

(c) intrusions on to the Network by animals,

in each case as may affect either the provision of the Services or those parts of the Network on which the Services are provided.

6.3 Safety

In relation to Safety Obligations:

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

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

6.4 Movements of trains onto and off the Network

6.4.1 Suitable access

In order that railway vehicles under the control of the Train Operator be promptly:

(a) accepted off the Network; and/or

(b) presented onto the Network,

the Train Operator shall ensure that in respect of each Nominated Location suitable access has been granted to it in relation to such location by the party which controls the relevant facility connected to the Network at the Nominated Location.

6.4.2 Prompt presentation onto the Network

Where railway vehicles under the control of the Train Operator will move onto and off the Network, the parties shall ensure that in respect of each Nominated Location they will facilitate (to the extent they are able) the prompt presentation of such railway vehicles onto and off the Network.

6.5 Use of Railway Code Systems

6.5.1 General

The parties shall:

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

(b) comply with the Systems Code.

6.5.2 Provision of train consist data

Without prejudice to Clause 6.5.1, the Train Operator shall:

(a) provide to Network Rail such train consist data as shall be necessary to enable Network Rail to calculate the amount of Track Charges; and

(b) ensure that such data is true and accurate as far as is reasonable in the circumstances.

6.5.3 Notification of movement onto and off the Network

The Train Operator shall notify Network Rail of any movement onto the Network and off the Network of any railway vehicle under the control of the Train Operator by promptly making a full and accurate train release or acceptance entry to the appropriate Railway Code Systems or Applicable System.

6.5.4 Network Rail audit

Subject to Clauses 6.5.5 and 6.5.6, Network Rail may:

(a) carry out checks and inspections necessary to establish whether the Train Operator is complying with its obligations under this Clause 6.5; and

(b) carry out such inspections of the books and records kept by or on behalf of the Train Operator in connection with the Services as Network Rail may reasonably consider to be necessary for such purpose.

6.5.5 Notice of audit

Network Rail shall:

(a) give to the Train Operator reasonable written notice of the checks and inspections to be carried out in accordance with Clause 6.5.4; and

(b) ensure that the checks and inspections are carried out between 0900 hours and 1700 hours on a Working Day.

6.5.6 Material discrepancy

If any such check or inspection carried out by Network Rail in accordance with Clauses 6.5.4 and 6.5.5 reveals a material discrepancy in information previously supplied to Network Rail by the Train Operator:

(a) the Train Operator shall pay the reasonable costs incurred by Network Rail in carrying out the checks and inspections in accordance with Clauses 6.5.4 and 6.5.5; and

(b) Network Rail shall:

(i) make the appropriate and consequent adjustments to the Track Charges; and

(ii) provide to the Train Operator evidence of such costs as the Train Operator may reasonably request.

6.5.7 Consent to use information

The Train Operator consents to the use by Network Rail of any data or information supplied by the Train Operator in the course of complying with its Safety Obligations, for the purpose of:

(a) monitoring the Train Operator's performance of its obligations under this contract; and

(b) calculating the amount of Track Charges.

7. TRACK CHARGES AND OTHER PAYMENTS

Schedule 7 shall have effect.

8. LIABILITY

8.1 Performance Orders in relation to breach

In relation to any breach of this contract:

(a) the Innocent Party shall be entitled to apply under Clause 13.3 for a Performance Order against the party in breach; and

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

8.2 Compensation in relation to breach

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

9. LOCAL OUTPUTS - PERFORMANCE ORDERS

If:

(a) a breach of contract is a failure by Network Rail to achieve a Local Output; or

(b) in the Train Operator's opinion, Network Rail is likely to fail to achieve a Local Output applicable to the Train Operator,

then:

(i) the Train Operator shall be entitled to apply under Clause 13.3 for a Performance Order, where applicable on an anticipatory basis; and

(ii) if a Performance Order is made, Network Rail shall comply with it.

10. LIABILITY - OTHER MATTERS

10.1 Train Operator indemnity

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

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

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

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

10.2 Network Rail indemnity

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

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

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

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

11. RESTRICTIONS ON CLAIMS

11.1 Notification and mitigation

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

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

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

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

11.2 Restrictions on claims by Network Rail

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

(a) shall exclude any Relevant Losses to the extent that they result from a cancellation of or a delay in commencement to a Restriction of Use; and

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

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

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

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

(d) shall:

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

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

11.3 Restrictions on claims by Train Operator

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

(a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in circumstances in which there has been a failure to achieve a Class A Local Output); and

(b) shall:

(i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and

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

11.4 Restriction on claims by both parties

Any claim for indemnity for Relevant Losses shall exclude Relevant Losses which:

(a) do not arise naturally from the breach; and

(b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:

(i) at the time of the making of this contract; or

(ii) where the breach relates to a modification or amendment to this contract, at the time of the making of such modification or amendment,

as the probable result of the breach.

11.5 Limitation on liability

Schedule 9 shall have effect so as to limit the liability of the parties to one another under the indemnities in Clauses 8.2 and 10, but:

(a) does not limit any liability arising under Schedules 4, 7 or 8 or under the Traction Electricity Rules;

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

(c) subject to Clause 18.3.3.

11.6 Claims Allocation and Handling Agreement

11.6.1 General

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

11.6.2 Restriction of application

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

11.6.3 Liability for small claims

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

11.6.4 Further limitation of liability

In relation to any claim or claims made by a party to which Schedule 9 applies ("Indemnity Claim") in addition to the limitations on liability that apply under Schedule 9 the liability of the parties to one another shall also be limited so that:

(a) for any Indemnity Claim that relates to or results from a single incident, event or circumstance then the other party shall not be liable to make payments that over any period of time exceed an amount equal to the Indemnity Incident Cap;

(b) if under Clause 11.6.4 (a) the Indemnity Incident Cap is exceeded then any Indemnity Claim shall be extinguished to the extent that it relates to such excess and the other party shall have no further liability for that excess; and

(c) any Indemnity Claim (or any part of an Indemnity Claim) that is extinguished under Clause 11.6.4 (b) shall not be taken into account when calculating the amount of Relevant Losses in respect of any

Indemnity Claim that is admitted or determined in a Contract Year under Schedule 9.

11.6.5 Indexation of the Indemnity Incident Cap

The Indemnity Incident Cap for the first Contract Year shall mean the sum of £6,000,000 and in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \times \left(\frac{CPI_n}{CPI_1}\right)$$

where:

(i) C1 is the sum of £6,000,000;

(ii) Cn is the Indemnity Incident Cap in the nth subsequent Contract Year;

(iii) CPIn is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and

(iv) CPI_1 is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the first month of the first Contract Year.

11.6.6 Applicable Contract Year for indexation

For the purposes of determining the Indemnity Incident Cap under Clause 11.6.5, the applicable Contract Year shall be the Contract Year in which the relevant incident, event or circumstance begins to occur.

12. GOVERNING LAW

This contract shall be governed by and construed in accordance with the laws of England and Wales.

13. DISPUTE RESOLUTION

13.1 ADRR

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

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

(b) any Part of Schedules 7 or 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply; or

(c) Clause 13.2 applies.

13.2 Unpaid sums

If either party fails to pay:

(a) any invoice issued to it under this contract in respect of Track Charges; or

(b) any other sum which has fallen due in accordance with any provision of this contract,

then, subject to Clause 16.1.1:

(i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any invoice or other sum due);

(ii) such debt shall be recoverable by any means available under the laws of England and Wales; and

(iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.5 shall not apply to proceedings commenced under this Clause 13.2.

13.3 Performance Orders

13.3.1 Power to order provisional relief

For the purposes of section 39 of the Arbitration Act 1996, should any Relevant Dispute be allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR, the arbitrator shall have power to order on a provisional basis any relief which he would have power to grant in a final award including Performance Orders.

13.3.2 Performance Orders

A Performance Order:

(a) is an order made under Clause 13.3.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and

(b) may be applied for by Network Rail or the Train Operator in the circumstances set out in Clauses 8.1 and 9, subject to the qualifications in Clause 17.8,

and an application for a Performance Order shall be without prejudice to any other remedy available to the claimant under this contract (whether final or interim and whether by way of appeal under the Network Code or otherwise).

13.3.3 Duties of arbitrator in relation to Performance Orders

Without prejudice to any additional remedies that may be ordered by the arbitrator under Clause 13.4, where a dispute is allocated in accordance with the ADRR to arbitration and a party has applied for a Performance Order, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that:

(a) the arbitrator shall decide as soon as possible whether the application is well founded or not; and

(b) if the arbitrator decides that the application is well founded, he shall be required to make an interim or final declaration to that effect and, in that event, the arbitrator may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which he considers just and reasonable in all the circumstances.

13.4 Remedies

The powers exercisable by the arbitrator as regards remedies shall include:

(a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;

(b) the powers specified in the ADRR;

(c) the power to make Performance Orders; and

(d) the power to order within the same reference to arbitration any relief specified in Clause 13.4(a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

13.5 Exclusion of applications on preliminary points of law

Any recourse to any Court for the determination of a preliminary point of law arising in the course of the arbitration proceedings is excluded.

14. CONFIDENTIALITY

14.1 Confidential Information

14.1.1 General obligation

Except as permitted by Clause 14.2, all Confidential Information shall be held confidential during and after the continuance of this contract and shall not be divulged in any way to any third party without the prior written approval of the other party.

14.1.2 Network Rail - Affiliates

Except as permitted by Clause 14.2, Network Rail shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.1.3 Train Operator - Affiliates

Except as permitted by Clause 14.2, the Train Operator shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.2 Entitlement to divulge

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

(a) to ORR;

(b) to the Secretary of State;

(c) to any Affiliate of either party;

(d) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;

(e) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;

(f) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance, upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;

(g) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;

(h) to the extent required by the Act, the Railways (Licensing of Railway Undertakings) Regulations 2005, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;

(i) to the extent that it has become available to the public other than as a result of a breach of confidence;

(j) under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant ADRR Forum, each as defined in the ADRR); and

(k) to London Underground Limited, to the extent that;

(i) such information is in respect of the interaction between the operation of the Services and the provision and/or operation of railway passenger services by London Underground Limited on the Network; and

(ii) it is necessary to divulge such information for the safe and efficient operation of railway services on the Network.

14.3 Return of Confidential Information

Each of Network Rail and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

(a) is made on or within two months after the Expiry Date or, if this contract lapses or is terminated earlier, is made within two months after the date on which this contract lapses or is terminated;

(b) is reasonable; and

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

14.4 Retention or destruction of Confidential Information

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

14.5 Ownership of Confidential Information

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

14.6 Network Code and Traction Electricity Rules

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

15. ASSIGNMENT

Neither party may assign, transfer, novate or create any encumbrance or other security interest over the whole or any part of its rights and obligations under

this contract except to the extent approved by ORR following consultation with the other party, and subject to the conditions (if any) of ORR's approval.

16. PAYMENTS, INTEREST AND VAT

16.1 Payment

16.1.1 No deduction

All amounts due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off, except:

(a) as may be required by law; or

(b) as expressly provided in this contract.

16.1.2 Delivery of invoices

All invoices or statements of amounts payable issued under any provision of this contract shall be delivered by hand at, or sent by prepaid first class post, or by facsimile transmission (with confirmation copy by prepaid first class post) or by email (where both parties agree) to the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

16.1.3 Payment and content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall, unless otherwise stated in this contract:

(a) be paid within 28 days of the date of its receipt; and

(b) contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it.

16.1.4 Method of payment

All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

16.1.5 Credit notes

Where a credit note has been issued in accordance with any provision of this contract, the party in receipt of the credit note shall be entitled to apply the amount specified in it against any amount payable by it under this contract or any future invoice or statement of amounts payable it may receive under this contract.

16.2 Disputed amounts

16.2.1 Notification of a dispute

Except as otherwise provided in this contract, within 14 days of receipt of an invoice or statement of amounts payable issued under any provision of this contract, the recipient shall notify the issuer of any aspects of the invoice or statement which it disputes, giving reasons for any dispute. Except to the extent that disputes are so notified, the recipient shall be deemed to have agreed the contents of the invoice or statement.

16.2.2 Payment in full

Subject to Clause 16.2.3 and except as otherwise provided in this contract, where any amount contained in an invoice in accordance with Schedule 7 is in dispute under Clause 16.2.1:

(a) the Train Operator shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice;

(b) payment of the disputed amount shall be without prejudice to the determination of whether such amount is properly due or not; and

(c) Clause 16.3.2 shall apply.

16.2.3 Right to withhold payment of disputed amount

If:

(a) any amount which is payable under any provision of this contract other than Schedule 7 is in dispute under Clause 16.2.1; or

(b) an invoice or statement of amounts payable under any provision of this contract contains an error and the recipient of such invoice or statement has notified the issuer of any aspects of the invoice or statement which contain an error and which it disputes under Clause 16.2.1,

then:

(i) the undisputed amount shall be paid in accordance with Clause 16.1.3, or as otherwise provided for in this contract;

(ii) the disputed balance, or such part of it as has been agreed or determined to be payable, shall be paid or set off, as the case may be, within 35 days after the end of the Charging Period in which the dispute is resolved or determined; and

(iii) Clause 16.3.1 shall apply also in respect of the disputed balance, or such part of it as has been agreed or determined to be payable.

16.3 Interest

16.3.1 Amounts not paid by due date

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause 16.1.2 or Clause 16.1.3(b).

16.3.2 Amounts paid which were not properly due

Where a disputed amount is paid under Clause 16.2.2 and it is subsequently determined that such amount, or part of it, was not properly due, the payee shall repay the disputed amount, or relevant part, to the payer together with interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the date of actual payment until the date of actual repayment (as well after judgment as before).

16.4 VAT

16.4.1 Payment of VAT

Where any taxable supply for VAT purposes is made under or in connection with this contract by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

16.4.2 Reimbursement of VAT

Where under this contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

16.4.3 VAT credit note to be issued on repayment

Where under this contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

17. FORCE MAJEURE EVENTS

17.1 Meaning of Force Majeure Event

In this Clause 17:

"**Affected Party**" means, in relation to a Force Majeure Event, the party claiming relief under this Clause 17 by virtue of that Force Majeure Event, and "**Non-affected Party**" shall be construed accordingly;

"**Force Majeure Event**" means, subject to Clause 17.9, any of the following events (and any circumstance arising as a direct consequence of any of the following events):

(a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;

(b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;

(c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);

(d) nuclear, chemical or biological contamination;

(e) pressure waves caused by devices travelling at supersonic speeds;

(f) discovery of fossils, antiquities or unexploded bombs; and

(g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

"**Force Majeure Notice**" means a notice to be given by the Affected Party to the other party stating that a Force Majeure Event has occurred;

"**Force Majeure Report**" means a report to be given by the Affected Party to the other party following the giving of a Force Majeure Notice;

"**Relevant Force Majeure Event**" means a Force Majeure Event in relation to which an Affected Party is claiming relief under this Clause 17; and

"**Relevant Obligation**" means an obligation under this contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under this Clause 17.

17.2 Nature and extent of relief for force majeure

Force majeure relief under this Clause 17:

(a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 8.2 in respect of Relevant Losses sustained as a

result of the failure of the Affected Party to perform a Relevant Obligation; but

(b) is not available in respect of:

(i) any obligation to pay money under Schedules 4, 7 and 8 or the Traction Electricity Rules; or

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

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

17.3 Entitlement to force majeure relief

An Affected Party is entitled to force majeure relief if and to the extent that:

(a) performance of the Relevant Obligation, including as to the achievement of a Local Output, has been prevented or materially impeded by reason of a Force Majeure Event;

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

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

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

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

17.4 Procedure for claiming relief

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

17.5 Force Majeure Notices and Reports

17.5.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

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

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

17.5.2 Force Majeure Report

Following the giving of a Force Majeure Notice:

(a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within 7 days of service of the Force Majeure Notice; and

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

17.5.3 Other information

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

17.6 Mitigation

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

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

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

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

17.7 Duration of relief for force majeure

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

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

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

17.8 Availability of Performance Order

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

17.9 Disapplication of Force Majeure Events

If the Office of Rail and Road's LOC Criteria so provide:

(a) a Local Output may be established on the assumption that one or more Force Majeure Events specified in Clause 17.1(a) to (g) shall not apply to such Local Output; and

(b) if a Local Output is established in the manner specified in Clause 17.9(a):

(i) the Local Output shall specify which Force Majeure Events are assumed not to apply; and

(ii) no relief shall be available under Clause 17.2 by reference to such Force Majeure Events in respect of any claim in relation to that Local Output (or any Performance Order made in respect of that Local Output).

18. MISCELLANEOUS

18.1 Non waiver

18.1.1 No waiver

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

18.1.2 Failure or delay in exercising a right or remedy

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

18.2 Variations

18.2.1 Amendments to be in writing and to be approved

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

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

(b) if it is an amendment which

(i) requires ORR's approval under section 22 of the Act; or

(ii) is made under section 22A or 22C of the Act or Schedule 4A to the Act

the amendment has been so approved or directed by ORR, as applicable.

18.2.2 Exceptions

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

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

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

18.2.3 No Office of Rail and Road approval needed

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

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

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

unless the relevant provision expressly states that it requires the approval of ORR.

18.2.4 Conformed copy of contract

Network Rail shall produce and send to the Train Operator and to ORR a conformed copy of this contract within 28 days of the making of any amendment or modification to it (including any modification made by virtue of Schedule 10).

18.3 Entire contract and exclusive remedies

18.3.1 Entire contract

Subject to Clause 18.3.3:

(a) this contract contains the entire agreement between the parties in relation to the subject matter of this contract;

(b) each party acknowledges that it has not been induced to enter into this contract in reliance upon, nor has it been given, any warranty,

representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and

(c) neither party shall have any right to rescind or terminate this contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this contract.

18.3.2 Exclusive remedies

Subject to Clause 18.3.3 and except as expressly provided in this contract:

(a) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this contract; and

(b) the remedies provided for in this contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

18.3.3 Fraud, death and personal injury

Without prejudice to the generality of this Clause 18.3, nothing in this contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

(a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this contract, in respect of any statement made fraudulently by the other party before the execution of this contract;

(b) any right which either party may have in respect of fraudulent concealment by the other party;

(c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

(d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 Notices

18.4.1 Giving of notices

Any notice to be given under this contract:

(a) shall be in writing; and

(b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post, recorded delivery, or by facsimile

transmission (with confirmation copy by prepaid first class post) or by email (where the parties agree), to the relevant address or email address or facsimile number as set out in Schedule 1.

For the purposes of this Clause 18.4 and Clause 16.1.2, delivery by hand shall include delivery by a reputable firm of couriers.

18.4.2 Right to modify communication details

A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 1 by giving notice of such modification:

(a) to the other party as soon as reasonably practicable; and

(b) to ORR within 14 days of such modification.

18.4.3 Deemed receipt

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

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

(b) if sent by prepaid first class post from and to any place within the United Kingdom, 3 Working Days after posting unless otherwise proven;

(c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 hours on the next following Working Day; and

(d) if sent by email (subject to confirmation of receipt of delivery) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 hours on the next Working Day.

18.4.4 Copyees

If Schedule 1 specifies any person to whom copies of notices shall also be sent:

(a) the party giving a notice in the manner required by this Clause 18.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under this Clause 18.4; and

(b) such copy notice shall be sent immediately after the original notice.

18.5 Counterparts

This contract may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this contract by signing either of such counterparts.

18.6 Survival

Those provisions of this contract which by their nature or implication are required to survive expiry or termination of this contract (including the provisions of Clauses 8 (Liability), 9 (Local Outputs - Performance Orders), 10 (Liability - Other Matters), 11 (Restrictions on Claims), 12 (Governing Law), 13.2 (Unpaid Sums), 14 (Confidentiality), 16 (Payments, Interest and VAT), 17 (Force Majeure Events), paragraph 4 of Schedule 6 (Consequence of Termination) and Schedule 9 (Limitation on liability)), shall so survive and continue in full force and effect, together with any other provisions of this contract necessary to give effect to such provisions.

18.7 Contracts (Rights of Third Parties) Act 1999

18.7.1 Application to third parties

Save as provided in this Clause 18.7 or as expressly provided elsewhere in this contract, no person who is not a party to this contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

18.7.2 Application to the Office of Rail and Road

ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under this contract.

18.7.3 Contract amendments

Subject to Clause 18.2, Network Rail and the Train Operator shall not, after 1st September 2018 enter into any agreement with a third party that requires the consent of any third party in order to amend this contract.

18.7.4 Application of Traction Electricity Rules to other train operators

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

18.8 Crossrail

Schedule 11 shall have effect.

SCHEDULE 1: CONTACT PARTICULARS

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

Network Rail Infrastructure Limited

1 Eversholt Street, London, NW1 2DN

Tel: ✂

Email: ✂

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to: Managing Director, Freight & National Passenger Operators

Network Rail Infrastructure Limited
1 Eversholt Street
London
NW1 2DN

Tel: ✂
Fax: N/A

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

Vintage Trains Limited

670 Warwick Road,

Tyseley
Birmingham B11 2HL

Tel: ✂

Email: ✂

All written notices to be marked:

"URGENT: ATTENTION The Managing Director"

SCHEDULE 2: INFORMATION TO ASSIST SUBMITTING AN ACCESS PROPOSAL OR TRAIN OPERATOR VARIATION REQUEST

1. Information Request

If the Train Operator considers that:

(a) it requires information in relation to the Network from Network Rail, including information about the available capacity of the Network;

(b) the information is not contained in the Operating Constraints and could not reasonably be derived from the Operating Constraints by the Train Operator; and

(c) the information is reasonably required in connection with an Access Proposal or Train Operator Variation Request it is considering making,

the Train Operator may serve a request on Network Rail for information (an "**Information Request**").

2. Contents of the Information Request

The Information Request shall contain:

(a) a list of the specific information which the Train Operator considers reasonably necessary in order for it to inform its decision on whether to submit an Access Proposal or a Train Operator Variation Request and, if so, for which Train Slot; and

(b) the timescale within which the Train Operator considers it is reasonable for Network Rail to provide the information requested.

3. Agreement of the Information Request

3.1 Notification by Network Rail

Network Rail shall, within five Working Days of the service of the Information Request by the Train Operator, notify the Train Operator of:

(a) the specific information which it is able to provide within the suggested timescale;

(b) any information which it is not able to provide within the suggested timescale and its alternative timescale for the provision of such information; and

(c) any information which it is not able to provide at all, giving reasons for such non-provision.

3.2 Failure to agree on provision of specific information

Following notification by Network Rail pursuant to paragraphs 3.1(b) or (c), if the parties fail to agree on the information to be provided by Network Rail in response to the Information Request and the timescales for the provision of

such information within five Working Days of such notification by Network Rail, those issues shall be resolved in accordance with the ADRR.

3.3 Relevant ADRR Forum resolution

The parties to any dispute referred under paragraph 3.2 above shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum which is to resolve the dispute shall:

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

(b) have regard to:

(i) the reasonableness of the Train Operator's request for the specific information; and

(ii) the reasonable timescale for the provision of the information in the Information Request;

(c) not make a determination which is inconsistent with the provisions of the Network Code; and

(d) provide reasons.

3.4 Provision of information by Network Rail

Following agreement or determination of the information to be provided by Network Rail in response to the Information Request and the timescale for the provision of such information, Network Rail shall provide such information to the Train Operator within the timescale so agreed or determined.

4. Parts D and G of the Network Code

The provisions of this Schedule 2 shall neither affect nor replace the rights and obligations of the parties contained in:

(a) Part D of the Network Code concerning the provision of information about changes to the Timetable Planning Rules and/or the Engineering Access Statement; and

(b) Part G of the Network Code concerning the provision of information about Network Change, as defined in Part G.

SCHEDULE 3: COLLATERAL AGREEMENTS

1. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement and, for the purpose of Schedule 6, the Claims Allocation and Handling Agreement.

2. An accession agreement to the document entitled Emergency Access Code as approved or directed by ORR and, for the purpose of Schedule 6, the Emergency Access Code.

SCHEDULE 4: VARIATIONS TO SERVICES

PART 1 - GENERAL PROVISIONS

1. Definitions

1.1 Definitions

In this Schedule 4 unless the context otherwise requires:

"**Actual Costs**" means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator including those attributable to limb (f) of a Category 3 Disruption and any increase in Variable Costs but net of:

(a) any benefit arising from a Category 3 Disruption including any decrease in Variable Costs as a consequence of a Category 3 Disruption; and

(b) any Enhanced Planned Disruption Sum due to the Train Operator in connection with the relevant Service affected by a Category 3 Disruption;

"**Actual Costs Claim Notice**" has the meaning specified in paragraph 3.4.3;

"**Applicable Service**" means a Revised Base Service, a Diverted Service or any Service which suffers a Cancellation;

"**Base Service**" means:

(a) a Planned Service which is not able to operate as Planned; or

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

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

"**Category 1 Disruption**" means a variation to any Base Service which would otherwise have operated, where such variation has one or more of the following effects:

(a) the Planned departure time from Origin of the Revised Base Service differs from that of the Base Service by more than 60 minutes;

(b) the Planned arrival time at Destination of the Revised Base Service differs from that of the Base Service by more than 60 minutes;

(c) the end to end journey of the Revised Base Service exceeds that of the Base Service by more than 10 miles; or

(d) the imposition of more demanding length or weight restrictions for the Revised Base Service compared to the Base Service,

provided that:

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

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

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

(a) there is no Revised Base Service;

(b) the imposition of more demanding gauge restrictions for the Revised Base Service compared to the Base Service;

(c) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service; or

(d) a diesel locomotive is required to be used for the Revised Base Service in circumstances where Network Rail has agreed to provide electricity for traction purposes for the Base Service as apparent from the column headed "Timing Load" in the Rights Table annexed to Schedule 5;

provided that:

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

(ii) a Category 3 Disruption has not been claimed and paid in relation to the relevant Base Service;

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

(a) there is no Revised Base Service and the access from the Origin or to the Destination of the Base Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route);

(b) (i) there is no Revised Base Service due to the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or

(ii) the Revised Base Service does not have an applicable gauge cleared route between the Origin and the Destination where:

(A) the lack of such applicable gauge cleared route has lasted or lasts in total for more than 60 hours; and

(B) the Revised Base Service operates in whole, or in part, at the relevant location within this 60 hour period;

(c) all or part of the goods planned to be carried by the Base Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination;

(d) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service;

(e) a diesel locomotive is required to be used for the Revised Base Service in circumstances where Network Rail has agreed to provide electricity for traction purposes for the Base Service as apparent from the column headed "Timing Load" in the Rights Table annexed to Schedule 5; or

(f) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the Revised Base Service and such requirement has come about as a direct result of the exceptional nature of the variation to the Base Service,

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

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

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

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

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

"**Enhanced Planned Disruption Sum**" means the Enhanced Planned Disruption Sum specified in Appendix 1;

"**Late Notice Actual Costs**" means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator including any increase in Variable Costs but net of:

(a) any benefit arising from a Relevant Cancellation or Relevant Service Variation (as the case may be) including any decrease in Variable Costs as a consequence of such Relevant Cancellation or Relevant Service Variation (as the case may be); and

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

"**Late Notice Actual Costs Claim Notice**" has the meaning specified in paragraph 9.3;

"**Late Notice Actual Costs Claim Trigger**" means:

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

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

"**Late Notice Cancellation**" has the meaning ascribed to it in Schedule 8;

"**Late Notice Cancellation Sum**" has the meaning ascribed to it in Schedule 8;

"**Network Rail Early Notice Possession**" means any Early Notice Possession other than an Operator Early Notice Possession;

"**Normal Planned Disruption Sum**" means the Normal Planned Disruption Sum specified in Appendix 1;

"**Operator Early Notice Possession**" means any Early Notice Possession to the extent:

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

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

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

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

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

"**Original Service**" means a Planned Service which:

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

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

"**Originally Requested**" has the meaning specified in paragraph 4.1;

"**Planned Disruption Sum**" means a Normal Planned Disruption Sum or an Enhanced Planned Disruption Sum;

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

"**Relevant Cancellation**" has the meaning specified in paragraph 9.1;

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

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

"**Round Trip**" means any Service conveying loaded wagons and any Empty Services and Ancillary Movements associated with that Service;

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

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

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

1.2 Interpretation

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

2. Payment

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

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

(b) a Late Notice Cancellation Sum in respect of each Late Notice Cancellation and, where applicable subject to paragraph 9.1, any Late Notice Actual Costs arising from the process set out in paragraph 9.4 and in accordance with paragraph 9.4;

(c) a Normal Planned Disruption Sum in respect of each Category 1 Disruption;

(d) an Enhanced Planned Disruption Sum in respect of each Category 2 Disruption;

(e) an Enhanced Planned Disruption Sum in respect of each Category 3 Disruption and, where applicable subject to paragraph 3.3.2, the Actual Costs arising from the process set out in paragraph 3.3.3 and in accordance with paragraph 3.3.3,

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

PART 2 - COMPENSATION FOR NOTIFICATION BEFORE THE POSSESSION NOTICE DATE

3. Disruption compensation

3.1 Category 1 Disruption

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

(a) Planned to depart its Origin in that Charging Period; or

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

3.2 Category 2 Disruptions

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

(a) Planned to depart its Origin in that Charging Period; or

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

3.3 Category 3 Disruptions

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

(a) Planned to depart its Origin in that Charging Period; or

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

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

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

(a) it agrees that the Category 3 Disruption Trigger is satisfied and agrees to the amount of Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case Network Rail shall also pay such Actual Costs to the Train Operator within 56 days of receipt by Network Rail of the relevant Actual Costs Claim Notice; or

(b) it agrees that the Category 3 Disruption Trigger is satisfied but does not agree to the amount of the Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case Network Rail shall:

(i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Base Service(s) affected by a Network Rail Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and

(ii) pay to the Train Operator its Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be); or

(c) it does not agree that the Category 3 Disruption Trigger is satisfied, in which case the matter shall be immediately referred for determination in accordance with Clause 13, and if it is determined in accordance with Clause 13 that the Category 3 Disruption Trigger is satisfied then Network Rail shall:

(i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Base Service(s) affected by a Network Rail Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and

(ii) pay to the Train Operator such Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be).

3.4 Notification, Disruption Claim Notices and Actual Costs Claim Notices

3.4.1 The Train Operator shall notify Network Rail of any Network Rail Early Notice Possession that it reasonably considers is likely to give rise to any Category 3 Disruption as soon as reasonably practicable after it has been notified of such Network Rail Early Notice Possession.

3.4.2 The Train Operator must notify Network Rail of any Category 1 Disruption, Category 2 Disruption or Category 3 Disruption, unless otherwise agreed in writing, within 56 days of its occurrence and include within such notice details of the affected Base Services and the Planned Disruption Sums claimed (a "**Disruption Claim Notice**").

3.4.3 In respect of a claim for Actual Costs for Category 3 Disruptions relating to a single Early Notice Possession, the Train Operator shall, unless otherwise agreed in writing, serve a claim on Network Rail:

(a) no later than the day falling 56 days after the end of the occurrence of the Network Rail Early Notice Possession giving rise to a Category 3 Disruption; or

(b) where an Early Notice Possession is reasonably believed to have exceeded 13 consecutive Charging Periods in length or upon the termination or expiry of this contract, whichever comes first, no later than the day falling 112 days after the end of the 13th consecutive Charging Period or the termination or expiry of this contract (as applicable),

whichever is the earlier, and such claim must include details of the estimate of the Actual Costs which are attributable to all relevant Category 3 Disruptions triggered by the relevant Network Rail Early Notice Possession (an "**Actual Costs Claim Notice**").

3.4.4 Nothing in paragraph 3.4.3 shall prevent the Train Operator from issuing more than one Actual Costs Claim Notice in respect of the same Network Rail Early Notice Possession, provided that:

(a) each such Actual Costs Claim Notice relates to a different period covered by the relevant Network Rail Early Notice Possession; and

(b) no Actual Costs Claim Notice can be issued after the last day for serving notice specified under paragraph 3.4.3.

3.5 Planned Disruption Sum on Round Trip

Network Rail shall not be liable to the Train Operator for more than one Planned Disruption Sum in respect of any Round Trip.

3.6 Early notice of potential Actual Cost claims

The parties may at any time engage in discussions on any matter likely to result in payments of any Actual Costs and shall use reasonable endeavours to agree whether such Actual Costs arising from the process set out in paragraph 3.3 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such Actual Costs. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it considers such Actual Costs will arise and what mitigating actions should be contemplated. Following any agreement or determination that such Actual Costs are likely to arise in connection with one or more future Network Rail Early Notice Possessions 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 Network Rail Early Notice Possession(s) 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 Network Rail Early Notice Possession(s). Unless otherwise agreed, the timescales for claiming Actual Costs in paragraph 3.4 shall still apply.

PART 3 - PROCESSES AND COMPENSATION FOR NOTIFICATION AFTER THE POSSESSION NOTICE DATE

4. Services rescheduled following a Disruptive Event

4.1 Establishing an Alternative Train Slot

Where there is a Disruptive Event:

(a) to the extent that there is appropriate capacity available on the relevant part of the Network; and

(b) subject to Part H of the Network Code and the Railway Operational Code,

Network Rail shall promptly nominate an Alternative Train Slot which most nearly accommodates the Service as originally included in an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request ("Originally Requested") in respect of any Service which is affected by the Disruptive Event and notify the Train Operator of it.

4.2 Train Operator's response

On receiving Network Rail's nomination (if any) of an Alternative Train Slot under paragraph 4.1, the Train Operator shall promptly by notice to Network Rail either:

(a) accept the Alternative Train Slot nominated by Network Rail (in which case the nomination by Network Rail and its acceptance by the Train Operator shall be treated as a Train Operator Variation; or

(b) reasonably reject the Alternative Train Slot nominated by Network Rail.

4.3 Rejection of Alternative Train Slot

If the Train Operator reasonably rejects under paragraph 4.2(b) the Alternative Train Slot nominated by Network Rail, it may in its notice of rejection propose a different Alternative Train Slot, which Network Rail shall treat as a Train Operator Variation Request.

4.4 Measure of performance

If an Alternative Train Slot is accepted under paragraph 4.2(a) or is accepted as a Train Operator Variation under paragraph 4.3, then:

(a) Network Rail shall permit the Train Operator to make the relevant movement in accordance with that Alternative Train Slot;

(b) the Service Characteristics of the Planned Service shall be those of the original Train Slot; and

(c) the performance of the movement shall be measured accordingly.

4.5 Cancellation

4.5.1 Where:

(a) Network Rail is not able to nominate an Alternative Train Slot under paragraph 4.1;

(b) the Train Operator rejects the Alternative Train Slot nominated by Network Rail under paragraph 4.2(b) and does not propose a different Alternative Train Slot under paragraph 4.3; or

(c) the Train Operator proposes a different Alternative Train Slot under paragraph 4.3 and this is not accepted by Network Rail,

the relevant Service shall be treated as a Cancellation for the purposes of paragraph 8.1(d) of Schedule 8 and paragraph 2 of Schedule 4 and paragraphs 8 and 9 of Schedule 8 shall apply.

4.5.2 Where an Alternative Train Slot is:

(a) accepted under paragraph 4.2(a); or

(b) accepted as a Train Operator Variation under paragraph 4.3,

the Original Service shall not be treated as a Cancellation for the purposes of Schedule 8.

4.6 Part H of the Network Code

This paragraph 4 is subject to the rights and obligations of the parties under Part H of the Network Code and the Railway Operational Code.

5. Other variations to Planned Services

5.1 Non-availability of a Service

This paragraph 5 applies if, for any reason other than:

(a) a Restriction of Use to be taken pursuant to the Engineering Access Statement which has been notified in all material respects prior to the Possession Notice Date; and

(b) the circumstances envisaged by paragraph 4,

Network Rail nominates that any part of the Network will not be available for a Planned Service to operate at the Planned time and such non-availability is:

(i) Attributable to Network Rail (as defined in Schedule 8); and

(ii) known about in sufficient time for an alternative Service to be the subject of a Train Operator Variation Request and entered into the Working Timetable as a new Planned Service.

5.2 Establishing an Alternative Train Slot

To the extent that there is appropriate capacity available on the relevant part of the Network, and subject to Parts D and H of the Network Code and the Decision Criteria, Network Rail shall promptly nominate an Alternative Train Slot which most nearly accommodates the Service as Originally Requested and notify the Train Operator of it.

5.3 Train Operator's response

On receiving Network Rail's nomination (if any) of an Alternative Train Slot under paragraph 5.2, the Train Operator shall promptly by notice to Network Rail either:

(a) accept the Alternative Train Slot nominated by Network Rail (in which case the nomination by Network Rail and its acceptance by the Train Operator shall be treated as a Train Operator Variation); or

(b) reasonably reject the Alternative Train Slot nominated by Network Rail.

5.4 Rejection of Alternative Train Slot

If the Train Operator reasonably rejects under paragraph 5.3(b) the Alternative Train Slot nominated by Network Rail, it may in its notice of rejection propose a different Alternative Train Slot, which Network Rail shall treat as a Train Operator Variation Request.

5.5 Measure of performance

If an Alternative Train Slot is accepted under paragraph 5.3(a) or is accepted as a Train Operator Variation under paragraph 5.4, then:

(a) Network Rail shall permit the Train Operator to make the relevant movement in accordance with the Alternative Train Slot;

(b) the Service Characteristics of the Planned Service shall be those of the Alternative Train Slot; and

(c) the performance of the movement shall be measured accordingly.

5.6 Cancellation

5.6.1 Where:

(a) Network Rail is not able to nominate an Alternative Train Slot under paragraph 5.2;

(b) the Train Operator rejects the Alternative Train Slot nominated by Network Rail under paragraph 5.3(b) and does not propose a different Alternative Train Slot under paragraph 5.4; or

(c) the Train Operator proposes a different Alternative Train Slot under paragraph 5.4 and this is not accepted by Network Rail,

the relevant Service shall be treated as a Cancellation for the purposes of paragraph 8.1(d) of Schedule 8, paragraph 2 of Schedule 4 shall apply and Network Rail shall be liable for the Late Notice Cancellation Sum in respect of that Cancellation in accordance with paragraphs 8.2.3 and 9 of Schedule 8.

5.6.2 Where an Alternative Train Slot is:

(a) accepted under paragraph 5.3(a); or

(b) accepted as a Train Operator Variation under paragraph 5.4,

the Original Service shall not be treated as a Cancellation for the purposes of Schedule 8.

PART 4 – RESTRICTIONS OF USE BEFORE POSSESSION NOTICE DATE

6. Restrictions of Use before Possession Notice Date

Without prejudice to any invoices issued under paragraphs 2 or 3 of Schedule 4 or paragraph 9 of Schedule 8, if Network Rail nominates that any part of the Network will not be available for a Service to operate at the Planned time by reason of a Restriction of Use to be taken pursuant to the Engineering Access Statement which has been notified to the Train Operator in all material respects prior to the Possession Notice Date, Network Rail shall have no liability to the Train Operator under Parts 3, 5 or 7 of Schedule 4 or Schedule 8 in respect of the effect of that Restriction of Use on such Service.

PART 5 – SERVICE VARIATION

7. Service Variation

7.1 Service Variation

For the purposes of this Schedule 4, "**Service Variation**" means a variation to any Service which:

(a) the Train Operator has accepted under paragraphs 4 or 5, and which is Attributable to Network Rail (as defined in Schedule 8); and

(b) has one or more of the following effects:

(i) the end to end journey of the Diverted Service exceeds that of the Original Service by more than five miles;

(ii) the addition of at least one Planned reversing movement for the Diverted Service over the number of Planned reversing movements for the Original Service;

(iii) the imposition of any more demanding length, weight or gauge restrictions for the Diverted Service compared with the Original Service;

(iv) the use of at least one additional locomotive for the Diverted Service over the number for the Original Service or use of a diesel locomotive for the Diverted Service in circumstances where Network Rail has agreed to provide Electricity for Traction for that Original Service as shown in Schedule 5;

(v) the Planned departure time from Origin of the Diverted Service differs from that of the Original Service by more than 30 minutes but less than 12 hours;

(vi) the Planned arrival time at Destination of the Diverted Service differs from that of the Original Service by more than 30 minutes but less than 12 hours; and

(vii) while the Train Operator Originally Requested the Train Slot in accordance with Part D of the Network Code, the nomination and acceptance of the Alternative Train Slot which is established for the Diverted Service is treated as a Short Notice Service because an act or omission of Network Rail resulted in the Originally Requested Train Slot not being Planned in accordance with Part D.

7.2 Network Rail liability

Subject to paragraphs 7.3 and 7.4, Network Rail shall be liable in any Charging Period for a Service Variation Sum in respect of each Service Variation relating to a Service Planned to depart its Origin in that Charging Period.

7.3 Service Variation Sum on Round Trip

Network Rail shall not be liable to the Train Operator for more than one Service Variation Sum in respect of any Round Trip.

7.4 Service Variation / Cancellation

Network Rail shall not be liable to the Train Operator for a Service Variation Sum if, following the Service Variation, the Train Operator is entitled to a Late Notice Cancellation Sum in respect of the Diverted Service.

PART 6 – NOT USED

8. Not Used

PART 7 – LATE NOTICE ACTUAL COSTS CLAIMS

9. Late Notice Actual Costs Claims

9.1 Late Notice Actual Costs Claim arising from Relevant Cancellation

If, pursuant to paragraph 5.6.1, Network Rail is liable for a Late Notice Cancellation Sum in respect of a Cancellation (a "**Relevant Cancellation**"), and:

(a) either:

(i) the Relevant Cancellation occurs because the access from the Origin or to the Destination of the Original Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route); or

(ii) the Relevant Cancellation occurs because of the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or

(iii) as a result of the Relevant Cancellation, all or part of the goods planned to be carried by the Original Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination; and

(b) the Train Operator incurs Late Notice Actual Costs as a consequence of the Relevant Cancellation, then the Train Operator will be entitled to serve a Late Notice Actual Costs Claim Notice in accordance with paragraph 9.3 below.

9.2 Late Notice Actual Costs Claim arising from Relevant Service Variation

If, pursuant to paragraph 7, Network Rail is liable for a Service Variation Sum in respect of a Service Variation (other than a Service Variation which arises from a variation to a Service which the Train Operator has accepted under paragraph 4) (a "**Relevant Service Variation**"), and:

(a) either:

(i) the Diverted Service does not have an applicable gauge cleared route between the Origin and the Destination where:

(A) the lack of such applicable gauge cleared route has lasted or lasts in total for more than 60 hours; and

(B) the Diverted Service operates in whole, or in part, at the relevant location within this 60 hour period; or

(ii) at least one additional locomotive is used for the Diverted Service over the number used for the Original Service; or

(iii) a diesel locomotive is required to be used for the Diverted Service in circumstances where Network Rail has agreed to provide Electricity for Traction for the Original as shown in Schedule 5; or

(iv) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the Diverted Service and such requirement has come about as a direct result of the exceptional nature of the variation to the Original Service; and

(b) the Train Operator incurs Late Notice Actual Costs as a consequence of the Relevant Service Variation,

then the Train Operator will be entitled to serve a Late Notice Actual Costs Claim Notice in accordance with paragraph 9.3 below.

9.3 Late Notice Actual Costs Claim Notice

In respect of a claim for Late Notice Actual Costs arising under paragraphs 9.1 or 9.2 above, the Train Operator shall, unless otherwise agreed in writing, serve a claim on Network Rail no later than the day falling 56 days after the occurrence of the Relevant Cancellation or Relevant Service Variation (as the case may be), and such claim must include details of the estimate of the Late Notice Actual Costs which are attributable to the Relevant Cancellation or Relevant Service Variation (as the case may be) (a "**Late Notice Actual Costs Claim Notice**").

9.4 Late Notice Actual Costs Claim Process

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

(a) it agrees that the Late Notice Actual Costs Claim Trigger is satisfied and agrees to the amount of the Late Notice Actual Costs claimed by the Train Operator in the Late Notice Actual Costs Claim Notice, in which case Network Rail shall also pay such Late Notice Actual Costs to the

Train Operator within 56 days of receipt by Network Rail of the relevant Late Notice Actual Costs Claim Notice; or

(b) it agrees that the Late Notice Actual Costs Claim Trigger is satisfied but does not agree to the amount of the Late Notice Actual Costs claimed by the Train Operator in the Late Notice Actual Costs Claim Notice, in which case Network Rail shall:

(i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Late Notice Actual Costs and shall continue such negotiations in good faith until they are concluded or until the Late Notice Actual Costs are determined in accordance with Clause 13; and

(ii) pay to the Train Operator its Late Notice Actual Costs within 28 days of those Late Notice Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be); or

(c) it does not agree that the Late Notice Actual Costs Claim Trigger is satisfied, in which case the matter shall be immediately referred for determination in accordance with Clause 13, and if it is determined in accordance with Clause 13 that the Late Notice Actual Costs Claim Trigger is satisfied then Network Rail shall:

(i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Late Notice Actual Costs and shall continue such negotiations in good faith until they are concluded or until the Late Notice Actual Costs are determined in accordance with Clause 13; and
(ii) pay to the Train Operator such Late Notice Actual Costs within 28 days of those Late Notice Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be).

Appendix 1

The Normal Planned Disruption Sum shall be £336 (amount to be expressed in pounds sterling and rounded to zero decimal places).

The Enhanced Planned Disruption Sum shall be £894 (amount to be expressed in pounds sterling and rounded to zero decimal places).

SCHEDULE 5: SERVICES

1. Definitions

1.1 Definitions

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

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

"**Contingent Right**" means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5 (and which is identified in the Rights Table by the notation "Contingent" in the column headed "Special Terms");

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

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

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

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

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

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

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

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

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

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

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

"**Flexing Rights**" has the meaning ascribed to it in Part D of the Network Code;

"**Freight Access Right**" means either:

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

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

"**International Freight Capacity Notice**" has the meaning ascribed to it in Part D of the Network Code;

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

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

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

"**Minimum Dwell Time at Intermediate Point**" means the minimum period of time that the Service shall be Planned to stay at any relevant Intermediate Point;

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

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

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

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

"**Revised Base Service**" has the meaning ascribed to it in Schedule 4;

"**Rights Table**" means the table at Annex 1 of this Schedule 5;

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

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

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

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

"**Timetable Period**" has the meaning ascribed to it in Part D of the Network Code;

"**Timing Load**" has the meaning ascribed to it in Part D of the Network Code;

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

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

(a) depart from one or more Origins to the same Destination; and/or

(b) arrive at one or more Destinations from the same Origin,

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

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

2. Rights and Services

2.1 Train Slots

The Train Operator has:

(a) Firm Rights to Train Slots in the Working Timetable relating to Services which are not Contingent Rights; and

(b) Contingent Rights to Train Slots in the Working Timetable (and which are identified in the Rights Table by the notation "Contingent" in the column headed "Special Terms").

2.2 Ancillary Movements

2.2.1 The Train Operator has:

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

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

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

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

(b) for driver training purposes; and

(c) which do not convey loaded wagons or empty passenger rolling stock;

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

2.3 Train Operator Variation Services

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

(a) accepted or been deemed to have accepted; or

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

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

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

(a) shall not include Services for the purpose of testing under vehicle acceptance procedures; but

(b) shall include Services for the purpose of testing rolling stock (including testing for the purpose of mileage accumulation) which has secured an engineering acceptance certificate and a certificate of interim operation.

2.3.4 For the purpose of this paragraph 2.3, where Train Operator Variation Requests for successive Train Operator Variation Services each having substantially the same characteristics are accepted, such Train Operator Variation Services shall be aggregated for the purpose of ascertaining whether the period of twelve months has been exceeded.

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

2.4 Public holidays

Not used

3. Network Rail's Flexing Rights

3.1 Associations

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

4. Services

4.1 Services

The Services under this contract comprise:

(a) services with the characteristics set out in the Rights Table in columns 1 to 18;

(b) any Diverted Services;

(c) Ancillary Movements;

(d) any Train Operator Variation Services;

(e) any Revised Base Service; and

(f) any service Planned to use an International Freight Train Slot listed in Section A of the International Freight Capacity Notice applicable for the relevant Timetable Period, and which is shown in the Working Timetable as having been allocated to the Train Operator.

4.2 Specified Equipment

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

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

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

4.3 Information

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

5. Amendment of the Rights Table

5.1 Circumstances in which parties may amend the Rights Table

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

5.2 Procedure for amendment of the Rights Table

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

(i) the amendment may only take effect on a Principal Change Date or Subsidiary Change Date, but in any event shall not take effect before the Principal Change Date in 2019; and

(ii) the notice must be given on or before the first day of the month fifteen (15) months before the relevant Principal Change Date or the Subsidiary Change Date as the case may be.

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

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

(d) If the party receiving a notice issued under paragraph 5.2(a) does not agree that the Rights Table should be amended in accordance with that notice, then it shall respond to that notice in writing in reasonable detail and with reasons for its response within 20 Working Days of service of such notice. Promptly (and in any event within 20 Working Days) following the service of such written notice of disagreement, the parties shall endeavour to agree whether the Rights Table should be amended in accordance with this paragraph 5 and, if so, the amendments. If they do so agree, the parties shall then ensure that ORR is furnished with the agreed amendment and such information and evidence as ORR requires to decide whether or not to approve the amendment.

(e) If the parties fail to reach agreement within 40 Working Days of service of a notice under paragraph 5.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached within that period:

(i) either party may notify ORR; and

(ii) the parties shall furnish ORR with such information and evidence as ORR shall require in order to determine the matter, such determination to be binding on the parties.

(f) In making its determination under paragraph 5.2(e)(ii), ORR shall have regard to the information and evidence provided by the parties, and the duties set out in section 4 of the Act.

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

Annex 1: Schedule 5
Rights Table

A	B	C	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Service characteristics																			
For Information - not part of contract			Origin Data						Destination Data					Additional Data				Equipment Characteristics				
Service Group Reference	Flow No	Train Reporting Number	Minimum Turn Around Time at Origin	Days per Week	Departure Window From	Departure Window To	Origin	Origin Stanox	Destination	Arrival Window From	Arrival Window To	Destination Stanox	Minimum Turn Around Time at Destination	Routing	Intermediate Points	Minimum Dwell Time at Intermediate Point	Special Terms	Timing Load	Maximum Length of Train	Route Availability (RA)	Loading Gauge	Contract Miles

SCHEDULE 6: EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1. Events of Default

1.1 Train Operator Events of Default

The following are Train Operator Events of Default:

(a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services in accordance with Clause 3.2(a);

(b) an Insolvency Event occurs in relation to the Train Operator;

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

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

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

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

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

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

1.2 Notification

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

1.3 Network Rail Events of Default

The following are Network Rail Events of Default:

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

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

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

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

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

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

1.4 Notification

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

2. Suspension

2.1 Right to suspend

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

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

2.2 Contents of Suspension Notice

A Suspension Notice shall specify:

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

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

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

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

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

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

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

2.3 Effect of a Suspension Notice served by Network Rail

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

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

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

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

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

2.4 Effect of a Suspension Notice served by the Train Operator

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

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

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

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

2.5 Suspension to be proportionate to breach

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

(a) railway vehicles;

(b) Services; and

(c) categories of train movements or railway vehicles,

or parts or part of them, to which the relevant Train Operator Event of Default relates.

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

(a) railway vehicles;

(b) Services; and

(c) categories of train movements or railway vehicles,

or parts or part of them, to which the relevant Network Rail Event of Default relates.

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

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

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

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

3. Termination

3.1 Network Rail's right to terminate

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

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

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

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

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

3.2 Train Operator's right to terminate

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

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

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

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

3.3 Contents of Termination Notice

A Termination Notice shall specify:

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

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

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

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

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

3.4 Effect of Termination Notice

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

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

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

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

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

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

3.5 Unilateral right of termination

The Train Operator may at any time serve a notice on Network Rail to terminate this contract (a "**unilateral termination notice**"). In such circumstances, the Train Operator shall send a copy of the unilateral termination notice to ORR.

3.6 Contents of unilateral termination notice

The unilateral termination notice shall specify a date and time on which termination of this contract is to take effect (which shall not be earlier than 12 months from the date on which the unilateral termination notice is served on Network Rail).

3.7 Effect of unilateral termination notice

Where the Train Operator has served a unilateral termination notice on Network Rail:

(a) the service of the unilateral termination notice shall not affect the parties' continuing obligations under this contract up to the date of termination specified in the unilateral termination notice; and

(b) the contract shall terminate under Clause 3.5 on the later of:

(i) the date and time specified in the unilateral termination notice; and

(ii) the date upon which a copy of the unilateral termination notice is sent to ORR.

4. Consequence of termination

4.1 Directions regarding location of Specified Equipment

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

4.2 Failure to comply with directions

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

4.3 Evidence of costs

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

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

1. **Definitions**

In this Schedule 7 unless the context otherwise requires:

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

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

"Adjustment Factor" means the factor calculated in accordance with paragraph 2.7.2;

"Attributable to Network Rail" has the meaning attributed to it in Schedule 8 of this contract;

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

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

"Coaching Stock Miles" means, in relation to coaching stock, the Contract Miles travelled by that coaching stock;

"Coaching Stock Weight" means, in relation to coaching stock, the gross weight of that coaching stock, measured in tonnes;

"Coal Spillage Charge Rate" means, in respect of each Coal Vehicle used in a Service, the coal spillage charge rate per kgtm for that Coal Vehicle, for the Relevant Year ending 31 March 2019 only, as set out in the track usage price list published by Network Rail on or around 20 December 2013 and adjusted in accordance with paragraph 2.7.2 of the version of this contract that was in force up until 31 March 2019;

"Coal Vehicle" means any vehicle in respect of which the applicable Commodity is coal;

"Commodity" means the commodity applying to each Service as shall be agreed between the Train Operator and Network Rail by reference to the classes of commodity in the Track Usage Price List;

"Contract Miles" means, in relation to a train, or a portion of a train, the actual distance in miles travelled by that train, or that portion of a train, on the Network as specified in the Rights Table or as otherwise agreed by the Train

Operator and Network Rail;

"Contributing Train Operator" means, in relation to any Qualifying Modification, the train operator which:

(a) has requested that Network Rail make the modification to the Operating Constraints; and

(b) continues to utilise the modification;

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

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

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

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

"Electrification Asset Usage Charge" means the charge calculated in accordance with paragraph 2.4.12;

"Electrification Asset Usage Rate" means, in respect of electrification asset usage, the rate per electrified kgtm on route type k as set out in the Track Usage Price List and, being an Indexed Figure, adjusted in accordance with paragraph 2.7.1 and 2.7.2;

"Empty Wagon Miles" means, in relation to an empty wagon, the Contract Miles travelled by that empty wagon;

"Empty Wagon Weight" means, in relation to an empty wagon, the tare weight of that wagon, measured in tonnes;

"ESI Biomass Vehicle" means any vehicle in respect of which the Commodity is electricity supply industry biomass;

"ESI Coal Vehicle" means any vehicle in respect of which the applicable Commodity is electricity supply industry coal;

"Freight Capacity Charge" means the charge calculated in accordance with paragraph 2.3;

"Freight Capacity Charge Wash-Up" means the charge calculated in accordance with paragraph 2.3;

"Freight Only Line Charge Rate" means, in respect of each ESI Coal

Vehicle, IO Vehicle and/or SNF Vehicle used in a Service, the rate per kgtm for that ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle, for the Relevant Year ending 31 March 2019 only, which shall be the total of the amount set out in the track usage price list published by Network Rail on or around 20 December 2013 relating to the freight only line charge rate for an ESI Coal Vehicle, IO Vehicle or SNF Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b) of the version of this contract that was in force up until 31 March 2019;

"Freight Specific Charge Rate" means:

(a) in respect of each ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle used in a Service the rate per kgtm for that ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Coal Vehicle, IO Vehicle or SNF Vehicle and, being an Indexed Figure, adjusted in accordance with paragraph 2.7.2:

(b) in respect of each ESI Biomass Vehicle used in a Service the rate per kgtm for that ESI Biomass Vehicle which shall be:

(i) in respect of the Relevant Year commencing on 1 April 2019 the total of the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Biomass Vehicle for that year, multiplied by the Phased in Charges Indexation Adjustment calculated in accordance with paragraph 2.7.3(a); and

(ii) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Biomass Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b);

"Geographic Area g" means, for the purposes of performing the calculations set out in paragraph 2.4 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network as set out in Appendix 5 of the Traction Electricity Rules;

"Gross Tonne Miles" or **"gtm"** means, in respect of each locomotive, loaded wagon, empty wagon or coaching stock, the Locomotive Miles, Loaded Wagon Miles, Empty Wagon Miles or Coaching Stock Miles multiplied by the relevant Locomotive Weight, Loaded Wagon Weight, Empty Wagon Weight or Coaching Stock Weight respectively;

"Incremental Costs" means all reasonable additional costs properly and reasonably incurred by Network Rail in respect of any modification referred to in paragraph 2.8, being the additional reasonable costs (if any) to Network Rail

in respect of its obligation to maintain and operate the Network, but excluding:

(a) any loss of income on the part of Network Rail; and

(b) freight-specific fixed and common costs for which Network Rail has already received funding from the Secretary of State, or any other body or person;

"Indexed Figures" means the Cancellation Sum, the VUC Default Rate, the Disruption Sum, the Electrification Asset Usage Rate, the Enhanced Planned Disruption Sum, the Freight Specific Charge Rate for the vehicles specified in paragraph (a) of the definition of "Freight Specific Charge Rate", the Incident Cap Access Charge Supplement Rate, the Late Notice Cancellation Sum, the Network Rail Cap, the Network Rail Payment Rate, the Normal Planned Disruption Sum, the Prolonged Disruption Amount, the Service Variation Sum, the Train Operator Cap and the Train Operator Payment Rate;

"Initial Indexation Factor" is derived from the following formula:

$$IIF = \left(1 + \frac{(CPI_{2018} - CPI_{2017})}{CPI_{2017}}\right)^2$$

where:

IIF means the Initial Indexation Factor;

CPI_{2017} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2017; and

CPI_{2018} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2018.

The value derived from this formula shall be rounded to three decimal places;

"IO Vehicle" means any vehicle in respect of which the applicable Commodity is iron ore;

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

"Loaded Wagon Miles" means, in relation to a loaded wagon, the Contract Miles travelled by that loaded wagon;

"Loaded Wagon Weight" means, in relation to a loaded wagon, the gross weight of that loaded wagon, measured in tonnes;

"Locomotive Miles" means, in relation to a locomotive, the Contract Miles travelled by that locomotive;

"Locomotive Weight" means, in relation to a locomotive, the gross weight of that locomotive, measured in tonnes;

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

(a) a train of a particular type; or

(b) a specific train having a train ID,

as specified in Appendix 3 of this Schedule 7;

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

"New Registered Equipment" means a type of railway vehicle or vehicle commodity combination not incorporated in the section of the Track Usage Price List entitled "Freight Variable Usage Charge rates";

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

"ORR's Qualifying Modification Criteria" means the criteria issued by ORR as described in paragraph 2.9.1;

"Phased in Charges Indexation Adjustment" has the meaning ascribed to it in paragraph 2.7.3;

"Proposed Review Notice" means the most recently proposed Review Notice given by ORR, in accordance with Schedule 4A of the Act;

"QM Threshold" means a level of costs in relation to a modification to the Operating Constraints determined in accordance with ORR's Qualifying Modification Criteria;

"Qualifying Modification" means a modification to the Operating Constraints in excess of their level as at 1 April 2019, which:

(a) exceeds the QM Threshold; and

(b) in respect of which a Contributing Train Operator has paid Network Rail Incremental Costs under paragraph 2.8 or its equivalent in the relevant access agreement;

"Qualifying Modification Benefit Charge" means, in relation to any Qualifying Modification, a charge which shall:

(a) take account of:

(i) the use made or to be made of the Qualifying Modification, where such modification increased the capacity of the Network; or

(ii) in any other case, the benefit which is likely to be derived from the Qualifying Modification by the Train Operator compared to the benefit derived from such modification by the Contributing Train Operator; and

(b) reflect any relevant guidance in relation to the funding of modifications to the Operating Constraints published in ORR's Qualifying Modification Criteria;

"Relevant Year" means a year commencing at 00:00 hours on 1 April and ending at 23:59 hours on the following 31 March;

"Relevant Year t" means the Financial Year for the purposes of which any calculation falls to be made;

"Relevant Year t-1" means the Financial Year preceding Relevant Year t, and similar expressions shall be construed accordingly;

"Review Implementation Notice" has the meaning given to "review implementation notice" in paragraph 7 of Schedule 4A of the Act;

"Review Notice" has the meaning given to "review notice" in paragraph 4 of Schedule 4A of the Act;

"Route-Level Efficiency Benefit Share" has the meaning ascribed to it in paragraph 4.1;

"route type k" means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;

"RPI" means the General Index of Retail Prices All Items measured by CHAW and published each month but where RPI for any month is not published on or before the last day of the third month after such month or there is a material change in the base composition of RPI, then ORR may, after consultation with the parties and such other persons as it considers appropriate, determine the use of such other index as it deems appropriate in the circumstances;

"SNF Vehicle" means any vehicle in respect of which the applicable Commodity is spent nuclear fuel;

"tariff band j" means the tariff zone and time band in which the train in question is operated;

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2018 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 2.2.10 of Schedule 7 to this contract or a freight track access contract previously held by the Train Operator;

"Traction Electricity Charge" means the charge calculated in accordance with paragraph 2.4;

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 2018 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 2.2.10 of Schedule 7 of this contract or a freight track access

contract previously held by the Train Operator;

“Traction Electricity Usage Occurrence Data” means information as to when a Bimodal Electric Multiple Unit or Bimodal Locomotive is either drawing current from the AC System and/or DC System, or is being powered by an alternative source of energy;

“Traction-Train Compatible” means a situation in which a Bimodal Electric Multiple Unit or Bimodal Locomotive is located on the Network with a system of electricity traction supply that the Bimodal Electric Multiple Unit or Bimodal Locomotive is capable of drawing current from;

"train category" means train category i as identified in the table in the Traction Electricity Modelled Consumption Rates List entitled "Freight Traction Electricity Modelled Consumption Rates for CP6";

"Train Mile" means, in relation to a train, or a portion of a train, a mile travelled by that train, or that portion of a train, on the Network;

"Variable Charge" means the charge that varies according to kgtm and is calculated in accordance with the formula set out in paragraph 2.2.1, summed across all Services;

"Vehicle Mile" in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;

"VUC Default Period" means the period from the later of:

(a) the date on which the New Registered Equipment is first used on the Network by the Train Operator; or

(b) 1 April 2019,

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 2.2.10 in respect of that New Registered Equipment;

"VUC Default Rate" means, in respect of any New Registered Equipment used on the Network by the Train Operator, the corresponding freight default rate for that type of vehicle (locomotive, empty wagon or loaded wagon) set out in the section of the Track Usage Price List entitled "Freight Variable Usage Charge default rates" and, being an Indexed Figure, adjusted in accordance with paragraphs 2.7.1 and 2.7.2;

"VUC Rate" means, in respect of each locomotive type, empty wagon type, loaded wagon type and coaching stock type used in respect of each Service, the rate per kgtm which shall be:

(a) in respect of the Relevant Year commencing on 1 April 2019 the total of the amount set out in the Track Usage Price List relating to the freight variable usage charge rate for the corresponding vehicle type and commodity for that year, multiplied by the Phased in Charges

Indexation Adjustment calculated in accordance with paragraph 2.7.3(a); and

(b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight variable usage charge rate for the corresponding vehicle type and commodity for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b); and

"Volume Reconciliation" has the meaning ascribed to it in the Traction Electricity Rules.

2. Track Charges and invoices

2.1 *Obligation on Train Operator to pay*

2.1.1 In respect of each Charging Period, the Train Operator shall pay or procure payment of the Variable Charge, the Freight Capacity Charge (where applicable, for the Relevant Year ending 31 March 2019), the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incremental Costs, the Incident Cap Access Charge Supplement and the Qualifying Modification Benefit Charge. In respect of each Relevant Year t, the Train Operator shall pay the amount of any sum $S1_{t\omega}$ and/or $S2_{t\omega}$ and/or any Charge Correction Amount payable, as provided in paragraph 18 of the Traction Electricity Rules. The charges will be rounded to the nearest penny. Where a calculation ends up exactly half way between whole numbers it will be adjusted upward.

2.1.2 No Track Charges shall be payable by the Train Operator in respect of a Train Slot when the train has not reached its Planned Destination for a reason which is Attributable to Network Rail.

2.1.3 Network Rail shall issue to the Train Operator an invoice as soon as practicable, or as otherwise agreed, following the expiry of each Charging Period in respect of the Variable Charge, the Freight Capacity Charge (where applicable, in respect of the Relevant Year ending 31 March 2019), the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incident Cap Access Charge Supplement and any Incremental Costs or Qualifying Modification Benefit Charge which is or are payable in respect of that Charging Period.

2.1.4 If, at the time that Network Rail issues any invoice pursuant to paragraph 2.1.3, any Route-Level Efficiency Benefit Share is payable by Network Rail to the Train Operator or any amount under the Traction Electricity Rules is payable by either party to the other, that invoice shall also reflect that Route-Level Efficiency Benefit Share payable by Network Rail or any amount under the Traction Electricity Rules payable by either party to the other.

2.2 *Variable Charges*

2.2.1 The Variable Charge in respect of each Service in each Charging Period shall be calculated in accordance with the following formula:

$$Variable\ Charge = 1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9$$

where:

1 means, in respect of each locomotive, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant locomotive type multiplied by the kgtm for that locomotive type relating to the relevant Service;

2 means, in respect of each empty wagon, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant empty wagon type multiplied by the kgtm for that empty wagon type relating to the relevant Service;

3 means, in respect of each loaded wagon, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant loaded wagon type multiplied by the kgtm for that loaded wagon type relating to the relevant Service;

4 means, in respect of each unit of coaching stock, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant coaching stock type multiplied by the kgtm for that coaching stock type relating to the relevant Service;

5 is to have a value of zero for any Relevant Year starting on or after 1 April 2019; in respect of the Relevant Year ending 31 March 2019, it means, in respect of each ESI Coal Vehicle, IO Vehicle and each SNF Vehicle, the Freight Only Line Charge Rate for that ESI Coal Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the kgtm for that ESI Coal Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service;

6 is to have a value of zero for any Relevant Year starting on or after 1 April 2019; in respect of the Relevant Year ending 31 March 2019, it means, in respect of each Coal Vehicle, the Coal Spillage Charge Rate multiplied by the kgtm for that Coal Vehicle relating to the relevant Service;

7 has a value of zero;

8 means, in respect of each ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle and each SNF Vehicle, the Freight Specific Charge Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for that ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the kgtm for that ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service; and

9 means, in respect of New Registered Equipment during the VUC Default Period, the VUC Default Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, multiplied by the kgtm for that New Registered Equipment relating to the relevant Service.

Bilateral supplements to the Track Usage Price List and Traction Electricity Modelled Consumption Rates List

2.2.2 Where the Train Operator intends to use New Registered Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.

2.2.3 No supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List shall have effect unless it has been:

(a) agreed between the parties and ORR has consented to it; or

(b) determined by ORR.

2.2.4 Either the Train Operator or Network Rail shall be entitled to propose that:

(a) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a new train category and corresponding rate; or

(b) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.

2.2.5 Any proposal of a kind referred to in paragraph 2.2.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.

2.2.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.

2.2.7 Where the parties agree to a supplement following a proposal under paragraph 2.2.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.

2.2.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 2.2.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.

2.2.9 Following a reference to ORR under paragraph 2.2.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

2.2.10 ORR may:

(a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 2.2.7, or following consultation with the parties, determine that a different supplement should apply; or

(b) following a referral to ORR under paragraph 2.2.8, determine the supplement that should apply.

2.2.11 In the case of a supplement to the Traction Electricity Modelled Consumption Rates List, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined the supplement.

2.2.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.

2.2.13 Following ORR's consent or determination under paragraph 2.2.10 Network Rail shall:

(a) apply the supplement from the date in accordance with paragraph 2.2.11 or 2.2.12 above as applicable; and

(b) within 28 days of the date of ORR's consent or determination:

(i) issue any adjusting invoice or credit note to the Train Operator. In the case of a supplement to the Track Usage Price List, this will reflect the difference between:

(A) the total amount paid by the Train Operator during the VUC Default Period under item '9' of the formula in paragraph 2.2.1; and

(B) the amount the Train Operator would have paid during this period under items '1' to '4' of the formula in paragraph 2.2.1 had the supplement been in place when the Train Operator first used the relevant railway vehicle on the Network; and

(ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.

2.2.14 Any supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List ORR has consented to or determined pursuant to a freight track access contract previously held by the Train Operator shall also apply to this contract.

2.3 ***Freight Capacity Charge and Freight Capacity Charge Wash-Up***

2.3.1 For the purposes of calculating the Freight Capacity Charge and Freight Capacity Charge Wash-Up for the Relevant Year ending 31 March 2019, paragraph 2.3 of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

2.3.2 Where Network Rail calculates that the Freight Capacity Charge Wash-up for the Relevant Year ending 31 March 2019 is a positive amount then, as soon as practicable, it shall issue to the Train Operator an invoice for that amount and the Train Operator shall pay or procure payment of it.

2.4 ***Traction Electricity Charge***

2.4.1 If the Train Operator procures the supply of electricity from or through Network Rail (whether as its agent or otherwise) for the purpose of running trains under

this contract, the Traction Electricity Charge in Relevant Year t shall be calculated in accordance with the following formula:

$E_t = E_{tmo} + E_{tme} + E_{tmuAC} + E_{tmuDC}$

where:

E_{tmo} means an amount calculated in accordance with paragraph 2.4.1.2 below;

E_{tme} means an amount calculated in accordance with paragraph 2.4.1.3 below;

E_{tmuAC} means an amount calculated in accordance with paragraph 2.4.1.4(a) below; and

E_{tmuDC} means an amount calculated in accordance with paragraph 2.4.1.4(b) below;

Circumstances in which calculation to be based on modelled data and circumstances in which calculation to be based on metered data

2.4.1.1 E_{tmo} shall be calculated in respect of all trains other than those identified in the table at Appendix 3, and E_{tme}, E_{tmuAC} and E_{tmuDC} shall be calculated in respect of the trains identified in the table at Appendix 3.

Calculation of modelled consumption

2.4.1.2 E_{tmo} is derived from the following formula:

$E_{tmo} = \sum E_{tmog}$

where:

$\sum$ means the summation across all Geographic Areas g, as appropriate;

E_{tmog} is derived from the following formula:

$E_{tmog} = \sum C_i \bullet EF_{gjt} \bullet UE_{igjt}$

where:

$\sum$ means the summation across all relevant train categories i (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

C_i means the modelled consumption rate:

(a) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and

(b) in kWh per electrified kgtm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

UE_{igjt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgtm in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract; provided that where train category i is a Bimodal Electric Multiple Unit or Bimodal Locomotive operating in a Traction-Train Compatible situation, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgtm in relation to locomotive-hauled units and all freight traffic), if any, of such trains is electrified.

Calculation of consumption using metered consumption data

2.4.1.3 E_{tme} is derived from the following formula:

$$E_{tme} = \sum E_{tmeg}$$

where:

$\sum$ means the summation across all Geographic Areas g, as appropriate;

E_{tmeg} is derived from the following formula:

$$E_{tmeg} = \sum \left(\left(CME_{mgjt} \bullet EF_{gjt} \right) - \left(RGB_{mgjt} \bullet EF_{gjt} \right) \right)$$

where:

$\sum$ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjt} means the consumption of electricity (in kWh) by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

RGB_{mgjt} means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t.

2.4.1.4

(a) E_{tmuAC} is derived from the following formula:

$$E_{tmuAC} = \sum E_{tmugAC}$$

where:

$\sum$ means the summation across all Geographic Areas g, as appropriate;

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \sum\left(CME_{mgjtAC} \bullet EF_{gjt}\right) \bullet \lambda_{ACg}$$

where:

$\sum$ means the summation across all Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjtAC} means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

λ_{ACg} means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g.

(b) E_{tmuDC} is derived from the following formula:

$$E_{tmuDC} = \sum E_{tmugDC}$$

where:

$\sum$ means the summation across all Geographic Areas g, as appropriate;

E_{tmugDC} is derived from the following formula:

$$E_{tmugDC} = \sum\left(CME_{mgjtDC} \bullet EF_{gjt}\right) \bullet \lambda_{DCg}$$

where:

$\sum$ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjtDC} means the consumption of electricity (in kWh) from the DC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction

Electricity Rules; and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g.

Metered Bimodal Electric Multiple Units and Bimodal Locomotives – deemed electrified mileage

2.4.1.5

(a) Where Metered Train m is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, as a minimum, within seven days of the end of each of the third, sixth, tenth and thirteenth Periods, provide to Network Rail the Traction Electricity Usage Occurrence Data for such Metered Train m. The Traction Electricity Usage Occurrence Data provided: within seven days of the end of the third Period shall cover Periods one, two and three; within seven days of the sixth Period shall cover Periods four, five and six; within seven days of the tenth Period shall cover Periods seven, eight, nine and ten; and within seven days of the thirteenth Period shall cover Periods eleven, twelve and thirteen.

(b) Where, after seven days, any Traction Electricity Usage Occurrence Data is missing in respect of any such Bimodal Electric Multiple Unit or Bimodal Locomotive, all mileage, if any, of such Bimodal Electric Multiple Unit or Bimodal Locomotive operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified in Traction-Train Compatible situations, and paragraphs 2.4.1.3 and 2.4.1.4 shall apply in respect of all such mileage.

2.4.2 Not used.

2.4.3 Not used.

2.4.4 Not used.

Election to introduce On-Train Metering for a vehicle or vehicle type

2.4.5 If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.

2.4.6 Any notice under paragraph 2.4.5 shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.

2.4.7 Promptly following any response served by Network Rail under paragraph 2.4.6, the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.

2.4.8 If the parties agree an amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.

2.4.9 Any agreed amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, which is approved by ORR under section 22 of the Act, shall apply with effect from the date agreed by the parties.

2.4.10 If the parties fail to reach agreement within 90 days after service of a notice under paragraph 2.4.5, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

2.4.11 Where ORR determines the matter pursuant to paragraph 2.4.10, it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

2.4.12 *Electrification Asset Usage Charge*

The Electrification Asset Usage Charge is an amount for electrification asset usage which is derived from the following formula:

$$Electrification\ Asset\ Usage\ Charge = \sum(EV_{tk} \bullet UV_{tk})$$

where:

$\sum$ means the summation across all Services using electric traction;

EV_{tk} means an amount in respect of the Electrification Asset Usage Rate, expressed in pounds sterling per electrified kgtm and rounded to four decimal places;

UV_{tk} means the actual number of electrified kgtm on route type k in the relevant Charging Period in Relevant Year t operated by or on behalf of the Train Operator. Where the Train Operator operates a Bimodal Electric Multiple Unit or Bimodal Locomotive, the actual number of electrified kgtm on route type k in Relevant Year t shall be calculated:

(i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is operating in a Traction-Train Compatible situation and is not a Metered Train m, in accordance with the proviso to the definition of UE_{igjt} in paragraph 2.4.1.2 above; or

(ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 2.4.1.5 above.

2.5 ***Not used.***

2.6 ***Incident Cap Access Charge Supplement***

The Incident Cap Access Charge Supplement shall be calculated in accordance with the following formula:

$$Incident\ Cap\ Access\ Charge\ Supplement = CMCP \times ICACSR$$

where:

CMCP means the sum of the Contract Miles operated in a Charging Period; and

ICACSR means the Incident Cap Access Charge Supplement Rate.

2.7 ***Price variation***

2.7.1 For each Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted in accordance with paragraph 2.7.2.

2.7.2

(a) For the Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted as at 1 April 2019 by multiplying them by the Initial Indexation Factor.

(b) For the Relevant Year commencing on and from 1 April 2020, and for each subsequent Relevant Year, the adjusted Indexed Figures from the preceding Relevant Year shall be further adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 2.7.2(b), the Adjustment Factor in respect of a Relevant Year shall be calculated in accordance with the following formula:

$$Adjustment\ Factor = 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}}$$

where:

CPI_{t-1} means the average value of the monthly CPI figures for the 12 months up to and including the month of December immediately preceding 1 April in the Relevant Year in question; and

CPI_{t-2} means the average value of the monthly CPI figures for the 12 months up to and including the month of December which falls 16 months before 1 April in the Relevant Year in question.

(c) If this contract takes effect after 1 April 2019, the Indexed Figures shall be adjusted in accordance with paragraphs 2.7.2(a) and (b) as if this contract had been in effect on and from 1 April 2019.

2.7.3 The Phased in Charges Indexation Adjustment shall be derived:

(a) in respect of the Relevant Year commencing on 1 April 2019, from the following formula:

$$PCIA_{2019} = Initial\ Indexation\ Factor$$

where:

$PCIA_{2019}$ means the Phased in Charges Indexation Adjustment in respect of the Relevant Year commencing on 1 April 2019; and

(b) in respect of any Relevant Year t commencing on or after 1 April 2020, from the following formula:

$$PCIA_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2018})}{CPI_{2018}}\right) \bullet Initial\ Indexation\ Factor$$

where:

$PCIA_t$ means the Phased in Charges Indexation Adjustment in respect of the Relevant Year t;

CPI_{t-1} has the same meaning as set out in paragraph 2.7.2 above;

CPI_{2018} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2018.

The value derived from this formula shall be rounded to three decimal places.

2.8 ***Incremental Costs***

2.8.1 Where:

(a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request;

(b) the operation of the Service requested would exceed the Operating Constraints applying as at 1 April 2019;

(c) the Train Operator notifies Network Rail at the time of requesting the Service that it wishes Network Rail to modify the Operating Constraints applying as at 1 April 2019 in a manner so as to permit the operation of the Service requested under this contract;

(d) Network Rail is reasonably able to effect such modifications in a timescale that meets the Train Operator's requirements; and

(e) the Incremental Costs of any such modifications are not estimated by Network Rail to exceed £300,000 in any Financial Year,

then paragraph 2.8.2 shall apply.

2.8.2 Network Rail shall, as soon as reasonably practicable following receipt of the Train Operator's notification under paragraph 2.8.1, notify the Train Operator that:

(a) it shall effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c); or

(b) it shall not effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c) for one of the following reasons:

(i) *it is not reasonably able to effect such modification in a timescale that meets the Train Operator's requirements; or*

(ii) *the Incremental Costs of such modification are estimated by Network Rail to exceed £300,000 in any Financial Year.*

2.8.3 If Network Rail fails to notify the Train Operator under paragraph 2.8.2, it shall be deemed to have accepted the Train Operator's request under paragraph 2.8.1(c).

2.8.4 Where Network Rail notifies the Train Operator under paragraph 2.8.2(a), paragraph 2.8.6 shall apply.

2.8.5 Where Network Rail notifies the Train Operator under paragraph 2.8.2(b), if the Train Operator disputes Network Rail's reasons under paragraphs 2.8.2(b)(i) or (ii), it shall be entitled to refer the matter for resolution in accordance with the ADRR.

2.8.6 Where Network Rail incurs Incremental Costs pursuant to paragraph 2.8.1, then such Incremental Costs shall be payable to Network Rail by the Train Operator in such amounts as are either:

(a) agreed between the parties prior to operation of the relevant Service; or

(b) if not so agreed between the parties, reasonable in the circumstances.

2.8.7 Where:

(a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request; and

(b) the operation of the Service requested:

(i) *would exceed the Operating Constraints applying as at 1 April 2019; and*

(ii) *is permitted under the Operating Constraints applying as at the date of the request by reason of a Qualifying Modification,*

then paragraph 2.8.8 shall apply.

2.8.8 The Train Operator shall, if it wishes to operate the Service requested under paragraph 2.8.7, pay to Network Rail a Qualifying Modification Benefit Charge of such amount as shall be determined to be reasonable by Network Rail using the criteria and guidance that are applicable to the Qualifying Modification Benefit Charge.

2.8.9 Where:

(a) the Train Operator pays for Incremental Costs under paragraph 2.8.6 in respect of any modification (in its capacity as a Contributing Train Operator); and

(b) another freight train operator pays a Qualifying Modification Benefit Charge to Network Rail in respect of such modification,

then Network Rail shall notify the Train Operator of the sum which it proposes to rebate to it and subject to paragraph 2.8.11, make a rebate to the Train Operator in respect of such Incremental Costs equal to the Qualifying Modification Benefit Charge so paid.

2.8.10 If the parties have failed to agree the Incremental Costs in accordance with paragraph 2.8.6 within 20 Working Days of the date of the relevant request under paragraph 2.8.1(a) either party shall be entitled to refer the determination of the Incremental Costs for resolution in accordance with the ADRR.

2.8.11 If the Train Operator disputes:

(a) the amount of any Qualifying Modification Benefit Charge payable by it under paragraph 2.8.8; or

(b) the amount of any rebate payable to it under paragraph 2.8.9,

within 20 Working Days of the date of its receipt from Network Rail of details of the amount of the charge or rebate respectively, it shall be entitled to refer the matter for resolution in accordance with the ADRR.

2.8.12 If a reference for resolution is made under paragraph 2.8.11, the parties shall serve a written notice on the freight train operator benefiting from the Qualifying Modification:

(a) notifying such freight train operator of the referral for resolution; and

(b) giving to such freight train operator the opportunity to become a party to the proceedings in respect of such resolution.

2.8.13 If a reference for resolution is made under paragraphs 2.8.5, 2.8.10 or 2.8.11, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall:

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

(b) have regard to:

(i) *the matters in respect of which duties are imposed on ORR by virtue of section 4 of the Act; and*

(ii) *the policy which ORR has most recently published in relation to track access charges for freight train operators and the funding of enhancements to the Network;*

(c) not make a determination which is inconsistent with any provisions of the Network Code; and

(d) give its reasons.

2.8.14 Network Rail undertakes to the Train Operator that, subject to the approval of ORR, in any regulated access agreement granting access rights which are subject to the Operating Constraints and entered into by Network Rail with a freight train operator after the date of signature of this contract, it will insert provisions that are, with only the necessary changes, the same as the terms set out in this paragraph 2.8.

2.8.15 Where, in relation to any Qualifying Modification, the determination of any Qualifying Modification Benefit Charge, or corresponding rebate of Incremental Costs, is referred to expert determination by any person under the provisions of any regulated access agreement (other than this contract):

(a) such determination shall be binding on Network Rail and the Train Operator; and

(b) Network Rail and the Train Operator shall make any necessary adjustments of payments between them under this contract to give effect to such determination.

2.8.16 Network Rail shall be the legal and beneficial owner of all modifications to Operating Constraints effected by or on behalf of Network Rail under this paragraph 2.8.

2.9 *Office of Rail and Road's Qualifying Modification Criteria*

2.9.1 ORR may at any time issue criteria:

(a) specifying how the QM Threshold for any Qualifying Modification shall be determined, which may vary for different types of Qualifying Modification; and

(b) setting out any guidance in relation to the funding of modifications to the Operating Constraints.

2.9.2 ORR's criteria under paragraph 2.9.1(a) above shall not have effect unless ORR has:

(a) consulted the parties in relation to the issues to be dealt with in such criteria;

(b) taken into account any representations made by the parties in response to the consultation under paragraph 2.9.2(a); and

(c) notified the parties as to its conclusions in relation to the issues to be dealt with in such criteria and the reasons for those conclusions.

2.10 **Not used**

2.11 ***Not used.***

2.12 **Not used*.***

3. **Freight charging review**

3.1 ORR may carry out one or more access charges reviews of all or part of this contract such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review.

3.2 In this paragraph 3, references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

3.3 *Interim treatment prior to implementation*

If the terms of a Proposed Review Notice proposing amendments to the contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the contract set out in the Proposed Review Notice shall have effect for the period (the "Interim Period") commencing on that date (or from any later date (or dates) specified

in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

(a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or

(b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

3.4 *Reconciliation payment*

(a) Within 28 days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the interim period, with (ii) the sums which would have been payable if the amendments required by either paragraphs 3.3(a) or (b) above had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:

(i) a statement of the amount due to or from the Train Operator; and

(ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.

(b) Within 14 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 3.4(a) above, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

(c) If any dispute is notified under paragraph 3.4(b) above it shall be resolved according to the following procedure:

(i) within seven days of service of the relevant notice, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;

(ii) if, for any reason, within seven days of the meeting referred to in paragraph 3.4(c)(i) above, the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;

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

(iv) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the ADRR.

(d) Within 28 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 3.4(a) above (if not disputed) or 28 days of resolution or determination of any dispute in accordance with paragraph 3.4(c) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this contract.

4. Route-Level Efficiency Benefit Share Mechanism

Calculation of the Route-Level Efficiency Benefit Share

4.1 For the purposes of the calculation and payment of any Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, paragraph 4 and Appendices 1 and 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

APPENDIX 1

(Not used)

APPENDIX 2

(Not used)

APPENDIX 3 – "METERED TRAINS M" FOR THE PURPOSES OF PARAGRAPH 2.4.1.1 OF PART 2

Train Type	Train ID	Traction Type
	[This column should include the full train ID. If all trains of the relevant train type used by the Train Operator are metered, this column should say "All".]	

SCHEDULE 8: PERFORMANCE REGIME

1. Definitions

In this Schedule 8 unless the context otherwise requires:

"**100 Train Operator Miles**" means the distance travelled by the Services operated by the Train Operator on the Network in any Charging Period as recorded in Network Rail's billing systems (unless there is a manifest error in such figure), divided by 100;

"30% Exposure" has the meaning ascribed to it in paragraph 11.1.1;

"**Actual Mileage t**" has the meaning ascribed to it in paragraph 10.1.4(a);

"**Adjusted MDNR**" has the meaning ascribed to it in paragraph 6.2.1;

"**Adjusted MDTO**" has the meaning ascribed to it in paragraph 4.2.1;

"**Adjustment Fraction**" means the number of Charging Periods or parts of a Charging Period in the first or final Financial Year, divided by 13;

"**Aggregate Net Liability**" has the meaning ascribed to it in paragraph 9.1.7;

"**Annual Contract Mileage**" has the meaning ascribed to it in paragraph 10.2.2(a);

"**Annual Contract Mileage Variation**" has the meaning ascribed to it in paragraph 10.2.2(b);

"**Attributable to both the Train Operator and Network Rail**" means, in respect of any delay to or cancellation of a Service or a Third Party Train, a delay or cancellation in relation to which the parties have agreed or it is otherwise determined, having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide, that both the Train Operator and Network Rail are to be jointly responsible (in which case the delay or cancellation shall not fall within the definitions of "Attributable to the Train Operator" or "Attributable to Network Rail");

"**Attributable to Network Rail**" means, in respect of any delay to or cancellation of a Service or any other matter:

(a) any delay or cancellation or other matter, occurring on or off the Network, which is not Attributable to the Train Operator;

(b) any delay to, or cancellation of, a Restriction of Use, which is not Attributable to the Train Operator;

(c) that portion of any such delay to or cancellation of a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree, or it is otherwise determined, is Attributable to Network Rail; or

(d) any delay or cancellation occurring on or off the Network, caused by an Other Train Operator Train on the Network,

and which excludes any such delay to or cancellation of a Service or any other matter arising as a result of a Planned Incident, in all cases having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide;

"**Attributable to the Train Operator**" means:

(a) in respect of any delay to or cancellation of a Service, any such delay or cancellation arising as a result of:

(i) any acts or omissions of the Train Operator's staff or its agents, contractors or sub-contractors;

(ii) any Train Operator Omission;

(iii) any failure or defect in the Specified Equipment relating to a Service (including where Network Rail shall have refused to permit the Service to move over the Network because the contents of the railway wagons have escaped, or there is pollution arising from the operation of such railway wagons);

(iv) any improperly loaded railway wagons which form the whole or part of any Service;

(v) any Service not being promptly accepted off the Network at a Destination or Intermediate Point for reasons not caused by Network Rail (in its capacity as operator of the Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for Network Rail in its capacity as operator of the Network) (other than the Train Operator);

(vi) any failures or delays arising off the Network, other than those which are caused by Network Rail (in its capacity as operator of the Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for Network Rail in its capacity as operator of the Network) (other than the Train Operator); or

(vii) that portion of any such delay to or cancellation of a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree or it is otherwise determined is Attributable to the Train Operator;

(b) in respect of any delay to or cancellation of a Third Party Train, or of a Restriction of Use, any such delay or cancellation arising as a result of:

(i) any delay to or cancellation of a Service Attributable to the Train Operator;

(ii) any Train Operator Omission; or

(iii) that portion of any such delay to, or cancellation of, a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree or it is otherwise determined is Attributable to the Train Operator,

in all cases:

(aa) having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide; and

(bb) ignoring any delay or cancellation under paragraph (d) of the definition of "Attributable to Network Rail";

"**Baseline Annual Contract Mileage**" has the meaning ascribed to it in paragraph 10.2.2(b);

"**Benchmarks**" means the Train Operator Benchmark and the Network Rail Benchmark;

"**Cancellation**" has the meaning ascribed to it in paragraph 8.1;

"**Cancellation Threshold**" has the meaning ascribed to it in Appendix 1;

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

"**Disruption Sum**" means the Disruption Sum specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

"**Enhanced Planned Disruption Sum**" has the meaning ascribed to it in Schedule 4;

"**Empty Third Party Train**" means any empty passenger train or any Ancillary Movement;

"Exposure Level" has the meaning ascribed to it in paragraph 11.1.1;

"**ETCS**" means the European Train Control System;

"**Financial Year t**" has the meaning ascribed to it in paragraph 10.1.4;

"**Financial Year t-1**" means the Financial Year preceding Financial Year t;

"**Financial Year t+1**" has the meaning ascribed to it in paragraph 10.2.2;

"**Full Cancellation**" means, in relation to a Third Party Train, a cancellation of a train resulting in the train not operating at all;

"**Incident Cap**" in respect of each Financial Year, means the Incident Cap selected by the Train Operator in accordance with paragraph 11.1;

"**Incident Cap Notice**" has the meaning ascribed to it in paragraph 11.1.2;

"**Initial Incident Cap Notice**" has the meaning ascribed to it in paragraph 11.1.1;

"**Late Notice Cancellation**" means any Service which, pursuant to paragraph 5.6.1 of Schedule 4, is treated as a Cancellation for the purposes of paragraph 8.1(d);

"**Late Notice Cancellation Sum**" means the Late Notice Cancellation Sum specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

"**MDNR**" has the meaning ascribed to it in paragraph 6.2.1(b);

"**MDTO**" has the meaning ascribed to it in paragraph 4.2.1(b);

"**Minutes Delay**" means, in respect of a Trigger of a Recording Point, the number of minutes delay in respect of that Trigger calculated in accordance with Appendix 2;

"**Network Rail Benchmark**" or "**NRB**" means, in relation to each Charging Period within the relevant Financial Year, the Network Rail Benchmark in Minutes Delay per 100 Train Operator Miles specified in Appendix 1;

"**Network Rail Cap**" means the Network Rail Cap specified in Appendix 1 and in respect of the first and last Financial Year means the Network Rail Cap specified in Appendix 1 multiplied by the Adjustment Fraction, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7 and paragraph 10.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"**Network Rail Charging Period Limit**" means $1/13^{th}$ of the Network Rail Cap;

"**Network Rail Payment Rate**" means the Network Rail Payment Rate specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7;

"**Normal Planned Disruption Sum**" has the meaning ascribed to it in Schedule 4;

"**Other Train Operator Train**" means any train operated pursuant to a permission to use granted to the Train Operator by an agreement other than this contract;

"**Part Cancellation**" means, in relation to a Third Party Train, a cancellation of a train resulting in the train either not commencing at its Origin or not arriving at its Destination;

"**Performance Data Accuracy Code**" has the meaning ascribed to it in Part B of the Network Code;

"**Performance Sum**" means an amount for which the Train Operator or Network Rail is liable under one of paragraphs 4 and 6 following a Charging

Period in relation to Minutes Delay in that Charging Period and the preceding Charging Periods, as adjusted in accordance with paragraph 10;

"**Planned Incident**" means an incident in connection with a Restriction of Use to the extent that there is Recovery Time in respect of that Restriction of Use incorporated in the Working Timetable;

"**Prolonged Disruption**" means the operation of Services in accordance with the Working Timetable on any part of the Network (for which there is no reasonably practicable diversionary route) being prevented for more than one Week as a result of any event or circumstance Attributable to Network Rail, but excluding from such events and circumstances Restrictions of Use, strikes, any kind of industrial action (on the part of any person) and the direct effects of the weather;

"**Prolonged Disruption Amount**" means the Prolonged Disruption Amount specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

"**Prolonged Disruption Sum**" means the Prolonged Disruption Sum calculated in accordance with paragraph 7;

"**Railway Operational Code**" has the meaning ascribed to it in Part H of the Network Code;

"**Recording Point**" means a location at which Network Rail records the times at which trains arrive at, pass or depart from that location;

"**Recovery Time**" means additional time incorporated in the Working Timetable to allow a train to regain time lost in delay during an earlier part of its journey;

"**Service Variation**" has the meaning ascribed to it in Schedule 4;

"**Third Party Train**" means a train other than a train operated by the Train Operator under this contract;

"**Train Operator Benchmark**" or "**TOB**" means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Charging Period, as specified in Appendix 1;

"**Train Operator Cap**" means the Train Operator Cap specified in Appendix 1 and in respect of the first and last Financial Year means the Train Operator Cap specified in Appendix 1 multiplied by the Adjustment Fraction, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7 and paragraph 10.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"**Train Operator Charging Period Limit**" means 1/13th of the Train Operator Cap;

"**Train Operator Payment Rate**" means the Train Operator Payment Rate specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7; and

"**Train Operator Omission**" means any failure of or defect in or damage to the Network (excluding fair wear and tear) arising from:

(a) the improper operation of trains under this contract;

(b) a breach of the Train Operator's Safety Obligations or of the terms of this contract; or

(c) any act or omission of the Train Operator's staff or agents, contractors or sub-contractors in breach of this contract;

"**Trigger**" means the act of a train arriving at, passing or departing from a Recording Point; and

"Zero Exposure" has the meaning ascribed to it in paragraph 11.1.1.

2. General

2.1 Performance monitoring system recordings

For the purposes of this Schedule 8, Network Rail shall use recordings made using the Performance Monitoring System, including the times at which Services and Third Party Trains Trigger a Recording Point. In respect of Services only, and where appropriate, Network Rail may require the Train Operator to make the relevant entry to record such times on the Performance Monitoring System. Network Rail and the Train Operator shall each comply with and be bound by the Performance Data Accuracy Code, and the provisions of the Performance Data Accuracy Code shall apply to this Schedule 8.

2.2 Liability for Short Notice Service

Network Rail shall, notwithstanding that it shall have accepted a Train Operator Variation Request for a Train Slot which is a Short Notice Service, have no liability under any provision of this Schedule 8 to the Train Operator in respect of delays to any Short Notice Service where such delay arises as a result of Network Rail meeting its commitments in terms of train regulation as set out in any relevant Train Regulation Policies established pursuant to the Railway Operational Code.

2.3 Mitigation of delays

The parties shall take reasonable steps to avoid and mitigate the effects of any incidents which cause delay to or cancellation of any trains, and any failure to take such steps shall be regarded as a separate incident.

2.4 Calculation of Minutes Delay

Appendix 2 (Calculation of Minutes Delay) shall have effect.

3. Diagnosis of delays

3.1 Attributing delays

Network Rail shall, using the information recorded under paragraph 2.1, identify whether each minute of delay included in Minutes Delay in respect of a Service or Third Party Train is:

(a) Attributable to the Train Operator;

(b) Attributable to Network Rail; or

(c) Attributable to both the Train Operator and Network Rail.

3.2 Delays Attributable to both the Train Operator and Network Rail

If a delay is Attributable to both the Train Operator and Network Rail, the associated Minutes Delay shall be allocated equally to the Train Operator and to Network Rail.

3.3 Unexplained delays Attributable to Network Rail

If the cause of the delay to or cancellation of a Service which occurs on the Network cannot be explained, the responsibility for such delay or cancellation shall be deemed to be Attributable to Network Rail.

3.4 Unexplained delays Attributable to the Train Operator

If the cause of the delay to or cancellation of a Service which occurs off the Network cannot be explained, the responsibility for such delay or cancellation shall be deemed to be Attributable to the Train Operator.

3.5 Identifying delaying incidents

The parties shall co-operate with each other by providing all such information to one another as is reasonably practicable regarding the identification of the incidents which cause delay to or cancellation of any Service or Third Party Train.

3.6 Performance statements

Appendix 3 (Performance statements) shall have effect.

4. Minutes Delay in respect of Train Operator performance

4.1 Prescribed delay period

4.1.1 For the purposes of this paragraph 4, the aggregate Minutes Delay to Third Party Trains Attributable to the Train Operator arising as a result of any one incident or event shall be capped as follows:

(a) where the Train Operator has elected to have no exposure above the Incident Cap in accordance with paragraph 11, any such minutes in excess of the Incident Cap shall be disregarded; or

(b) where the Train Operator has elected to have 30% exposure above the Incident Cap in accordance with paragraph 11, 70% of such minutes in excess of the Incident Cap shall be disregarded.

4.1.2 Any Full Cancellation of a Third Party Train (other than an Empty Third Party Train) which is Attributable to the Train Operator shall equate to 30 Minutes Delay and any Part Cancellation of a Third Party Train (other than an Empty Third Party Train) which is Attributable to the Train Operator shall equate to 15 Minutes Delay.

4.2 Train Operator performance against TOB

4.2.1 In respect of each Charging Period:

(a) the Minutes Delay to Third Party Trains which are Attributable to the Train Operator; and

(b) that portion of Minutes Delay to Third Party Trains which are Attributable to both the Train Operator and Network Rail which is allocated to the Train Operator (the aggregate Minutes Delay under (a) and (b) being referred to as "**MDTO**"),

in each case as adjusted in accordance with paragraph 4.1, shall be converted into a per 100 Train Operator Miles figure (the "**Adjusted MDTO**") using the formula below:

$$\text{Adjusted MDTO} = \frac{\text{MDTO}}{\text{100 Train Operator Miles}}$$

4.2.2 The Adjusted MDTO calculated in accordance with paragraph 4.2.1 shall then be compared with the TOB and:

(a) if the Adjusted MDTO is less than TOB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$\text{((TOB - the Adjusted MDTO) x Train Operator Payment Rate) x } \left(\frac{CPCM}{100}\right)$$

where:

CPCM means the total number of Contract Miles operated by the Train Operator in the relevant Charging Period;

(b) if the Adjusted MDTO exceeds TOB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$\text{((the Adjusted MDTO - TOB) x Train Operator Payment Rate) x } \left(\frac{CPCM}{100}\right)$$

where CPCM has the meaning ascribed to it in paragraph 4.2.2(a); and

(c) if the Adjusted MDTO is equal to TOB, neither party shall be liable to the other for a Performance Sum under this paragraph 4.2.

5. Cancellations of or delays to Restrictions of Use Attributable to the Train Operator

If a Restriction of Use is cancelled or the commencement of a Restriction of Use is delayed, in either case for a reason Attributable to the Train Operator, then, in respect of the cancellation of or delay to such Restriction of Use, the Train Operator shall be liable to pay Network Rail a sum equal to:

(a) in the case of a cancellation of a Restriction of Use, the Disruption Sum; or

(b) in the case of a delay to the commencement of a Restriction of Use, one quarter of the Disruption Sum multiplied by the number of hours by which the commencement is delayed, up to a maximum of four hours. For the purposes of this paragraph 5(b) part of an hour shall be treated as an entire hour.

6. Minutes Delay in respect of Network Rail performance

6.1 Cancellations

For the purposes of this paragraph 6, in respect of any Service which is a Cancellation:

(a) if the Service is a Cancellation as defined in paragraph 8.1(a), there shall not be any Minutes Delay in respect of the Service Attributable to Network Rail;

(b) if the Service is a Cancellation as defined in paragraph 8.1(b), there shall be disregarded any Minutes Delay in respect of the Service after the first 12 hours aggregate of Minutes Delay; and

(c) if the Service is a Cancellation as defined in paragraph 8.1(c), there shall be disregarded any Minutes Delay in respect of the Service after the time

at which the Service arrives at the point on or off the Network where it subsequently becomes a Cancellation.

6.2 Network Rail performance against NRB

In respect of each Charging Period:

6.2.1

(a) the Minutes Delay to Services which are Attributable to Network Rail; and

(b) that portion of Minutes Delay to Services which are Attributable to both the Train Operator and Network Rail which is allocated to Network Rail (the aggregate Minutes Delay under (a) and (b) being referred to as "**MDNR**"),

in each case as adjusted in accordance with paragraph 6.1, shall be converted into a per 100 Train Operator Miles figure (the "**Adjusted MDNR**") using the following formula:

$$\text{Adjusted MDNR} = \frac{MDNR}{100\,Train\,OperatorMiles}$$

6.2.2 the Adjusted MDNR calculated in accordance with paragraph 6.2.1 shall then be compared with the NRB and:

(a) if the Adjusted MDNR is less than NRB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$((\text{NRB} - \text{the Adjusted MDNR}) \times \text{Network Rail Payment Rate}) \times \left(\frac{CPCM}{100}\right)$$

where:

CPCM means the total number of Contract Miles operated by the Train Operator in the relevant Charging Period;

(b) if the Adjusted MDNR exceeds NRB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$((\text{the Adjusted MDNR} - \text{NRB}) \times \text{Network Rail Payment Rate}) \times \left(\frac{CPCM}{100}\right)$$

where CPCM has the meaning ascribed to it in paragraph 6.2.2(a); and

(c) if the Adjusted MDNR is equal to NRB, neither party shall be liable to the other for a Performance Sum under this paragraph 6.2.

7. Prolonged Disruption

7.1 Prolonged Disruption Sum calculation

In respect of each Week during which any Prolonged Disruption continues, the Prolonged Disruption Sum shall be calculated in accordance with the following formula:

Prolonged Disruption Sum = PDA x S x M

where:

PDA is the Prolonged Disruption Amount;

S is one quarter of the number of Services operated during the four Weeks immediately before the first Week of the Prolonged Disruption over that part of the Network subject to the Prolonged Disruption; and

M is the multiplier set out in the table below in respect of that Week of the Prolonged Disruption:

Week	**Multiplier**
Week 1	1
Week 2	1
Week 3	2
Week 4	3
Week 5 to 13	2
Week 14 to 26	1.5

7.2 Subsequent Prolonged Disruption

No Prolonged Disruption Sum shall be payable in respect of Week 27 or any subsequent Week of a Prolonged Disruption.

7.3 Network Rail liability

7.3.1 Subject to paragraph 7.3.2 below, Network Rail shall be liable in any Charging Period for the Prolonged Disruption Sum in respect of each Prolonged Disruption of a Service Planned to depart its Origin in that Charging Period.

7.3.2 Network Rail shall not be liable under this paragraph 7 for any Prolonged Disruption Sum in respect of any Service which is an Empty Service (save that, for the purpose of this paragraph 7, a service, pursuant to a contract with a third party, conveying empty wagons and/or coaching stock will not be an Empty Service), a Short Notice Service or an Ancillary Movement.

8. Cancellation

8.1 Cancellation

"**Cancellation**" means any Service:

(a) which does not depart from its Origin within 12 hours after the time at which it is Planned to depart;

(b) which departs from its Origin within 12 hours after the time at which it is Planned to depart and arrives at its Destination more than 12 hours after the time at which it is Planned to arrive, and in respect of which no Diverted Service has been agreed; or

(c) which departs from its Origin within 12 hours after the time at which it is Planned to depart but does not arrive at its Destination, and in respect of which no Diverted Service has been agreed,

in each case where at least 6 hours of the delay to the Service is Attributable to Network Rail; or

(d) in respect of which Network Rail:

(1) nominates an Alternative Train Slot for a reason which is Attributable to Network Rail under paragraphs 4 or 5 of Schedule 4 and the Train Operator reasonably rejects such Train Slot and:

(i) does not propose a different Alternative Train Slot; or

(ii) proposes a different Alternative Train Slot and this is not accommodated by Network Rail as a Train Operator Variation; or

(2) is not able to nominate an Alternative Train Slot under paragraphs 4 or 5 of Schedule 4.

8.2 Network Rail liability

8.2.1 Subject to paragraphs 8.2.2, 8.2.3 and 8.3 below, and paragraphs 4.5, 5.6 and 7.4 of Schedule 4, Network Rail shall be liable in any Charging Period for the Cancellation Sum in respect of each Cancellation of a Service Planned to depart its Origin in that Charging Period.

8.2.2 Network Rail shall not be liable under this paragraph 8 for any Cancellation Sum in respect of:

(a) an Empty Service (save that, for the purpose of this paragraph 8, a service, pursuant to a contract with a third party, conveying empty wagons and/or coaching stock will not be an Empty Service), a Short Notice Service or an Ancillary Movement; or

(b) any Service which is Planned to depart its Origin during a Week in respect of which a Prolonged Disruption Sum is payable and which is a Cancellation as a result of such Prolonged Disruption.

8.2.3 In respect of any Cancellation which is a Late Notice Cancellation, Network Rail shall not be liable for the Cancellation Sum in respect of that Late Notice Cancellation pursuant to paragraph 8.2.1 above but shall instead be liable for the Late Notice Cancellation Sum in respect of that Late Notice Cancellation.

8.3 Late presentation of Service

Network Rail shall have no liability to the Train Operator under the terms of this Schedule 8 where a Service is presented to Network Rail after the time at which it is Planned to depart its Origin to the extent such late presentation leads to:

(a) a Cancellation as a result of Network Rail meeting its commitments in terms of train regulation as set out in any relevant Train Regulation Policies established pursuant to the Railway Operational Code; or

(b) a conflict with any restrictions on the use of the Network contained in the Timetable Planning Rules.

9. Payment

9.1 Aggregate Net Liability of Network Rail and the Train Operator for Performance Sums

9.1.1 The Aggregate Net Liability of Network Rail for a Performance Sum in respect of any Charging Period shall not exceed the Network Rail Charging Period Limit.

9.1.2 Subject to paragraph 9.1.3, if Network Rail would otherwise be liable for a Performance Sum which exceeds the Network Rail Charging Period Limit, then the amount by which such claim exceeds the Network Rail Charging Period Limit shall be taken into account when calculating Network Rail's Aggregate Net Liability for a Performance Sum in respect of the subsequent Charging Period or Charging Periods in that Financial Year.

9.1.3 In respect of any Financial Year, the Aggregate Net Liability of Network Rail under this paragraph 9.1 shall not exceed the Network Rail Cap.

9.1.4 The Aggregate Net Liability of the Train Operator for a Performance Sum in respect of any Charging Period shall not exceed the Train Operator Charging Period Limit.

9.1.5 Subject to paragraph 9.1.6, if the Train Operator would otherwise be liable for a Performance Sum which exceeds the Train Operator Charging Period Limit, then the amount by which such claim exceeds the Train Operator Charging Period Limit shall be taken into account when calculating the Train Operator's Aggregate Net Liability for a Performance Sum in respect of the subsequent Charging Period or Charging Periods in that Financial Year.

9.1.6 In respect of any Financial Year, the Aggregate Net Liability of the Train Operator under this paragraph 9.1 shall not exceed the Train Operator Cap.

9.1.7 In this paragraph 9.1, the "**Aggregate Net Liability**" of a party means, in respect of a Charging Period or Financial Year, its liability after setting off the liability of the other party to it under the same provisions in respect of the same period.

9.2 Issue of invoice or credit note

9.2.1 In respect of each Charging Period, subject to paragraph 9.1, Network Rail shall:

(a) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the period final statement provided in accordance with paragraph 11 of Appendix 3 within 28 days after the provision of such period final statement;

(b) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the period final statement provided in accordance with paragraph 12 of Appendix 3, within 28 days after the provision of such period final statement;

(c) issue a credit note in respect of the aggregate of all Normal Planned Disruption Sums and Enhanced Planned Disruption Sums for which Network Rail is liable in accordance with Schedule 4, if any, within 28 days after agreement of such liability.

9.2.2 In the event that (i) any of the period final statements referred to in sub-paragraphs 9.2.1(a) and 9.2.1(b) have not been provided within 28 days after the end of the Charging Period to which they relate or (ii) agreement referred to in sub-paragraph 9.2.1(c) has not been reached within those same 28 days, in both cases Network Rail may agree with the Train Operator that an interim payment be made. If such agreement is reached then the invoice or credit note (as appropriate) issued shall detail which of the relevant sums are thus settled and which remain outstanding; and any subsequent invoice or credit note (as appropriate) issued in respect of the same Charging Period under sub-paragraphs 9.2.1(a), 9.2.1(b) or 9.2.1(c) shall take account of the interim payments as well as remaining subject to paragraph 9.1.

9.3 Resolution of disputes

9.3.1 Without prejudice to Clause 13, Part B of the Network Code shall apply to any dispute under this Schedule 8 in relation to the attribution of delay or cancellation.

9.3.2 The Train Operator shall not dispute any matter which it has agreed or is deemed to have agreed under Appendix 3.

10. Reviews of Network Rail Cap and Train Operator Cap

10.1 Not used

10.2 Adjustments to the Network Rail Cap and Train Operator Cap

10.2.1 The Network Rail Cap and the Train Operator Cap that shall apply from 1 April in each Financial Year in relation to each Charging Period in that Financial Year shall be the Network Rail Cap and the Train Operator Cap, in each case as specified in Appendix 1 and as adjusted in accordance with this paragraph 10.2 and paragraphs 2.7.1 and 2.7.2 of Schedule 7, provided that no adjustment shall be made to the Network Rail Cap or the Train Operator Cap pursuant to the following subparagraphs of this paragraph 10.2 prior to 1 April 2020.

10.2.2 Within 28 days after the last day of Financial Year t, Network Rail shall notify the Train Operator in writing of:

(a) the total number of Contract Miles operated by the Train Operator during Financial Year t (the "**Annual Contract Mileage**");

(b) Network Rail's determination as to whether or not the Annual Contract Mileage for Financial Year t exceeds or is less than the Baseline Annual Contract Mileage (as determined in accordance with paragraph 10.2.3 below ("**Baseline Annual Contract Mileage**")) by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Contract Mileage (the "**Annual Contract Mileage Variation**"); and

(c) if Network Rail determines that there has been an Annual Contract Mileage Variation, Network Rail's proposal for an adjusted Network Rail Cap and/or Train Operator Cap in respect of the Financial Year immediately following Financial Year t ("**Financial Year t+1**"), in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR.

10.2.3

(a) The Baseline Annual Contract Mileage that shall apply from 1 April in each Financial Year shall be the Baseline Annual Contract Mileage

specified in Appendix 1, unless it is adjusted in accordance with paragraph 10.2.3(b).

(b) If, in accordance with paragraph 10.2.2(b), Network Rail determines that there has been an Annual Contract Mileage Variation, then the Baseline Annual Contract Mileage for Financial Year t+1 and each subsequent Financial Year until any further adjustment is made to the Baseline Annual Contract Mileage pursuant to this paragraph 10.2.3(b) shall be the Annual Contract Mileage for the Financial Year t in which the Annual Contract Mileage Variation has occurred.

10.2.4 Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 10.2.2, the parties shall endeavour to agree whether the Network Rail Cap and/or the Train Operator Cap should be adjusted in accordance with this paragraph 10.2 and, if so, the adjustment (in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR), provided that any adjustment to the Network Rail Cap and/or the Train Operator Cap pursuant to this paragraph 10.2 shall be subject to the prior approval of ORR.

10.2.5 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 10.2.2, the Train Operator and Network Rail reach agreement as to any adjustment to the Network Rail Cap and/or the Train Operator Cap, the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine whether or not to approve the proposed adjustment. The parties agree to abide by any determination issued by ORR.

10.2.6 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 10.2.2, either:

(i) the parties fail to reach agreement; or

(ii) prior to the expiry of that 56 day period both parties agree that agreement is unlikely to be reached prior to expiry of that period,

the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine the matter. The parties agree to abide by any determination issued by ORR.

10.2.7 Any adjustment to the Network Rail Cap and/or the Train Operator Cap shall take effect only when it has been approved by ORR and, unless otherwise specified by ORR, any such adjustment shall take effect from 1 April in Financial Year t+1.

10.2.8 Promptly following any adjustment to the Network Rail Cap and/or the Train Operator Cap pursuant to this paragraph 10.2, and in order to give effect to that adjustment, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:

(a) any invoices and credit notes already issued; and

(b) any payments already made in respect of Performance Sums,

in each case relating to the Charging Periods in Financial Year t+1.

10.2.9 Any statement issued by Network Rail pursuant to paragraph 10.2.8 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 9.2.

11. Selection by the Train Operator of the Incident Cap and Exposure Level

11.1 Selection by the Train Operator of the Incident Cap and Exposure Level

11.1.1 Subject to paragraph 11.1.3, on or before the date on which this paragraph 11.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Incident Cap and the level of exposure above the Incident Cap (the **"Exposure Level"**) it wishes to apply, being either no exposure above the Incident Cap, as described in paragraph 4.1.1(a) (**"Zero Exposure"**), or 30% exposure above the Incident Cap, as described in paragraph 4.1.1(b) (**"30% Exposure"**) (such notification being the **"Initial Incident Cap Notice"**). The Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in that part of column B (if the Train Operator selects Zero Exposure) or column C (if the Train Operator selects 30% Exposure) adjacent to the level of Incident Cap selected by the Train Operator in the Initial Incident Cap Notice until it is replaced by a different level of Incident Cap and Exposure Level selected by the Train Operator in an Incident Cap Notice issued pursuant to paragraph 11.1.2.

11.1.2 Subject to paragraph 11.1.3, the Train Operator may change the level of Incident Cap and Exposure Level previously selected by it (either in the Initial Incident Cap Notice or any subsequent Incident Cap Notice issued pursuant to this paragraph 11.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Incident Cap and Exposure Level it wishes to apply for that Financial Year (the "Incident Cap Notice"). Any such Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Incident Cap and Exposure Level to apply, and the Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in that part of column B (if the Train Operator selects Zero Exposure) or column C (if the Train

Operator selects 30% Exposure) adjacent to the level of Incident Cap selected by the Train Operator in the Incident Cap Notice until it is replaced by a different level of Incident Cap and Exposure Level selected by the Train Operator in an Incident Cap Notice issued pursuant to this paragraph 11.1.2.

11.1.3 For the avoidance of doubt, if the Train Operator selected an Incident Cap prior to Financial Year 2019/20, and did not issue a subsequent Incident Cap Notice in respect of Financial Year 2019/20 selecting 30% Exposure, the Train Operator shall be deemed, for the purposes of paragraphs 11.1.1 and 11.1.2, to have selected Zero Exposure for Financial Year 2019/20.

11.2 **Level of Incident Cap, Exposure Level and Incident Cap Access Charge Supplement Rate**

For the purposes of paragraph 11.1, the Train Operator shall select one of the following Incident Caps and, in respect of the relevant Incident Cap, the Exposure Level as set out in either Column B or C:

A	B	C
Incident Cap	**Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period)** expressed in pounds sterling and rounded to four decimal places – Zero Exposure above the Incident Cap	**Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period)** expressed in pounds sterling and rounded to four decimal places – 30% Exposure above the Incident Cap
1,000 Minutes	0.2045	0.1432
2,000 Minutes	0.1057	0.0740
3,000 Minutes	0.0623	0.0436
4,000 Minutes	0.0403	0.0282
5,000 Minutes	0.0280	0.0196
6,000 Minutes	0.0217	0.0152
7,000 Minutes	0.0172	0.0121
8,000 Minutes	0.0135	0.0095
9,000 Minutes	0.0101	0.0071
10,000 Minutes	0.0067	0.0047
No Incident Cap	None	None

12. ETCS Amendments

12.1 Circumstances in which ETCS Amendments can be made

(a) Either party may by notice to the other propose that amendments are made to this Schedule 8 (and to any other provisions of this contract as a result of those amendments) as a consequence of the introduction of

ETCS on any part of the Network that is used by the Train Operator ("**ETCS Amendments**").

(b) ORR may make ETCS Amendments, subject to complying with paragraph 12.3.

12.2 ETCS Amendments agreed by the parties

(a) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:

(i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and

(ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.

(b) The party receiving a notice under paragraph 12.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.

(c) Promptly, and in any event within 20 Working Days following service of a response pursuant to paragraph 12.2(b), the parties shall use reasonable endeavours to agree the wording of the proposed ETCS Amendments and the date on which they are to have effect.

(d) If:

(i) the parties agree to make ETCS Amendments pursuant to paragraph 12.2(c); or

(ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 12.2(a), or prior to that date the parties agree that it is unlikely that agreement will be reached within that period,

they shall notify ORR.

12.3 ORR right to approve, determine or make ETCS Amendments

(a) If ORR:

(i) receives a notification under paragraph 12.2(d); or

(ii) proposes to make ETCS Amendments itself,

then in deciding whether to approve, determine or make (as the case may be) the ETCS Amendments it shall:

(A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and

(B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.

(b) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 12.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

APPENDIX 1: PERFORMANCE

Train Operator Performance

Train Operator Payment Rate	£54.04 per Minutes Delay to Third Party Trains which are Attributable to the Train Operator.
Train Operator Cap	✂
Disruption Sum	£2,375

Network Rail Performance

Network Rail Payment Rate	£21.38 per Minutes Delay to Services which are Attributable to Network Rail.
Network Rail Cap	✂
Prolonged Disruption Amount	means an amount equal to the Late Notice Cancellation Sum.

Benchmarks

Train Operator Benchmark

The Train Operator Benchmark (TOB) in relation to each Charging Period shall be 3.10 Minutes Delay per 100 Train Operator Miles.

Network Rail Benchmark

The Network Rail Benchmark (NRB) in relation to a Charging Period shall be 7.82 Minutes Delay per 100 Train Operator Miles;

Cancellation Sum

The Cancellation Sum shall be calculated as follows:

(a) the Cancellation Sum shall be £2,025 for each Cancellation below the Cancellation Threshold;

(b) the Cancellation Sum shall be £5,401 for each Cancellation equal to or above the Cancellation Threshold; and

(c) the "**Cancellation Threshold**" in any Charging Period shall be 0.40 per cent of the total number of Services operated by the Train Operator in that Charging Period.

Late Notice Cancellation Sum

The Late Notice Cancellation Sum in respect of each Late Notice Cancellation shall be £1,749.

Baseline Annual Contract Mileage

The Baseline Annual Contract Mileage shall be that number approved or determined by ORR in due course.

APPENDIX 2: CALCULATION OF MINUTES DELAY

1. Subject to paragraph 2 below, the Minutes Delay for a train in respect of the Trigger of a Recording Point shall be equal to:

   (a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train Triggers the Recording Point is later than the time at which the train is Planned to Trigger the Recording Point; and

   (b) in respect of each other recorded Trigger, the lesser of:

      (i) the number of minutes in respect of the first recorded Trigger calculated in accordance with paragraph 1(a); and

      (ii) the greater of ((A1-A2) + B) and zero,

      where:

         A1 is the number of minutes between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);

         A2 is the Planned time between the Triggers mentioned in (A) above; and

         B is any Recovery Time between such Triggers.

2. The Minutes Delay calculated in accordance with paragraph 1 above shall be allocated to the incidents causing those Minutes Delay as described in paragraph 3 of this Schedule 8. Any minutes of delay which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero and for the purposes of this Schedule 8 shall not be included in the Minutes Delay.

APPENDIX 3: PERFORMANCE STATEMENTS

Interim statements provided by Network Rail

1 Using all reasonable endeavours, Network Rail shall provide to the Train Operator an interim statement listing all incidents which are in connection with Services which were Planned to depart from their Origin during each day. Such interim statements shall be issued on the eighth day after the end of each particular day (or, if the eighth day is not a Working Day, on the next Working Day thereafter) indicating:

(a) which incidents are Attributable to the Train Operator and, in respect of such incidents, the Minutes Delay to Third Party Trains;

(b) which incidents are Attributable to Network Rail and, in respect of such incidents, the Minutes Delay to Services;

(c) which incidents are Attributable to both the Train Operator and Network Rail, and in respect of such incidents (i) that portion of Minutes Delay to Third Party Trains which is allocated to the Train Operator and (ii) that portion of Minutes Delay to Services which is allocated to Network Rail; and

(d) which incidents in categories (a) to (c) above remain, at the time of production of the interim statement, under further investigation following a referral by the Train Operator under Condition B2.3.2 of the Network Code.

2 As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, Network Rail shall provide to the Train Operator an interim statement listing all Disruption Sums arising during that Week for which it believes the Train Operator is liable under paragraph 5 of Schedule 8.

3 As soon as reasonably practicable after the end of each Charging Period, and using all reasonable endeavours to provide such interim statement within six Working Days after the end of each Charging Period, Network Rail shall provide to the Train Operator an interim statement listing:

(a) the total Contract Miles; and

(b) the total number of Services,

in each case operated by the Train Operator during that Charging Period.

Interim statements provided by the Train Operator

4 As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, the Train Operator shall provide to Network Rail the following interim statements:

(a) an interim statement listing (i) all Cancellations occurring during that Week for which the Train Operator considers it is entitled to a Cancellation Sum, and (ii) any Late Notice Cancellations for which the Train Operator considers it is entitled to a Late Notice Cancellation Sum, in each case under paragraph 8 of Schedule 8;

(b) an interim statement listing all Prolonged Disruptions occurring or continuing during that Week for which the Train Operator considers it is entitled to a Prolonged Disruption Sum under paragraph 7 of Schedule 8; and

(c) an interim statement listing all Service Variations arising during that Week for which the Train Operator considers it is entitled to a Service Variation Sum under Schedule 4.

Dispute of interim statement

5 Within two Working Days of receipt of any interim statement under paragraph 1, 2, 3 or 4 of this Appendix the recipient shall notify the provider of the interim statement of any reason why it disputes the interim statement by endorsing the interim statement and returning it to the provider of such statement.

6 Within the next five Working Days after notification of any dispute under paragraph 5 above, nominated representatives of the parties shall meet and attempt to resolve that dispute.

7 If any matter is still in dispute ten Working Days after the meeting held under paragraph 6 above, either party may refer such matter for resolution under paragraph 9.3.1 of Schedule 8.

Deemed agreement

8 Except to the extent that it has, within two Working Days of receipt, notified the provider of an interim statement under paragraph 5 above that it disputes the contents of such interim statement, the recipient shall be deemed to have agreed the contents of that statement.

Period final statements

9 After the resolution of any investigations listed in an interim statement in accordance with paragraph 1(d) above, and of any disputes notified under paragraph 5 above, Network Rail shall provide to the Train Operator a final statement in respect of each Charging Period, listing:

(a) the total Cancellations and the aggregate of the Cancellation Sums payable under Schedule 8;

(b) the total Late Notice Cancellations and the aggregate of the Late Notice Cancellation Sums payable under Schedule 8;

(c) the total Service Variations and the aggregate of the Service Variation Sums payable under Schedule 4;

(d) the aggregate of the Disruption Sums payable under Schedule 8; and

(e) the aggregate of the Prolonged Disruption Sums payable under Schedule 8,

in each case applicable to Services Planned to depart from their Origin during that Charging Period.

10 After the resolution of any incidents referred for further investigation under Condition B2.3.2 of the Network Code, Network Rail shall provide to the Train Operator a final statement in respect of each Charging Period, listing:

(a) the total Performance Sum for which Network Rail is liable under Schedule 8; and

(b) the total Performance Sum for which the Train Operator is liable under Schedule 8,

in each case including such relevant calculations as the parties shall agree from time to time.

Statement of adjustment

11 If Condition B3.3 of the Network Code (Adjustment to prior results) applies in respect of all or part of a Charging Period, Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to any Performance Sums, Cancellation Sums, Late Notice Cancellation Sums, Normal Planned Disruption Sums, Enhanced Planned Disruption Sums, Disruption Sums and Prolonged Disruption Sums already paid in respect of the Charging Period.

12 Any statement issued by Network Rail under paragraph 11 above shall be accompanied by an adjusting invoice or credit note.

SCHEDULE 9: LIMITATION ON LIABILITY

1. Definitions

In this Schedule 9:

"Liability Cap" means:

(a) in relation to the first Contract Year, the sum of £6,000,000; and

(b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \times \left(\frac{CPI_n}{CPI_1}\right)$$

where:

(i) C_1 is the sum of £6,000,000;

(ii) C_n is the Liability Cap in the nth subsequent Contract Year;

(iii) CPI_n is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and

(iv) CPI_1 is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the month in which this contract became effective under 3.1.

2. Application

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 11.5.

3. Limitation on Network Rail's liability

In relation to any claim for indemnity made by the Train Operator to which this Schedule 9 applies:

(a) Network Rail shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

(b) to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and Network Rail shall have no further liability for it.

4. Limitation on Train Operator's liability

In relation to any claims for indemnity made by Network Rail to which this Schedule 9 applies:

(a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

(b) to the extent its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Train Operator shall have no further liability for it.

5. Disapplication of limitation

To the extent that any Relevant Losses:

(a) result from a conscious and intentional breach by a party; or

(b) are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with its Safety Obligations,

such Relevant Losses:

(i) shall not be subject to the limitation of liability in Schedule 9; and

(ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Contract Year for the purposes of the limitations of liability in this Schedule 9.

6. Exclusion of legal and other costs

The limits on the parties' liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7. Exclusion of certain Relevant Losses

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this contract.

8. Continuing breaches

Nothing in this Schedule 9 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

(a) is a continuing breach of contract which continues for more than 12 months;

(b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or

(c) is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3(b) or 4(b).

9. Final determination of claims

For the purpose of this Schedule 9, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

SCHEDULE 10: NETWORK CODE AND TRACTION ELECTRICITY RULES MODIFICATIONS

1. Automatic effect

1.1 General

This contract shall have effect:

(a) with the modifications; and

(b) from the date,

specified by ORR in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

1.2 Retrospective effect

No relevant notice may have retrospective effect.

2. Modification notice

2.1 Meaning

A modification notice is a notice given by ORR to the parties for the purposes of this contract, which modifies specified provisions of this contract (other than this Schedule 10) by making such modifications as are consequential upon, or necessary to give full effect to, any change to the Network Code or the Traction Electricity Rules.

2.2 Contents of modification notice

A modification notice shall state:

(a) the modifications which are to be made to this contract;

(b) the date from which specified modifications are to have effect; and, if any such modifications are to have effect from different dates, the dates applicable to each modification; and

(c) which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question.

3. Adaptation procedure

3.1 Application

This paragraph 3 applies in the case of specified modifications which are specified as being subject to adaptation.

3.2 Negotiation of Adaptations

In respect of the modifications in each modification notice:

(a) within 14 days of the date of service of the relevant modification notice, the parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;

(b) each party shall ensure that:

(i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and

(ii) ORR's criteria are applied in the negotiations; and

(c) the negotiations shall not continue after the backstop date.

3.3 Agreed adaptations - notice to the Office of Rail and Road

If the parties have agreed the requisite adaptations on or before the backstop date, not later than seven days after the backstop date the agreed requisite adaptations shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

(a) stating the reasons for the agreed requisite adaptations;

(b) stating the extent to which and ways in which ORR's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and

(c) giving such other information as ORR may have requested.

3.4 Agreed adaptations - Office of Rail and Road's consent

If ORR is satisfied with the agreed requisite adaptations, and it gives a notice of consent to requisite adaptations, they shall have effect as provided for in paragraph 3.8.

3.5 Agreed requisite adaptations - Office of Rail and Road's refusal of consent

If ORR gives notice to the parties that it is not satisfied with any or all of the agreed requisite adaptations, it may:

(a) require the parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as it specifies), in which case they shall do so; or

(b) determine the requisite adaptations itself.

3.6 Requisite adaptations - failure to agree or submit

If the parties have failed to submit agreed requisite adaptations to ORR for its consent within 7 days after the backstop date, it may determine the requisite adaptations itself.

3.7 Notice of determined requisite adaptations

A notice of determined requisite adaptations is a notice:

(a) given by ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to ORR within 7 days of the backstop date requisite adaptations to which it gives its consent; and

(b) which states the requisite adaptations which ORR has determined should be made using its powers to do so under paragraph 3.5 or 3.6.

3.8 Effect of requisite adaptations

Requisite adaptations established either:

(a) by agreement of the parties and in respect of which ORR has given a notice of consent to requisite adaptations under paragraph 3.4; or

(b) by the determination of ORR under paragraph 3.5 or 3.6 and stated in a notice of determined requisite adaptations,

shall have effect from such date as ORR states in the relevant notice of consent to requisite adaptations or (as the case may be) the relevant notice of determined requisite adaptations.

4. Procedural matters

4.1 More than one notice

More than one modification notice may be given.

4.2 Differences etc as to requisite adaptations

Any difference or question as to whether any thing is a requisite adaptation shall be determined by ORR:

(a) on the application of either party; and

(b) in accordance with such procedure (including as to consultation) as ORR may by notice to the parties determine.

4.3 Co-operation and information

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

(a) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and

(b) if that party fails timeously to do so, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

4.4 Office of Rail and Road's criteria

In relation to the negotiation of any requisite adaptation, ORR shall be entitled to:

(a) give to the parties any criteria which it requires to be applied in the negotiations; and

(b) modify the criteria after consultation.

4.5 Procedural modifications

In relation to the procedure in paragraph 3 for the agreement or establishment of requisite adaptations (including the times within which any step or thing requires to be done or achieved):

(a) such procedure may be modified by ORR by a notice of procedural modification given by it to the parties; but

(b) ORR may give a notice of procedural modification only if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if such a notice is requested by both parties.

4.6 Dates

In this Schedule 10:

(a) where provision is made for a date to be specified or stated by ORR it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and

(b) any notice given by ORR which states a date may state different dates for different purposes.

4.7 Requirement for prior consultation

No relevant notice shall have effect unless:

(a) ORR has first consulted the parties and the Secretary of State in relation to the proposed relevant notice in question;

(b) in the consultations referred to in paragraph 4.7(a), ORR has made available to the parties and the Secretary of State such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;

(c) ORR has given each party and the Secretary of State the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;

(d) ORR has notified the parties and the Secretary of State as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and

(e) in effecting the notifications required by paragraph 4.7(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.8 Consolidated contract

Not later than 28 days after the giving of the last of:

(a) a modification notice; and

(b) a notice of determined requisite adaptations or a notice of consent to requisite adaptations (as the case may be),

Network Rail shall prepare and send to the Train Operator, ORR and the Secretary of State a copy of this contract as so modified.

4.9 Saving

Nothing in this Schedule 10 affects:

(a) the right of either party to approach and obtain from ORR guidance in relation to the requisite adaptations; or

(b) the right of ORR at any time to effect modifications to the Network Code under Condition C8 of that code, or the Traction Electricity Rules pursuant to the provisions contained therein.

5. Definitions

In this Schedule 10 unless the context otherwise requires:

"backstop date"	means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a), 4.5 or 4.6);
"modification notice"	has the meaning ascribed to it in paragraph 2.1;
"notice of consent to requisite adaptations"	means a notice given by ORR under paragraph 3.4;
"notice of determined	has the meaning ascribed to it in paragraph 3.7;

requisite adaptations"	
"notice of procedural modification"	means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;
"ORR's criteria"	means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;
"relevant notice"	means a modification notice, notice of consent to requisite adaptations, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR's criteria;
"requisite adaptations"	in relation to specified modifications, means the amendments (including the addition of information) to the provisions in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and "adaptation" shall be construed accordingly; and
"specified"	means specified in a modification notice, and "specify" and "specifying" shall be construed accordingly.

SCHEDULE 11: CROSSRAIL MODIFICATIONS

1. Automatic effect

1.1 General

This contract shall have effect:

(a) with the modifications ; and

(b) from the date which shall not be earlier than 1 January 2015,

specified by ORR in a modification notice.

1.2 Retrospective effect

A modification notice shall not have retrospective effect.

2. Modification notice

2.1 Meaning

A modification notice is a notice given by ORR to the parties for the purposes of this contract which modifies:

(a) the specified provisions; and

(b) any other provisions of this contract which require modification as a result of the modifications to the specified provisions,

by making such modifications as are, in ORR's opinion, necessary or desirable having regard to:

(i) ORR's duties under section 4 of the Act;

(ii) and the access rights under any Crossrail Track Access Contract if, and to the extent that, those access rights are inconsistent with the specified provisions.

2.2 Contents of Modification notice

A modification notice shall state:

(a) the modifications which are to be made to this contract;

(b) the date or dates from which the specified modifications are to have effect; and, if any such modifications are to have effect from different dates, the dates applicable to each modification;;

(c) the reasons for the modifications; and

(d) the amount of compensation, if any, which shall be payable to the Train Operator under paragraph 4.1, including the reasons for ORR's determination of such amount.

3. Procedural matters

3.1 Modification notice

More than one modification notice may be given.

3.2 Co-operation and information

If ORR gives notice to either or both of the parties that it requires from either or both of them any information in relation to any proposed modifications (including information that a party would be required to provide, to the extent applicable, under Part G of the Network Code in respect of a Network Change proposed by Network Rail):

(a) the party of whom the request is made shall provide the requested information to ORR in accordance with any timescales specified by ORR in its notice and to the standard required by ORR; and

(b) if that party fails to provide the requested information in accordance with paragraph 3.2(a) and has not provided ORR with an explanation which is satisfactory to ORR for its failure to do so, including, to the extent applicable, any revised timescales within which that party shall provide the requested information, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

3.3 Dates

In this Schedule 11, a modification notice may:

(a) instead of specifying or stating a date, specify or state a method by which a date shall be determined, and references to dates shall be construed accordingly; and

(b) state different dates for different purposes.

3.4 Requirement for prior consultation

No modification notice shall have effect unless:

(a) ORR has first consulted the parties, the Secretary of State and such other persons, if any, as it considers appropriate in relation to the proposed modification notice;

(b) in the consultations referred to in paragraph 3.4(a), ORR has made available to the consultees such drafts of the proposed modification

notice as it considers are necessary so as properly to inform them of its contents;

(c) ORR has given each consultee the opportunity to make representations in relation to the proposed modification notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on such notice;

(d) ORR has notified the consultees as to its conclusions in relation to the modification notice in question (including by providing to each consultee a copy of the text of the proposed modification notice) and its reasons for those conclusions; and

(e) in effecting the notifications required by paragraph 3.4(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

3.5 Consolidated contract

Not later than 14 days after the giving of a modification notice Network Rail shall prepare and send to the Train Operator, ORR and the Secretary of State a copy of this contract as so modified.

4. Train Operator compensation

4.1 Network Rail obligations

4.1.1 Network Rail shall compensate the Train Operator in accordance with the terms of the modification notice.

Following Network Rail's entry into any Crossrail Track Access Contract, it shall notify the Train Operator (and send copies of this notice to ORR and the Secretary of State) as soon as reasonably practicable of the extent of any modifications to the specified provisions that it reasonably considers, at that time, may be required in relation to the Crossrail Project to enable the Train Operator to plan the future of its business.

4.2 Compensation

4.2.1 For the purposes of determining the amount of compensation under paragraph 2.2(d), the relevant provisions of Part G of the Network Code shall apply as if the implementation of the modifications was a consequence of implementing a Network Change proposed by Network Rail under Part G of the Network Code.

4.2.2 The Train Operator shall take reasonable steps to prevent, mitigate and restrict the circumstances which may give rise to an entitlement to compensation pursuant to this Schedule 11.

4.3 Implementation of modifications

No issue or procedure relating to the compensation of the Train Operator for the consequences of the implementation of the modifications shall entitle any party to delay the implementation of the modifications.

5. Definitions

Unless the context otherwise requires, in this Schedule 11:

"**Crossrail Act**" means the "**Crossrail Act 2008**";

"**Crossrail Project**" means the railway transport system and connected matters as described in the Crossrail Act;

"**Crossrail Track Access Contract**" means any access contract (as defined in Section 17(6) of the Act) in respect of track which Network Rail has entered into (including, pursuant to directions by ORR under the Act) in relation to the Crossrail Project;

"**modification notice**" has the meaning ascribed to it in paragraph 2.1; and

"**specified provisions**" means the provisions in this contract relating to the Services which operate on the routes between:

(a) Shenfield and Stratford; and

(b) Paddington and Reading.

IN WITNESS WHEREOF THE DULY AUTHORISED REPRESENTATIVES OF NETWORK RAIL AND THE TRAIN OPERATOR HAVE EXECUTED THIS CONTRACT ON THE DAY FIRST ABOVE WRITTEN.

Signed by ……

Print name……..

Duly authorised for and on behalf of

NETWORK RAIL INFRASTRUCTURE LIMITED

Signed by ……..

Print name……..

Duly authorised for and on behalf of

VINTAGE TRAINS LIMITED