

TRACK ACCESS CONTRACT (PASSENGER SERVICES)¹

Dated²

[³

¹ All cross references to the HAL Network Code (including defined terms, Parts and Conditions) in this contract will need to be reviewed and updated as necessary once the HAL Network Code is finalised as part of this regulation 29/30 application.

² References to Network Rail have been changed to Heathrow Airport Limited throughout to reflect that HAL is the infrastructure manager (for the purposes of The Railways Infrastructure (Access and Management) Regulations 2005) of the Heathrow Rail Infrastructure. HAL has indicated to TfL that it intends to enter into an infrastructure management agreement with Network Rail Infrastructure Limited under which HAL will subcontract the vast majority of the day-to-day management, operation and maintenance of the track to Network Rail. TfL has no issue in principle with HAL subcontracting its obligations. TfL does however have concerns as to how this structure will work in practice, specifically in relation to:

- Events of Default, including how the insolvency of Network Rail and/or Network Rail's failure to perform its obligations under the subcontract will impact on this contract;
- charging, specifically how HAL will effectively manage Network Rail's costs;
- how day-to-day operations will be managed in practice; specifically what mechanisms will be in place to enable the Train Operator to liaise with Network Rail;
- as Network Rail will continue to act as the infrastructure manager of the Great Western Main Line, ensuring that no conflicts of interest arise between that role and the role of subcontractor to HAL; and
- whether HAL or Network Rail will hold the required safety authorisation in this context (and so be the infrastructure manager for the purposes of the The Railways and Other Guided Transport Systems (Safety) Regulations 2006).

HAL confirmed at a meeting with TfL on 25 November 2015 that it would not append its infrastructure management agreement with Network Rail to this contract and that it would instead report back with an alternative proposal as to how TfL could have visibility of, and contractual rights in connection with, HAL's arrangement with Network Rail. TfL has yet to receive this proposal. Once the scope of Network Rail's role is confirmed, this contract may need to be updated to incorporate interface arrangements between HAL, TfL/MTR and Network Rail.

³ HAL is exempt from the requirement to hold a network licence in respect of the Heathrow Rail Infrastructure. The implication of this is that HAL is not subject to the obligations that are imposed by such licences (for example obligations in respect of asset stewardship, the environment and passenger information). Without such obligations in place, there is a risk to track users (and ultimately the passengers) that HAL will not put in place the necessary processes and safeguards to ensure a smooth and safe operation of the Heathrow Rail Infrastructure. This is of great concern to TfL, and should be of concern to the ORR in respect of protecting the interests of users and passengers. The inclusion of "surrogate licence conditions" (i.e. contractual provisions which replicate certain aspects of a typical licence) was discussed with HAL during meetings in November and December 2015 and it was agreed that the Network Rail licence conditions would be reviewed to determine which obligations TfL reasonably expected to be included within access documentation. HAL originally agreed to undertake this work but after weeks of filibustering, flatly declined, at which stage TfL undertook its own review and provided its proposals to HAL at the start of 2016. As a result of this work, TfL has included in this contract certain obligations equivalent to the licence conditions that it reasonably considers should be included within a track access contract. For further detail and rationale, please

Between⁴

~~NETWORK RAIL INFRASTRUCTURE~~ HEATHROW AIRPORT LIMITED

and

[Insert name of the beneficiary]

TRANSPORT FOR LONDON OR A RAILWAY UNDERTAKING NOMINATED BY
TRANSPORT FOR LONDON (CURRENTLY MTR CORPORATION (CROSSRAIL)
LIMITED)

see our comments on Clauses 4, 6, and 7. The inclusion of “surrogate licence conditions” will need to be accompanied by effective remedies in the event that HAL does not comply with the obligations imposed. TfL considers that users of the Heathrow Rail Infrastructure should be entitled not only to damages where HAL fails to meet its obligations but also a process to compel performance by HAL of those obligations, as due to the nature of the obligations and the monopoly nature of this essential facility, HAL is ultimately the only person who can provide (or procure) the access and services. TfL has also proposed the inclusion of a new indemnity in Clause 10.2 for a breach of these “surrogate licence conditions”, similar to the existing indemnities for breach of Safety Obligations and in relation to Environmental Damage. Please see our comments on Clause 10.2 for further detail.

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HAL has advised TfL that traction electricity (EC4T) would be charged under the Network Rail Track Access Agreement for the Great Western Main Line for both EC4T used on the Network Rail network and EC4T used on the Heathrow Rail Infrastructure (with amendments being required to both the Network Rail Great Western track access agreement and this contract to acknowledge this). This is acceptable to TfL in principle provided that there is no duplication in charging between HAL and Network Rail and subject to Network Rail being entitled and willing to do so. In early April 2016, HAL and Network Rail circulated a proposal for how EC4T and electrification asset usage charges for the Heathrow Rail Infrastructure were to operate. TfL has identified a number of potential issues with this proposal and the details and suitability of this proposal are still being worked through with the relevant parties. References to Traction Electricity and the Traction Electricity Rules have therefore been retained in this contract pending resolution on these arrangements, given that ultimately HAL should be required to provide traction electricity for the use of its infrastructure. To the extent that the arrangements proposed by HAL and Network Rail are not viable, EC4T will need to be provided and paid for pursuant to this contract.

~~[Version published 11 February 2016]~~

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THIS CONTRACT is made the [] day of [Month Year]

BETWEEN:

- (1) ~~Network Rail Infrastructure~~ Heathrow Airport Limited, a company registered in England under number ~~2904587-1991017~~ having its registered office at ~~4 Eversholt Street~~ The Compass Centre, London Nelson Road, NW1-2DN (~~“Network Rail~~ Hounslow, Middlesex, TW6 2GW (~~“HAL”~~); and
- (2) ~~[], a company registered in [] under number []~~ Transport for London or a railway undertaking nominated by Transport for London (currently MTR Corporation (Crossrail) Limited), a body established under the Greater London Authority Act 1999 having its registered office at ~~[]~~ Windsor House, 42-50 Victoria Street, London, SWH 0TL (the **“Train Operator”**).

WHEREAS:

- (A) ~~Network Rail~~ HAL is the owner of the Network; ~~and~~
- (B) HAL is exempt from the requirement under section 7 of the Act to be authorised by a licence granted under section 8 of the Act to be the operator of the Network⁶;
- ~~(B) Network Rail has been directed by ORR-~~ (C) HAL has agreed to grant to the Train Operator permission to use certain track comprised in the Network on the terms and conditions of this contract~~;~~ and
- (D) HAL has or intends to appoint Network Rail to perform certain of HAL’s obligations under this contract⁷.

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 HAL Network Code;

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⁶ TfL has included this additional recital given the existence of the exemption is key to the arrangements proposed by HAL.

⁷ As noted on the front cover, we understand that HAL intends to subcontract the vast majority of the day-to-day management, operation and maintenance of the Network to Network Rail. This recital has been included to reflect this arrangement.

⁸ The process of periodic review of track access charges cannot refer to Schedule 4A of the Railways Act 1993 as this relates to the periodic review of Network Rail charges only. TfL and HAL discussed, in outline, how periodic review would work during meetings in November and December 2015, although HAL was not willing to discuss any matters relating to charging pending the outcome of the ORR’s decision on the charging framework. No proposal was forthcoming from HAL following these discussions. TfL has included in Schedule 8 principles

~~“access charges review” has the meaning ascribed to it in paragraph 1(1) of Schedule 4A to the Act;~~

“**Access Dispute Resolution Rules**” and “**ADRR**” have the meaning ascribed to them in Part A of the [HAL](#) Network Code;

“**Access Proposal**” has the meaning ascribed to it in Part D of the [HAL](#) 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 1159 of the Companies Act 2006;

“**Ancillary Movements**” has the meaning ascribed to it in Part D of the [HAL](#) Network Code;

“**Applicable [HAL](#) Engineering Access Statement**” means the [HAL](#) Engineering Access Statement in force in respect of the ~~Routes~~ [Network](#) on the date on which Services may first be operated by the Train Operator under this contract, as from time to time amended or replaced under Part D of the [HAL](#) Network Code;

“**Applicable Timetable Planning Rules**” means the [HAL](#) Timetable Planning Rules in force in respect of the ~~Routes~~ [Network](#) on the date on which Services may first be operated by the Train Operator under this contract, as from time to time amended or replaced under Part D of the [HAL](#) Network Code;

“**Applicable Timetable**” has the meaning ascribed to it in Schedule 8;

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

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

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

[for how it considers the charging and periodic review regime should operate under this contract. This is consistent with the charging framework proposed to be established by the ORR.](#)

“Concession Agreement” means the concession agreement between Rail for London Limited and the Train Operator more particularly described in Schedule 3;⁹

“Concessionaire” means the person defined as such in the Concession Agreement;

“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 HAL Network Code and the Traction Electricity Rules;

“D-X” has the meaning ascribed to it in Part D of the HAL Network Code;

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

“Environmental Condition” has the meaning ascribed to it in Part E of the HAL Network Code;

“Environmental Damage” has the meaning ascribed to it in Part E of the HAL 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** HAL Event of Default;

“Expiry Date” means [~~date to be added~~ May 2028]¹⁰;

“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;

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TfL has prepared this agreement on the basis that it will apply only in relation to the Crossrail services. Crossrail services are let by TfL / RfL under a concession agreement. This has therefore been updated to reflect the Crossrail operation. TfL acknowledges that franchising could be relevant in future for any franchises which use the Heathrow Rail Infrastructure.

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This date should be consistent with the date that the exemption granted to HAL in respect of the requirement to hold a network licence expires (i.e. 30 years from the date when services commenced on the Network), as HAL will need to apply for a licence or another exemption and have either in effect from this date. This will require amendment to the form of track access agreement – particularly if HAL becomes regulated under sections 17 and 18 of the Railways Act 1993. Further clarity will be required around the arrangements that will be in place when HAL’s exemption is revoked, expired or renewed as the Train Operator and other related parties will need to know which set of arrangements they are operating under in any transition period. TfL recognises that this expiry date extends the term of the contract beyond the length of the Crossrail concession granted to the Train Operator as set out in the Concession Agreement but notes that the successor operator will still require access to the Network and considers this additional period to be appropriate. The contract will be novated to the successor operator in due course. Please also see the “mandatory Proposal for Change” process set out in the HAL Network Code and HAL Station Access Conditions forming part of this regulation 29/30 application.

“Force Majeure Report” has the meaning ascribed to it in Clause 17.1;

~~“Franchise Agreement” means the franchise agreement with the Secretary of State referred to in Schedule 3;~~

~~“Franchisee” means the person defined as such in the Franchise Agreement;~~

“HAL Event of Default” has the meaning ascribed to it in paragraph 1.3 of Schedule 6;¹¹

“HAL Network Code” means the document by that name published by HAL;¹²

“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

¹¹ [This is simply an amendment from the definition of Network Rail Event of Default to HAL Event of Default.](#)

¹² [This is simply an amendment from the definition of Network Code to HAL Network Code.](#)

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;

“Liability Cap” has the meaning ascribed to it in paragraph 1 of Schedule 9;

~~“Longstop Date” means [date to be added];~~

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“Network” has the meaning ascribed to it in Part A of the [HAL](#) Network Code and further described in [Schedule 2](#);

~~“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;~~

“Network Rail” means [Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN](#);

“New Working Timetable” means, in respect of any day, the version of the Working Timetable for that day provided by ~~Network Rail~~ [HAL](#) in accordance with Condition D2.7.1, as amended pursuant to Condition D2.7.4;

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[The definition of Longstop Date is no longer applicable given the amendments to Clause 3 \(Conditions Precedent and Duration\). Please see our comments on Clause 3 below.](#)

“**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;

“**Operations Agent**” means at the date of this Agreement, Network Rail or such other suitably qualified and competent party as may be appointed by HAL from time to time;¹⁴

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

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

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“~~railway facility~~**Railway Group Standards**” has the meaning ascribed to it in ~~section 83-Part A~~ of the ~~Act~~HAL Network Code;¹⁶

“**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); or
- (c) in the case of Schedule 8, the matter specified in paragraph 18 of Schedule 8 (a “breach” for the purposes of this definition only),

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;

¹⁴ This definition has been included to reflect that HAL is intending to subcontract the majority of its obligations under this contract to Network Rail. TfL notes that an equivalent concept has been proposed for the stations access agreements as part of this regulation 29/30 application where HAL is intending to subcontract the majority of its obligations to Heathrow Express Operating Company Limited.

¹⁵ The definition of railway facility has been deleted as the defined term is not used in this contract.

¹⁶ HAL advised TfL by email dated 24 March 2016 that it does not consider it necessary to produce equivalents to the Network Rail standards for the Heathrow Rail Infrastructure as these are not relevant. TfL’s understanding is therefore that the standards applicable on the Network Rail Network are to apply.

“Relevant Obligation” has the meaning ascribed to it in Clause 17;

“Rolled Over Access Proposal” has the meaning ascribed to it in Part D of the [HAL](#) Network Code;

~~**“Routes”** means that part of the Network specified in Schedule 2;~~

¹⁷**“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;

“Services” means the railway passenger services specified in Schedule 5;

“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 as specified in paragraph 5.1 of Schedule 5;

¹⁸

~~**“SPP Threshold”** has the meaning ascribed to it in paragraph 18 of Schedule 8;~~

“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 code systems [used by Network Rail in respect of the](#)

¹⁷ [The definition of Routes is not relevant in this context as access to the whole Network is relevant given the size of the Network. This definition has therefore been deleted and consequential amendments have been made throughout the contract to refer to “Network”.](#)

¹⁸ [Reference to SPP Threshold in the context of performance has been deleted in this contract at this stage, pending preparation of Schedule 8. TfL’s principles for a performance regime are set out in Schedule 8 to this contract.](#)

Network Rail Network as amended from time to time in accordance with its terms;¹⁹

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

“**Timetable Participant**” shall have the meaning ascribed to it in Part D of the HAL Network Code;

“**Track Charges**” means the charges payable by or on behalf of the Train Operator to ~~Network Rail~~HAL, as set out in ~~paragraph 1 of Part 2 of~~ 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;

20

~~“**Train Consist Data**” means information as to the number(s) and type(s) of railway vehicle comprised in a train movement;~~

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

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

“**TW-X**” has the meaning ascribed to it in Part D of the HAL 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;

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

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

1.2 Interpretation

In this contract, unless the context otherwise requires:

¹⁹ HAL advised TfL by email dated 24 March 2016 that it has amended the Network Rail systems code to reflect the characteristics of the Heathrow Rail Infrastructure (although we have not been provided with the nature of these amendments). As HAL has not provided this document to TfL for review, this definition and Clause 6.4 (Use of Railway Code Systems) remains subject to further comment by TfL pending review of the updated Systems Code. We note that if HAL has in fact produced its own Systems Code this definition may need to be updated to reflect this.

²⁰ The definition of Train Consist Data has been deleted as this concept is not relevant in the context of this contract as all trains will be formed of the same class and number of vehicles.

- (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 2006²¹ and ~~Network Rail’s network licence~~ [The Railways Infrastructure \(Access and](#)

²¹

[Note: HAL is currently exempt from the requirement to hold a network licence. If such exemption were to be withdrawn or expire, this provision would need to be updated.](#)

[Management\) Regulations 2005](#)²² 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 [\[as defined in Schedule 4\]](#)²³;
- (n) words and expressions defined in the [HAL](#) Network Code shall have the same meanings in this contract;
- (o) if there is any conflict of interpretation between this contract and the [HAL](#) Network Code, the [HAL](#) Network Code shall prevail;
- (p) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and
- (q) 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.

2 [HAL](#) NETWORK CODE AND TRACTION ELECTRICITY RULES

2.1 Incorporation

The [HAL](#) Network Code and the Traction Electricity Rules are incorporated in and form part of this contract.

2.2 Modifications to the [HAL](#) Network Code or the Traction Electricity Rules

If either the [HAL](#) 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 [HAL](#) Network Code, and except in relation to London Underground Limited²⁴ ~~and Heathrow Express Operating Company Limited~~ to

²² [This should be updated to reflect the applicable legislation at the time this contract is to be entered into, noting that the DfT proposes to introduce replacement regulations.](#)

²³ [To be confirmed once the detail of Schedule 4 has been prepared.](#)

²⁴ HEOC will be party to the HAL Network Code and must be bound by the multilateral provisions.

the extent that such persons are not party to the HAL Network Code, ~~Network Rail~~ HAL shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the HAL Network Code.

3 CONDITIONS PRECEDENT AND DURATION²⁵

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~~ Clause 5 shall take effect on [~~insert the date on which Services may first be operated by the Train Operator under this contract~~ 28 May 2018]²⁶.

3.2 Conditions precedent ~~to Clause 5~~

~~Clause 5 shall take effect when the~~ The following conditions precedent ~~have been~~ are to be satisfied in full by the date specified in Clause 3.1:

- (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~~ HAL is authorised by a licence granted under section 8 of the Act to be the operator of ~~that part of~~ the Network ~~comprising the Routes~~ 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

²⁵

Given the unwillingness of HAL to meaningfully engage with TfL in negotiating this contract (leading to the need for the regulation 29/30 application to be brought), it is not acceptable to TfL that this contract would lapse if HAL was not to satisfy its conditions precedent by the relevant date; indeed TfL considers this to be a likely outcome if HAL would incur no liability by doing so. Clause 3 has therefore been redrafted on the basis that each party has a period between the date the contract is signed (when all clauses other than Clause 5 will come into effect) and the date specified in Clause 3.1 (when Clause 5 is scheduled to come into effect) in order to satisfy their respective conditions precedent. A failure to satisfy any conditions precedent by this date will constitute an Event of Default for which damages may be claimed (i.e. for costs incurred as a result of not being able to access the Network). Consequential amendments have also been made to Clause 14.3 and Schedule 6.

²⁶

This start date is consistent with the intended start date of the Crossrail services to Heathrow. As discussed in footnote 70 below, at this stage TfL is seeking rights for the passenger services from May 2018, with a limited number of driver training rights from 2017. Access rights for testing and pre-service access will also be required (which would allow for access during 2017). Planning is still taking place in relation to the additional rights which may be needed for driver training, mileage accumulation, trial operations and trial running and additional rights may be required in due course. If such access rights are not granted pursuant to a separate agreement, this contract will need to be updated to allow for earlier access for these purposes. Please see footnote 70 below for further comments on earlier access rights required for driver training.

only for the fulfilment of any condition relating to this contract becoming unconditional);

- (d) ~~each of the parties~~ the Train Operator and HAL (or the Operations Agent, as applicable)²⁷ each 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~~ date specified in Clause 3.1:

- (a) in the case of ~~Network Rail~~ HAL, 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~~ date specified in Clause 3.1:

- ~~(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.~~
- (a) this shall constitute a HAL Event of Default where HAL was responsible for satisfying the outstanding condition precedent in accordance with Clause 3.3(a);
- (b) this shall constitute a Train Operator Event of Default where the Train Operator was responsible for satisfying the outstanding condition precedent in accordance with Clause 3.3(b); and

²⁷

As noted above in footnote 2, depending on the scope of obligations that HAL subcontracts to Network Rail, Network Rail may be required to obtain the relevant safety authorisation instead of HAL. To ensure that this condition precedent references the correct party it has been updated to require either HAL or the Operations Agent (as applicable) to obtain the required safety authorisation.

(c) other than Clause 5, the contract shall continue in full force and effect. Clause 5 shall take effect on the date the outstanding condition(s) precedent is satisfied.

3.5 Expiry

This contract shall continue in force until the earliest of:

~~(a) lapse under Clause 3.4;~~

~~(b)~~(a) termination under Schedule 6; and

~~(e)~~(b) 0159 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~~HAL); 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.

4.3 Non-discrimination²⁸

4.4 Cooperation²⁹

4.5 Provision of information³⁰

5 PERMISSION TO USE

5.1 Permission to use the **Routes**Network

~~Rail~~ HAL grants the Train Operator permission to use the **Routes**Network.

5.2 Meaning

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

- (a) to use the track comprised in the **Routes**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 HAL Network Code;
- (c) to make Ancillary Movements;
- (d) to Stable, which shall be treated, for the purposes of Part D of the HAL Network Code, as the use of a Train Slot;
- (e) for the Train Operator and its associates to enter upon ~~that part of the Network comprising the Routes~~, with or without vehicles; and
- (f) for the Train Operator and its associates to bring things onto ~~that part of the Network comprising the Routes~~ and keep them there,

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

- (i) the HAL Network Code;

28

As HAL is exempt from the requirement under section 8 of the Railways Act 1993 to hold a licence authorising it to operate the Heathrow Rail Infrastructure, it is not subject to the obligations that are imposed by such licences. As HEOC is a subsidiary of HAL, the absence of a licence obligation requiring HAL to not discriminate is of particular concern to TfL. TfL therefore considers that an obligation on HAL not to discriminate should be included.

29

Further to the above footnote, TfL is concerned, in the absence of a licence obligation requiring HAL to cooperate with relevant authorities and third parties, that HAL may not act in a prudent manner as infrastructure manager. Accordingly, TfL proposes that an obligation to this effect be included to address this concern.

30

HAL should provide information to the Train Operator demonstrating how its governance structure and decision making (particularly in relation to capacity allocation and charging and who takes those decisions) meets the requirements of the Railways Infrastructure (Access and Management) Regulations 2005 (or their replacement, as the case may be) – both at the outset of this contract and on an ongoing basis during the term of this contract. Despite repeated requests from TfL, HAL has refused to provide this information, which is essential to make sure there is full separation from those making decisions in relation to HEOC. TfL therefore requires that an obligation of this nature be included in the contract.

- (ii) the Applicable HAL Engineering Access Statement; and
- (iii) the Applicable HAL Timetable Planning Rules.

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~~HAL, 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~~HAL; 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~~HAL shall specify.

5.4 Changes to Applicable HAL Engineering Access Statement and Applicable HAL Timetable Planning Rules

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

~~**5.5 Engineering Access Statement, Timetable Planning Rules and Restrictions of Use**~~

5.5 [NOT USED]³¹

~~Schedule 4 shall have effect.~~

5.6 The Services and the Specified Equipment

Schedule 5 shall have effect.

5.7 Performance

Schedule 8 shall have effect.

5.8 Stabling

Without prejudice to ~~Network Rail's~~ HAL's obligations, if any, under Schedule 5 to provide Stabling, ~~Network Rail~~ HAL 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.

³¹ [Please see our comments on Schedule 4 below.](#)

6 OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

6.1 General³²

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 ~~Routes~~ Network in accordance with the Working Timetable and the making of Ancillary Movements; and
- (b) ~~Network Rail~~ HAL shall maintain and operate the Network in accordance with Clause 4.1 ~~with a view to permitting so as to permit~~ the provision of the Services on the ~~Routes~~ Network using the Specified Equipment in accordance with the Working Timetable and the making of Ancillary Movements.

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 the ~~Routes~~ Network.

6.3 Safety

In relation to Safety Obligations:

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

³²

HAL should be required to operate, maintain, renew and replace the track infrastructure to a specified standard. This should be in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of users of the track. In a meeting with TfL on 2 December 2015, HAL advised that they would provide further information on their proposed asset stewardship provisions. TfL has yet to receive this information. In the absence of a licence, there would otherwise be no asset stewardship obligation and therefore TfL requires HAL to be contractually obligated to renew and replace the Network in accordance with certain standards. Accordingly, TfL proposes that Clause 6.1 be updated to include asset stewardship obligations, both for the benefit of track users and their passengers.

which affects or is likely to affect the performance of the Train Operator's Safety Obligations.

6.4 Use of Railway Code Systems

~~6.4.1 General~~

The parties shall:

- (a) use the Railway Code Systems in their dealings with each other in connection with matters provided for in this contract; and
- (b) comply with the Systems Code³³.

³⁴

~~6.4.2 Provision of Train Consist Data~~

~~Without prejudice to Clause 6.4.1, 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) procure that such data is true and accurate in all respects.~~

6.5 Railway Group Standards³⁵

6.6 Maintenance Strategy and Delivery Plans³⁶

6.7 Environment³⁷

³³ As discussed above in relation to the definition of Systems Code, HAL has not provided TfL with a copy of HAL's proposed Systems Code and Clause 6.4 therefore remains subject to this review.

³⁴ Please see our comments on the definition of Train Consist Data above.

³⁵ As HAL does not have a licence, TfL requires a contractual commitment from HAL to comply with Railway Group Standards.

³⁶ TfL requires assurance that the Network will be properly maintained by HAL as this in the interests of all passengers. In the absence of a licence, HAL should be contractually required to:

- (i) consult upon, take into account the views of users and subsequently publish its asset maintenance strategy and delivery plans;
- (ii) prepare delivery plans setting out how the overarching obligations on asset stewardship will be met;
- (iii) reflect the asset maintenance strategy and delivery plans in the costs for using the track (i.e. ensuring costs can be updated to reflect this – this will need to be incorporated into the Track Charges regime, the principles of which are set out in Schedule 7);
- (iv) implement the asset maintenance strategy/plans in accordance with their terms;
- (v) incorporate the requirement for an asset register to be maintained and updated; and
- (vi) ensure that users of the track have effective remedies if HAL does not maintain the track either to the standard specified in this contract or in accordance with the above maintenance strategy and plans.

³⁷ Protection of the environment is a key aspect of the Network Rail network licence and this matter is important to TfL in its capacity of body responsible for transport in London. Assurance is required in TfL's key contracts (of which this will be one) that an adequate policy is in place and implemented by HAL. HAL should be contractually required to:

6.8 Passenger Information³⁸

7 TRACK CHARGES AND OTHER PAYMENTS

7.1 Track Charges and Other Payments

Schedule 7 shall have effect.

7.2 Cross-subsidy

HAL shall not:

(a) receive a cross-subsidy from or give a cross-subsidy to any Affiliate; or

(b) receive any other form of cross-subsidy

in relation to the Network or any railway services provided by an Affiliate.³⁹

7.3 Accounting Records⁴⁰

HAL shall prepare accounting records (including profit and loss accounts and balance sheets) in relation to its functions as the infrastructure manager of the Network and associated stations that are separate from accounting records in

(i) have a written environmental policy designed to protect the environment from the activities associated with the Heathrow Rail Infrastructure;

(ii) have operational objectives and management arrangements in place to give effect to its environmental policy;

(iii) review on a regular basis, consult upon and update the environmental policy, objectives and arrangements; and

(iv) in undertaking its obligations under this contract, have regard to the policy and objectives and use reasonable endeavours to operate the arrangements effectively.

TfL also proposes a Part E in the Network Code (which has not been included in the documentation prepared by HAL).

38

In the absence of a licence, TfL requires contractual assurance that HAL will provide appropriate information to passengers / TfL / RfL / adjoining infrastructure managers (as this is in the best interest of users of the railway). Accordingly, HAL should be subject to additional obligations in respect of passenger information, including:

(i) a general obligation to cooperate with users of the Heathrow Rail Infrastructure;

(ii) requiring HAL (through its subcontractor) to secure the provision of appropriate, accurate and timely information relating to planned and actual movements of trains on the Heathrow Rail Infrastructure;

(iii) providing information to users, passengers and prospective passengers when there is disruption on the Heathrow Rail Infrastructure;

(iv) facilitating the effective exchange of information relating to the operation of trains on the Heathrow Rail Infrastructure and cooperating with access beneficiaries to provide such information;

(v) requiring a suitable timetabling process being put in place to ensure the capacity is fairly allocated, which then feeds into the information provided to passengers;

(vi) using reasonable endeavours to promptly resolve timetabling disputes and responding expeditiously to timetabling matters which an access beneficiary reasonably considers to be urgent;

(vii) procuring the provision to Network Rail of such information relating to train movements on the Heathrow Rail Infrastructure to allow Network Rail to publish a national timetable for passenger services; and

(viii) granting access to information relating to train movements on the Heathrow Rail Infrastructure to enquiry services.

39

As HEOC is a subsidiary of HAL, TfL requires contractual assurance that no cross-subsidy will be made between the two entities.

40

TfL requires transparency in the way HAL accounts for its infrastructure management activities and therefore assurance in relation to its track and station charging.

relation to any other businesses engaged in by HAL or its Affiliates (including any affiliated railway undertaking).

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 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 NOT USED

10 LIABILITY - OTHER MATTERS

10.1 Train Operator indemnity

The Train Operator shall indemnify ~~Network Rail~~ HAL 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~~ HAL under Condition E2 of the HAL 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~~ HAL indemnity

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

- (a) a failure by ~~Network Rail~~ HAL to comply with its Safety Obligations;
- (b) a failure by HAL to comply with its asset stewardship obligations;⁴¹

⁴¹

As discussed above in relation to Clause 6, HAL's licence exemption means that it is not otherwise subject to asset stewardship obligations and there is therefore no assurance that the Network will be properly and safely maintained. If HAL was subject to a network licence then the ORR would have recourse for breach of these conditions. TfL requires similar means of recourse and therefore proposes that HAL should be required to provide an indemnity in relation to failures to comply with the asset stewardship obligations proposed to be incorporated into this contract.

- ~~(b)(c)~~ any Environmental Damage ~~to the Network~~ arising directly from ~~any the~~ 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~~HAL⁴²; and
- ~~(ed)~~ 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~~ HAL'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~~HAL

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

- (a) 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;
- (b) 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

⁴²

[The reference to the British Railways Board is not relevant where Network Rail is not the infrastructure manager.](#)

- (c) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which ~~Network Rail HAL~~ would not have incurred as network owner and operator but for the relevant breach; and
 - (ii) give credit for any savings to ~~Network Rail HAL~~ 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 HAL~~ 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 where the SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8)]⁴³; 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:

⁴³

Please see the principles set out in Schedule 8. An equivalent concept of the SPP Threshold will be applicable in this context but this is subject to preparing the detail of the performance regime. The principle behind this proviso, i.e. that HAL should remain liable to the Train Operator for compensation for delays or cancellation after the applicable liquidated damages regime is no longer in effect, should remain. Once the performance / compensation regime has been finalised this clause will need to be updated accordingly.

- (a) does not limit any liability arising under Schedules 4, 5, 7 or 8 (~~other than under paragraph 18 of Schedule 8~~) or under the Traction Electricity Rules;
- (b) in relation to a failure to perform an obligation under the [HAL](#) Network Code, only to the extent (including as to time and conditions) that the [HAL](#) Network Code so provides; and
- (c) subject to Clause 18.3.3.

11.6 Claims Allocation and Handling Agreement⁴⁴

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).

12 GOVERNING LAW

This contract and any non-contractual obligations connected with it shall be governed by and construed in accordance with the laws of England and Wales.

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[HAL has advised TfL that it intends to accede to the industry standard CAHA \(and will not be seeking to adopt an amended CAHA for the purposes of the Heathrow Rail Infrastructure\). HAL has provided no further update on progress on becoming party to CAHA so Schedule 3 has been amended accordingly to reflect that both HAL and TfL / MTR will enter into an agreement whereby they agree to become a party to the industry standard CAHA. Further, HAL should be required to procure that all other users of the Network become party to the Claims Allocation and Handling Agreement and remain party to the Claims Allocation and Handling Agreement for the term of their access agreement with HAL.](#)

13 DISPUTE RESOLUTION⁴⁵

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 [HAL](#) 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 4, 5, 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:
 - (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

⁴⁵

[HAL originally advised TfL that its intention was to become party to the access disputes resolution arrangements for the Network Rail network but that it is considering the mechanisms for doing so further. HAL then provided its latest version of the HAL Network Code to TfL on 10 March 2016 which included an amended version of the Network Rail ADRR, which indicates that HAL may be intending to create its own set of Access Dispute Resolution Rules.](#)

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~~ HAL or the Train Operator in the circumstances set out in Clause 8.1, 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~~ HAL - Affiliates

Except as permitted by Clause 14.2, ~~Network Rail~~ HAL 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 divulge⁴⁶

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 Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network);⁴⁷
- ~~(e)(d)~~ to any Affiliate of either party; (except, in the case of HAL, to any Affiliate that is a railway undertaking, including Heathrow Express Operating Company Limited)⁴⁸;

⁴⁶ This clause should also be updated to allow disclosure pursuant to a Freedom of Information Act request, wherever relevant.

⁴⁷ Updated to refer to TfL/Rail for London Limited as the persons responsible for procuring passenger rail services on the Heathrow Rail Infrastructure. TfL appreciates that this is a different approach than was taken in the Track Access Contract entered into between Network Rail and MTR but considers this better future proofs the contract in the event that one day RfL is not the concessioning authority. Similar amendments have been made where appropriate throughout this contract.

⁴⁸ HAL should not be entitled to disclose confidential information of TfL/MTR to HEOC, who is a railway undertaking and a competing train operator on the Heathrow Rail Infrastructure. This clause has been updated accordingly.

- (~~d~~e) 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;
- (ef) 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;
- (fg) 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;
- (gh) 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;
- (hi) 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;
- (ij) to the extent that it has become available to the public other than as a result of a breach of confidence; and
- (jk) 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).

14.3 Return of Confidential Information

Each of ~~Network Rail~~HAL 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~~HAL 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, Schedule 7 and the Traction Electricity Rules

Nothing in this Clause 14 restricts the right of ~~Network Rail~~ HAL 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, the Traction Electricity Rules or Schedule 7.

15 ASSIGNMENT ~~AND~~ NOVATION AND SUBCONTRACTING

15.1 Assignment

~~Neither~~ Subject to the provisions of this Clause 15, neither party may assign, transfer, novate ~~(including a novation under Clause 15.2)~~ 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.

15.2 Novation⁴⁹

~~Network Rail~~ HAL (and any assignee of all or part of ~~Network Rail's~~ HAL's rights under this contract) shall:

- (a) agree to the novation of the rights and obligations of the Train Operator under this contract in favour of another person (including the Secretary of State ~~Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network)~~ or a person nominated by ~~him~~ either of them) in any circumstances where:
 - (i) the Secretary of State requests ~~Network Rail~~ HAL to participate in such a novation in the course of exercising its powers under section 30 of the Act; ~~and~~ or
 - (ii) Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network) requests HAL to participate in such a novation in the case of exercising its rights under the Concession Agreement; and
- (b) execute such contracts and do such things as the Secretary of State or Transport for London (or such Affiliate of Transport for London

⁴⁹

This clause has been updated to reflect that RfL has let the Concession Agreement and therefore will be interested in the operation of this agreement going forward.

responsible for the procurement of passenger rail services on the Network) may reasonably request to give effect to the novation.

15.3 Novation terms

Any novation under Clause 15.2 shall be on terms that:

- (a) the Train Operator shall not be released from:
 - (i) any accrued but unperformed obligation;
 - (ii) the consequences of any breach of this contract which is the subject of any proceedings (arbitral or otherwise) for the resolution of a dispute between the parties; or
 - (iii) any liability in respect of anything done under this contract before, or as at the date of, any such novation (except to the extent that such other person agrees to assume and be responsible for it); and
- (b) such other person shall not be required by ~~Network Rail~~HAL, as a term of or a condition to the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequence of a breach of the kind referred to in Clause 15.3(a), but this shall not prevent any such agreement being a term or condition of the novation if required by the Secretary of State ~~or Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network)~~.

15.4 Subcontracting⁵⁰

- (a) Subject to Clauses 15.4(b) and (c), HAL shall not, without first consulting with and obtaining the prior written consent of, the Train Operator, subcontract any of its obligations under this contract to any suitably qualified and competent third party (such consent not to be unreasonably withheld or delayed).
- (b) HAL shall be entitled to subcontract the exercise of any of its rights and the performance of any of its obligations under this contract to Network Rail without the Train Operator's prior written consent provided that at all times during the continuation of such subcontract:
 - (i) Network Rail holds a licence granted under section 8 of the Act; and
 - (ii) Network Rail remains the infrastructure manager (for the purposes of both the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and the Railways Infrastructure (Access and

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TfL recognises that HAL intendeds to subcontract the performance of its obligations and the exercise of its rights to Network Rail and accepts this (to the extent that Network Rail holds a network licence and is the principle infrastructure manager for the wider rail network). However, HAL must remain liable to TfL for Network Rail's acts and omissions. Accordingly, clause 15.4 has been inserted, been included. Note that the drafting in clause 15.4(c) has been adapted from the equivalent drafting in the template station access agreement.

Management) Regulations 2005) for the substantial part of the wider Great Britain railway network (including in particular the Great Western Main Line).

HAL shall promptly terminate any subcontract with Network Rail in respect of the exercise of any of its rights and/or the performance of any of its obligations under this contract if either of Clauses 15.4(b)(i) or 15.4(b)(ii) cease to be satisfied at any time during the term of this contract.

(c) Nothing in this Clause 15.4 shall operate to relieve HAL of its obligations under this contract and HAL shall remain liable for the acts and omissions of any subcontractor as if they were the acts and omissions of HAL.

15A DISPOSITION OF THE NETWORK BY HAL⁵¹

(a) Promptly following execution of this contract, HAL shall procure that Land Registry places the following restriction in the Proprietorship Register of all the land comprising the Network and associated stations:

["No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the track forming part of the registered estate) {address}."]

(b) The Train Operator shall (upon payment of its reasonable costs and expenses) use its reasonable endeavours to procure the consent of Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the track forming part of the registered estate) to any disposition affected by the restriction referred to in Clause 15A(a) and will provide to Land Registry sufficient evidence of such consent upon any disposition provided that the relevant disponent has previously entered into an agreement in a form approved by the Train Operator (such approval not to be unreasonably withheld or delayed) in which that disponent covenants with the Train Operator from the completion of that disposition to observe and perform the obligations of HAL under this contract as if that disponent were HAL.

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TfL is concerned in the absence of a licence obligation requiring the ORR's consent to the disposition of land, i.e. HAL could transfer the track / stations to a third party and render this contract redundant. This creates uncertainty for TfL and ultimately passengers who intend to use the Crossrail services to access Heathrow Airport. Accordingly, TfL proposes a solution to address this concern.

16 PAYMENTS, INTEREST AND VAT

16.1 Payment

16.1.1 No deduction

All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in any Schedule to this contract, in the Network Code, or under the Traction Electricity Rules.

16.1.2 Delivery of invoices

All invoices issued under Schedule 7, or statements of amounts payable under Schedules 4, 5 or 8, under the Network Code, or under the Traction Electricity Rules, shall be delivered by hand at, or sent by prepaid first class post⁵² ~~[or by facsimile transmission] [or by Email]~~ (with confirmation copy by prepaid first class post) 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 Content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall 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.

16.2 Interest

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.

⁵² [TfL does not accept delivery of invoice or notices by facsimile or email.](#)

16.3 VAT

16.3.1 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.

16.3.2 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.

16.3.3 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.

16A INSURANCE

16A.1 Required Insurance Policies

HAL shall take out and maintain in full force and effect and at its own cost, insurance of no less than £155 million in respect of all liabilities and in accordance with the ORR's guidance on insurance requirements, from time to time.⁵³

16A.2 Evidence of Insurance Policies⁵⁴

Promptly following any request by the Train Operator, and otherwise on each anniversary of the execution of this contract, HAL shall provide to the Train

⁵³ In the absence of a licence obligation, the contract should specify particular levels and types of insurance to be held by HAL in providing the various track services. These insurance policies need to reflect the standard industry requirements for network licence holders; we note that the insurance requirements in Network Rail's network licence require it to, in respect of licensed activities, maintain insurance against third party liabilities in accordance with any relevant ORR consent (i.e. on terms approved by the ORR, as set out in its guidance). We consider this guidance should also be followed by HAL given the passenger services operating on the Heathrow Rail Infrastructure.

⁵⁴ TfL requires ongoing assurance that the required insurances are being maintained by HAL.

Operator for inspection evidence satisfactory to the Train Operator that the insurance policies specified in Clause 16A.1 are in place, are in full force and effect and that all premiums payable in respect of such insurance policies have been paid in full.

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 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, 5, 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 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 seven 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.

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 requires ORR's approval under section 22 of the Act, the amendment has been approved by ORR.

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~~ HAL 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 Email] [or by facsimile transmission] (with confirmation copy by prepaid first class post) to, to~~ the relevant address ~~[or Email address] [or facsimile number]~~ 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 registered company and communication details

A party shall be entitled to modify in any respect:

- (a) the registered name and address details which relate to it and are set out on page one of this contract (provided that this modification shall not amount to or purport to be an assignment, transfer or novation of this contract); and
- (b) the communication particulars which relate to it and which are set out in Schedule 1,

by giving notice of such modification:

- (i) to the other party as soon as reasonably practicable; and
- (ii) 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; and

(b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven;
~~[and]~~⁵⁵.

~~[(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~~

~~(c)/(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 following 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), 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.

⁵⁵

[Please see our comments on Clause 16.1.2 above.](#)

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 Application to the Secretary of State [or Transport for London](#)

The Secretary of State [or Transport for London \(or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network\)](#) shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce Clauses 15.2 and 15.3.

18.7.4 Application of the 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.

19 ~~TRANSITION~~[NOT USED](#)⁵⁶

~~19.1 Corresponding Rights~~

~~In relation to any Corresponding Right:~~

- ~~(a) any Access Proposal or Rolled Over Access Proposal made under the Previous Access Agreement in relation to a Train Slot in respect of which there is a Corresponding Right shall:
 - ~~(i) cease to have effect under the Previous Access Agreement as from the Transition Date; and~~
 - ~~(ii) be deemed to have effect under this contract as from the Transition Date;~~~~
- ~~(b) any Train Slot which is the subject of an Access Proposal or Rolled Over Access Proposal referred to in Clause 19.1(a) shall for all purposes be treated as if it had been established in and under this contract and not the Previous Access Agreement;~~

⁵⁶

[Transition arrangements are not required given that these are new arrangements for the use of the Heathrow Rail Infrastructure.](#)

- ~~(c) any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made which:~~
- ~~(i) are made in accordance with Parts D, F, G or H of the Network Code under the Previous Access Agreement in relation to the Engineering Access Statement or the Timetable Planning Rules, Major Projects, Vehicle Change, Network Change or train regulation; and~~
 - ~~(ii) relate to a right under the Previous Access Agreement which is the subject of a Corresponding Right,~~
- ~~shall:~~
- ~~(A) cease to have effect under the Previous Access Agreement as from the Transition Date; and~~
 - ~~(B) be deemed to have effect under this contract as from the Transition Date; and~~
- ~~(d) in applying Schedule 4, effect shall be given:~~
- ~~(i) in relation to any Restriction of Use which was notified before the Transition Date, to any Previous Notification Factor;~~
 - ~~(ii) in relation to any Significant Restrictions of Use, to any bespoke compensation arrangements established under the Previous Access Agreement; and~~
 - ~~(iii) in relation to any Competent Authority Restrictions of Use, to any bespoke compensation arrangements established under the Previous Access Agreement.~~

~~19.2 Definitions~~

~~In this Clause 19:~~

~~“Corresponding Right” means any right of a party under this contract which:~~

- ~~(a) relates to the permission of the Train Operator to use the Routes; and~~
- ~~(b) corresponds to a right which:~~
 - ~~(i) existed under the Previous Access Agreement; and~~
 - ~~(ii) ceased to have effect under the Previous Access Agreement as from the Transition Date;~~

~~["Previous Access Agreement" means the track access agreement dated [] between Network Rail Infrastructure Limited and [];]~~

~~“Previous Notification Factor” means the Notification Factor as established by reference to Column C, D or E of Annex A to Part 3 of Schedule 4 under the relevant Previous Access Agreement; and~~

~~“Transition Date” means the date on which this contract comes into effect for all purposes.~~

SCHEDULE 1: CONTACT PARTICULARS

1. ~~Network Rail's~~ HAL's address for service of notices is: ⁵⁷

~~Network Rail Infrastructure Limited~~

~~1 Eversholt Street~~

~~London~~

~~NW1 2DN~~

~~Tel: 020 7904 4001~~

~~Email: notices@networkrail.co.uk~~

Heathrow Airport Limited

The Compass Centre

Nelson Road

Hounslow

Middlesex

TW6 2GW

Tel: []

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

[Address]

[Tel:]

~~[Fax:]~~ ~~[[Email:]]~~

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

~~[Address]~~

[The railway undertaking nominated by Transport for London]

[Tel:]

~~[Fax:]~~

~~[Email:]~~

All written notices to be marked:

⁵⁷

[HAL's address details to be confirmed.](#)

SCHEDULE 2: THE ~~ROUTES~~NETWORK⁵⁸

1. NOT USED

~~1. In order to provide the Services, the Train Operator has permission to use the routes specified in Column 1 of Table 2.1 and Table 2.2 of Schedule 5.~~

~~2. In order to provide Services when any part of the route is unavailable, the Train Operator has permission to use any reasonable route for diversionary purposes, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.~~

2. NOT USED

3. In order to make Ancillary Movements, the Train Operator has permission to use any reasonable route on the Network, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.

4. In order to Stable railway vehicles, the Train Operator has permission to use any reasonable location on the Network, subject to obtaining any necessary route clearance for the Specified Equipment for the location in question.

5. Use of all routes is subject to the HAL Network Code.

⁵⁸

Paragraphs 1 and 2 are not required given the definition of Routes is not applicable to this contract (i.e. because access to the whole Network is required). Paragraphs 3 to 5 are still relevant and have been retained with minor amendments.

SCHEDULE 3: COLLATERAL AGREEMENTS

1. ~~[An access agreement between (1) the Train Operator and (2) Network Rail HAL granting the Train Operator permission to use the following station[s] [list relevant station[s] in respect of which Network Rail is the facility owner]Central Terminal Areas station.~~⁵⁹
2. An access agreement between (1) the Train Operator and (2) HAL granting the Train Operator permission to use Terminal 4 station.⁶⁰
23. An agreement under which HAL and 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.⁶¹
34. A ~~franchise concession~~ agreement between (1) the Train Operator and (2) ~~the Secretary of State under the Act~~ Rail for London Limited under which the ~~franchisee concessionaire~~ undertakes to provide or procure the provision of all or a material part of the Services.⁶²
45. 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.⁶³

⁵⁹ Updated to reflect stations owned by HAL to which TfL / MTR is seeking access under the station access agreements.

⁶⁰ As above.

⁶¹ Updated to reflect that both HAL and MTR will need to accede to the industry standard CAHA. See also footnote relating to Clause 11.6.

⁶² As a TfL concessionaire will be a beneficiary of this contract (and TfL will be funding the Crossrail services), this clause has been updated to reflect TfL's role as concessioning authority.

⁶³ HAL has advised TfL that it will not be preparing a separate Emergency Access Code for the Network. Given the Heathrow Rail Infrastructure is operated by and its operation is aligned with the Network Rail Network, TfL considers that accession to the Emergency Access Code applicable to Network Rail Network remains necessary.

SCHEDULE 4: ENGINEERING ACCESS STATEMENT, TIMETABLE PLANNING RULES AND RESTRICTIONS OF USE⁶⁴

PART 1: NOT USED

PART 2: NOT USED

PART 3: ~~COMPENSATION FOR RESTRICTIONS OF USE~~ NOT USED

TfL requires compensation in the event that it is restricted by HAL from accessing the Network in the period during which it has been granted access (for example due to maintenance work). HAL has advised TfL that it is confident no such disruptions would occur as it only intends to undertake engineering work in so-called “white periods” (i.e. non-service periods). However, if such disruption was to occur, TfL would nevertheless expect to be compensated. HAL proposed that any such compensation could be dealt with under Schedule 8, which TfL has accepted. Therefore, TfL proposes the following compensation regime; this would be incorporated into Schedule 8 and Schedule 4 would be marked as Not Used.

~~1—Definitions~~

~~1.1—Defined terms~~

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

~~“Applicable Timetable” means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00~~

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As noted in relation to Part 3 of Schedule 4, HAL has indicated that it does not propose including an equivalent of Schedule 4 in this contract, instead relying upon the performance regime set out in Schedule 8 to compensate the Train Operator wherever there are planned / unplanned restrictions of use. For the purposes of this regulation 29/30 application, TfL has accepted this approach and sets out principles in Schedule 8 as to how this should be addressed (including which timetable is considered when assessing whether there is a restriction of use and which trains will be cancelled as a result). However, TfL recognises the practical difficulties that this may create (as a result of HAL’s proposal), particularly given Network Rail is proposed to be HAL’s subcontractor for the purposes of the operation of the track comprised in the Heathrow Rail Infrastructure (and therefore would have to administer a fundamentally different “restrictions of use” regime from that used on the Great Western Main Line).

	<p>hours on the day prior to that day;</p>
<p>“Bi-annual Timetable”</p>	<p>means either of the following:</p> <p>(a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or</p> <p>(b) the Corresponding Day Timetable for all days from and including the Subsidiary Change Date up to but excluding the immediately following Subsidiary Change Date or Principal Change Date, as the case may be;</p>
<p>“Cancellation Minutes”</p>	<p>shall have the meaning ascribed to it in Schedule 8;</p>
<p>“Cap”</p>	<p>shall have the meaning ascribed to it in Schedule 8;</p>
<p>“Corresponding Day”</p>	<p>means, in respect of any day (the “first day”):</p> <p>(a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or</p> <p>(b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or</p> <p>(c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with</p>

“Corresponding Day Timetable”	paragraph 12.2; means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;
“Day 42 Statement”	shall have the meaning ascribed to it in paragraph 13.1(a);
“Defined Service Group Revenue”	shall have the relevant value as set out in Annex D to Part 3 of this Schedule 4;
“Disrupted”	means: (a) cancelled; (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or (c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;
“First Restriction”	shall have the meaning ascribed to it in paragraph 2.12(a)(i);
“First Restriction Period”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii);
“Further Restriction”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);
“High Speed Diversion”	means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the New Working Timetable;
“Initial Indexation Factor”	shall have the meaning ascribed to it in Schedule 7;
“Monitoring Point”	shall have the meaning ascribed to it in Schedule 8;
“Network Rail Restriction”	means any Restriction of Use other than an

“of Use”	Operator Restriction of Use;
“Notification Factor” or “NF”	shall have the meaning ascribed to it in paragraph 9;
“Off-Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Operator Restriction of Use”	means a Restriction of Use of the type referred to in paragraph 2.3;
“Over-run”	shall have the meaning ascribed to it in paragraph 2.12(a);
“Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Period”	shall have the meaning ascribed to it in Schedule 8;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Recovery Allowance”	means an allowance for additional time incorporated in the New Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the New Working Timetable and Network Rail complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;
“Restriction of Use”	means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26 which results in:
	(a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or
	(b) a difference between the New Working

	<p>Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;</p>
“Restriction of Use Day”	<p>means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;</p>
“RoU Claim Notice”	<p>means a notice issued by either party pursuant to paragraph 2.8;</p>
“RoU Direct Costs”	<p>means the aggregate amount of:</p> <ul style="list-style-type: none"> (a) bus and taxi hire costs; (b) publicity costs; (c) train planning and diagramming costs; and (d) other costs directly related to the organisation and management of the Train Operator’s response to a Type 2 Restriction of Use, <p>reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by:</p> <ul style="list-style-type: none"> (i) adding any increase in RoU Variable Costs; and (ii) deducting any decrease in RoU Variable Costs;
“RoU Liability”	<p>means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim;</p>
“RoU Losses”	<p>means any RoU Direct Costs or RoU Liability (as applicable);</p>
“RoU Trigger Date”	<p>means, in respect of any Period, the later to occur</p>

	of the following:
	(a) the date on which Network Rail issues a Day 42 Statement; and
	(b) in the event of any dispute in respect of Network Rail's Day 42 Statement, the date on which such dispute is agreed or determined;
“RoU Variable Costs”	means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge, the Variable Track Usage Charge and the Capacity Charge (as such terms are defined in Schedule 7);
“RPI”	shall have the meaning ascribed to it in Schedule 7 of this contract;
“SPD Claim”	has the meaning specified in paragraph 2.10(d);
“SPD Notice”	means a notice issued by either party pursuant to paragraph 2.10(a);
“SPD Period”	means the period of any 3 or 7 (as the case may be) consecutive Periods in which it is agreed or determined that Sustained Planned Disruption has occurred in respect of the Train Operator, together with any subsequent consecutive Period up to but excluding the first Period to occur in respect of which it is agreed or determined that the test for Sustained Planned Disruption is not satisfied in respect of the Train Operator;
“SPD Cost Threshold No.1”	means [£609,500 ^{in 2012-13 prices}];
“SPD Cost Threshold No.2”	means [£1,219,000 ^{in 2012-13 prices}];
“SPD Revenue Threshold No.1”	means 20% of the relevant Defined Service Group Revenue;
“SPD Revenue Threshold No.2”	means 15% of the relevant Defined Service Group Revenue;
“SPD Termination Notice”	has the meaning specified in paragraph 2.10(e);

~~“Sustained Planned Disruption” or “SPD”~~

means a circumstance where:

~~(a) the aggregate of the compensation payable in respect of a Service Group calculated in accordance with paragraph 3 for any one or more Restrictions of Use during:~~

~~(i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or~~

~~(i) 7 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2;~~

~~and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the compensation calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or~~

~~(a) in respect of any one or more Restrictions of Use during:~~

~~(i) 3 consecutive Periods the difference between the Train Operator’s RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator’s costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 1; or~~

~~(ii) 7 consecutive Periods the difference between the Train Operator’s RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator’s costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 2;~~

~~“Service Code”~~

~~shall have the meaning ascribed to it in Schedule 8;~~

~~“Service Group”~~

~~shall have the meaning ascribed to it in Schedule 8;~~

~~“Train”~~

~~shall have the meaning ascribed to it in Schedule 8;~~

“Train-Bus-Train Pattern”	<p>means a situation where:</p> <p>(a) a Restriction of Use occurs on any section of track between:</p> <ul style="list-style-type: none"> (i) successive Monitoring Points; or (ii) the station of origin and the next Monitoring Point; and <p>(b) the Train Operator uses a substitute bus or other alternative road service between any pair of stations situated:</p> <ul style="list-style-type: none"> (i) between or including such successive Monitoring Points; or (ii) at or between the station of origin and the next Monitoring Point;
“Type 1 Restriction of Use”	means any single Restriction of Use which does not fall within the definition of Type 2 Restriction of Use or Type 3 Restriction of Use;
“Type 2 Restriction of Use”	<p>means:</p> <p>(a) a single Restriction of Use of more than 60 consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and</p> <p>(b) which results in a Service being Disrupted but excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use;</p>
“Type 3 Liability Claim”	has the meaning specified in paragraph 2.7(b);
“Type 3 Restriction of Use”	means a single Restriction of Use of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);
“Unplanned Over-run Period”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A);
“Viable Transfer Point”	a station normally served by the services operated by the Train Operator, and equipped to enable the efficient and safe transfer of trainloads of passengers to and from alternative modes of

“Week”	transport, and/or services operated by other Train Operators, and which the parties have agreed, and set out in Annex B, shall be used for the purpose of providing bus substitution services, and for calculating the cost of bus substitution services in accordance with the provisions of paragraph 4 “Costs compensation for Network Rail Restrictions of Use”;
“White Period”	means any period during which the taking of a Restriction of Use would not result in any compensation being payable in accordance with paragraph 3.

~~1.2 — Suspension Notices~~

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

~~1.3 — Possession~~

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

~~1.4 — White Period~~

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

~~2 — Application of this Part~~

~~2.1 — Entry into effect~~

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

- ~~2.2 Applicable~~ The Engineering Access Statement and the Network Code is to specify the 'white period' for access to the Network.
- Any changes to the 'white period' must be made in accordance with the regime set out in the HAL Network Code.
- Compensation will be payable to the Train Operator by HAL in the event of any restriction on the Train Operator's use of the Network outside of the 'white period'.

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

- ~~(a) Network Rail's right to take Restrictions of Use under or pursuant to the Applicable Engineering Access Statement;~~
- ~~(a) the establishment of any amended Working Timetable under Part H of the Network Code; and~~
- ~~(b) any rights pursuant to the Network Code that the Train Operator may have to challenge any decision of Network Rail.~~

~~2.3 Operator Restriction of Use~~

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

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

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

~~2.4 Network Rail payments~~

~~Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of a Network Rail Restriction of Use calculated in accordance with paragraphs 2.5 to 2.7 and 2.10 where applicable.~~

~~2.5 Type 1 Restriction of Use~~

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

~~2.6 Type 2 Restriction of Use~~

~~(a) Except where paragraph 2.6(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 2 Restriction of Use.~~

~~(b) If either party reasonably believes or expects that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 would exceed £10,000 then that party will be entitled to require that the costs be calculated in accordance with paragraph 6 by serving an RoU Claim Notice within the time periods set out in paragraph 2.8.~~

~~(c) Following a request in accordance with paragraph 2.6(b), if it is agreed or determined that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 6.~~

~~2.7 Type 3 Restriction of Use~~

~~(a) Except where paragraph 2.7(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 3 Restriction of Use.~~

~~(b) If either party reasonably believes or expects that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 would exceed £10,000 then that party will be entitled to require that the costs and losses be calculated in accordance with paragraph 7 instead by serving an RoU Claim Notice within the time periods set out in paragraph 2.8 (a "Type 3 Liability Claim").~~

~~(c) Following a request in accordance with paragraph 2.7(b), if it is agreed or determined that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 exceeds £10,000 then the relevant party shall make~~

~~payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.~~

~~2.8 — RoU Claim Notice~~

- ~~(a) — Either party wishing to make a request pursuant to Clause 2.6(b) or Clause 2.7(b) must notify the other that a Restriction of Use is a Type 2 Restriction of Use or a Type 3 Restriction of Use and that the circumstances in paragraph 2.6(b) or 2.7(b) (as applicable) apply within 56 days of the RoU Trigger Date relating to the Period in which that Restriction of Use commences.~~
- ~~(b) — The notice referred to in paragraph 2.8(a) must, if provided by the Train Operator, include details of the estimate of the RoU Direct Costs or RoU Liability (as applicable) which the Train Operator has incurred in respect of the relevant Restriction of Use.~~

~~2.9 — Changes to Restrictions of Use~~

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

~~costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this paragraph 2.9(c), references to “costs” shall mean those categories of costs which the Train Operator would have been entitled to recover under this Schedule 4 for that type of Restriction of Use which the Restriction of Use was classified as prior to its change.~~

~~(d) Notwithstanding paragraph 2.9(c), where:~~

- ~~(i) the notice served by the Train Operator under paragraph 2.9(c) is in respect of a cancellation of a Type 1 Restriction of Use that was notified to the Train Operator less than 12 weeks before the date on which that Type 1 Restriction of Use was scheduled to occur; and~~
- ~~(ii) the costs to which the Train Operator is committed or which it has already incurred prior to the cancellation of the Type 1 Restriction of Use and any costs associated with responding to that cancellation, amount to £5000 or more,~~

~~the Train Operator shall be entitled to recover those costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this paragraph 2.9(d), references to “costs” shall mean those categories of costs described in the definition of “RoU Direct Costs” (save that references in that definition to “Type 2 Restriction of Use” shall be deemed to refer to “Type 1 Restriction of Use”).~~

~~2.10 Sustained Planned Disruption~~

- ~~(a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use for the relevant services during the relevant SPD Period be calculated in accordance with paragraph 8 by serving a notice on the other (an “SPD Notice”) in accordance with paragraph 2.10(b).~~
- ~~(b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling 56 days after the issue of the Day 42 Statement which followed the end of the relevant SPD Period and must include a short explanation of why it reasonably believes a Sustained Planned Disruption has occurred and a statement of when the SPD Period commenced.~~

- ~~(c) Following the issue of an SPD Notice, either party may serve a notice (an “SPD Termination Notice”) stating that it reasonably believes that the relevant Sustained Planned Disruption is no longer occurring, such notice to include a short explanation of why the party serving it reasonably believes that the Sustained Planned Disruption has ceased and stating the Period in which such cessation has occurred. A party receiving an SPD Termination Notice shall within 30 days of its receipt by notice to the serving party either accept or reject the SPD Termination Notice and where it rejects the notice it shall include with its rejection notice a short explanation of why it reasonably believes the Sustained Planned Disruption is continuing. If the parties fail to reach agreement within 30 days after service of a rejection notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply (save that references to paragraph 13.2 shall be construed as being references to this paragraph).~~
- ~~(d) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an “SPD Claim”):~~
- ~~(i) no later than the day falling 112 days after the issue of the Day 42 Statement for the last Period in the relevant SPD Period; or~~
 - ~~(ii) where an SPD Period has exceeded 13 consecutive Periods in length or upon the termination or expiry of this contract, whichever comes first, unless otherwise agreed in writing, no later than the day falling 112 days after the issue of the Day 42 Statement which followed the 13th consecutive Period or the termination or expiry of this contract (as applicable),~~
- ~~whichever is the earlier.~~
- ~~(e) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(d) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:~~
- ~~(i) each such SPD Claim relates to a different period within the said SPD Period (so there is no double counting); and~~
 - ~~(ii) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(d).~~

- ~~(f) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:~~
- ~~(i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or~~
 - ~~(ii) if the claim is made by Network Rail, the reasons why Network Rail reasonably believes that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.~~
- ~~(g) Following the service of an SPD Claim, if and to the extent it is agreed or determined that a Sustained Planned Disruption has occurred in the period covered by the claim then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8 in respect of the SPD Period (or where applicable the part of the SPD Period) covered by the SPD Claim.~~

~~2.11 Early notice of RoU Losses~~

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

~~2.12 Over runs~~

- ~~(a) For the purposes of this paragraph 2.12, an over-run ("Over-run") occurs where:~~
- ~~(i) there is a Restriction of Use which is not an Operator Restriction of Use (the "First Restriction");~~
 - ~~(ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:~~
 - ~~(A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Engineering Access Statement) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this contract (the "Unplanned Over-run Period"); and/or~~
 - ~~(B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly connected with or attributable to any activities undertaken or planned to be undertaken under the First Restriction (a "Further Restriction");~~

~~in each case without there being any intervening period between the First Restriction and the relevant Unplanned Over-run Period or Further Restriction, which is not either a White Period, Unplanned Over-run Period or a Further Restriction.~~
- ~~(b) Where a Restriction of Use is subject to one or more Over runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.~~

- ~~(c) — Where there is an Over-run which results in a Service being Disrupted which:~~
- ~~(i) — is not part of either a Type 2 or Type 3 Restriction of Use;~~
 - ~~(ii) — lasts for more than one hour; and~~
 - ~~(iii) — results in the Train Operator incurring costs in the category of RoU Direct Costs in relation to the Over-run in excess of £10,000, then the Unplanned Over-run Period element of that Over-run (but not the relevant First Restriction Period or the period of any Further Restriction) shall for the purposes only of calculating RoU Direct Costs be deemed to constitute a Type 2 Restriction of Use.~~
- ~~(d) — For the purposes of calculating RoU Liability under paragraph 7 (when it is agreed or determined that the requirements of paragraph 2.7(c) are satisfied) or paragraph 8 when there is agreed or determined to be a Sustained Planned Disruption, the amount of the RoU Liability shall be calculated: —~~
- ~~(i) — including costs, direct losses and expenses (including loss of revenue and any increase in RoU Variable Costs) reasonably incurred or reasonably expected to be incurred by the Train Operator as a consequence of any Unplanned Over-run Period; and~~
 - ~~(ii) — offsetting any benefit as a consequence of the Unplanned Over-run Period including:
 - ~~(A) — any reduction in RoU Variable Costs;~~
 - ~~(B) — any payments made as result of paragraph 2.12(c); and~~
 - ~~(C) — any payments received by the Train Operator under Schedule 8.~~~~
- ~~(e) — This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4.~~

~~3 — Revenue loss compensation for Network Rail Restrictions of Use~~

~~3.1 — Basis for calculations~~

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

~~3.2—Separate calculations~~

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

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

~~3.3—Meaning of T1 and T2~~

~~In paragraph 3.4:~~

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

~~3.4—Formula~~

~~The formula referred to in paragraph 3.1 is as follows:~~

~~where:~~

- ~~(z) — NRP is the Network Rail Payment;~~
- ~~(a) — Σ is the sum across all Network Rail Restrictions of Use and all Restriction of Use Days in the Period;~~
- ~~(b) — WACM is the weighted average of Cancellation Minutes for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:~~
- ~~where:~~
- ~~CM is the Cancellation Minutes for the Service Group in question specified in column J of Appendix 1 to Schedule 8;~~
- ~~NRPP is the Network Rail performance point for the Service Group in question specified in column B of Appendix 1 to Schedule 8;~~
- ~~Σ is the sum across all Monitoring Points in the Service Group;~~
- ~~MPW is the weighting attributable to the Monitoring Point, as specified in column O of Appendix 1 to Schedule 8;~~
- ~~CS is the number by which the number of stops at that Monitoring Point scheduled for that day in T2 is less than SS as a result of the Network Rail Restriction of Use; and~~
- ~~SS is the number of stops at the Monitoring Point scheduled for that day in T1;~~
- ~~(c) — NREJT is the extended Journey Time as a result of a Network Rail Restriction of Use in respect of Services in that Service Group, for the Restriction of Use Day, being Services which are not cancelled, calculated according to the following formula:~~

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

- ~~where:~~
- ~~Σ , MPW, CS and SS have the meanings ascribed to them in paragraph 3.4(b) above; and~~
- ~~EJT is the extended Journey Time as a result of a Network Rail Restriction of Use in respect of Services in that Service Group calculated according to the following formula:~~

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

~~if otherwise,~~

~~EJT is the lesser of:~~

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

~~(ii) $AJT \bullet ((u-v)/v)$,~~

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

~~where:~~

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

~~u is the average speed of Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the number of miles scheduled to be run in T1 by such Trains divided by the aggregate of the Journey Times scheduled in T1 in respect of such Trains; and~~

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

~~and for the purposes of this paragraph 3.4:~~

~~“Journey”~~

~~means the journey of the Train scheduled in the relevant timetable from its station of origin to its destination station; provided that if a Train crosses a Service Group boundary then in respect of each Service Group the Train’s station of origin and destination station shall respectively mean the station at which the Train commences that part~~

~~of its journey in that Service Group and the station at which it ends that part of its journey in that Service Group; and that where any Train splits to become more than one Train then that part of the Train's journey up to the station where it splits shall be treated as one journey and each Train into which the Train splits shall be treated as making a separate journey; and~~

~~"Journey Time"~~

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

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

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

~~where:~~

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

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

~~(e) NRPR is the Network Rail payment rate specified in column E of Appendix 1 to Schedule 8, as indexed according to the relevant provisions of Schedule 8.~~

~~3.5 High Speed Diversions~~

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

$$\text{ANRP} = \frac{\text{TDR}_{\text{SG}} \bullet (\text{CM} - \text{NRPP}) \bullet \text{NRPR} \bullet \text{BF} \bullet \text{NF}}{\text{TDT}_{\text{SG}}}$$

~~where:~~

~~ANRP is the additional Network Rail payment;~~

~~TDR_{SG} is, in respect of each Service Group and each Restriction of Use Day on which a High Speed Diversion applies, the number of Trains in the~~

~~Service Group scheduled in T2 to be subject to the High Speed Diversion;~~

~~TDT_{SG} is the total number of Trains scheduled to be run in the Service Group in T1;~~

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

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

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

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

~~3.6 Train-Bus-Train Patterns~~

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

$$\text{ANRP} = \frac{\text{TTSSG} \bullet (\text{CM} - \text{NRPP}) \bullet \text{DV} \bullet \text{NRPR} \bullet \text{BF} \bullet \text{NF}}{\text{TTR}_{\text{SG}}}$$

~~where:~~

~~ANRP is the additional Network Rail payment;~~

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

~~TTR_{SG} is the total number of Trains scheduled to be run in the Service Group in T1;~~

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

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

~~DV shall have the value of 0.125,~~

~~provided that if:~~

~~TTR_{SG} is less than TTS_{SG} then shall be deemed to have the value of one.~~

~~In such a situation the Train Operator shall provide Network Rail with evidence, either that the Train-Bus-Train Pattern resulting from the Network Rail Restriction of Use is an arrangement that has been commonly used in the past by that Train Operator on the Services in question, or that it has arisen due to a change in circumstances.~~

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

~~4 — Costs compensation for Network Rail Restrictions of Use~~

~~4.1 — Basis for calculations~~

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

~~4.2 — Cost compensation formula~~

~~The formula referred to in paragraph 4.1 is as follows:~~

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

~~where:~~

- (a) ~~Σ is the sum across all applicable Network Rail Restrictions of Use and all Restriction of Use Days in the Period;~~
- (b) ~~RRBC is the rail replacement bus cost, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:~~

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

Where:

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

~~EBMPR is the payment rate per EBM, which is £[14.29^{in 2012-13 prices}]~~

~~If there is full bus replacement~~

$$\text{EBM} = \text{EBMW} \times \text{FBRmiles}$$

~~If there is partial bus replacement~~

$$\text{EBM} = \text{EBMW} \times 0.5 \times \text{PBRmiles} \times \text{ITS}$$

~~If there is no bus replacement (as set out in Annex B to this Part 3 of Schedule 4)~~

$$\text{EBM} = \text{EBMW} \times 0$$

where:

~~EBMW is the weighting applicable to the affected section of route, as set out in Annex B to this Part 3 of Schedule 4;~~

~~FBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which full bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;~~

~~PBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which partial bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;~~

~~ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%; and~~

- ~~(e) TMC is the cost or saving resulting from train mileage change, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:~~

$$\text{TMC} = \text{TM} \times \text{TMPR}$$

~~where:~~

~~TM is the change in train mileage; and~~

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

~~5 Estimated bus miles change mechanism~~

~~5.1 Circumstances in which parties agree to amend Annex B~~

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

~~5.2 Procedure for amendments to Annex B~~

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

~~(i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls 6 months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and~~

~~(ii) in any other case prior to the date from which it proposes such change shall have effect.~~

~~(b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.~~

~~(c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter may be referred for resolution in accordance with the ADRR. In respect of any such dispute which is referred for resolution under the ADRR the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the~~

~~relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement most recently issued by ORR.~~

~~(d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment.~~

~~(e) Any amendment to Annex B shall apply with effect from:~~

~~(i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 5.2 (a) (i) applies); or~~

~~(ii) subject to paragraph 5.2 (d) the date proposed by the party requesting the change in accordance with paragraph 5.2 (a) (ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).~~

~~5.3 Costs of implementing amendment~~

~~The party proposing the amendment to Annex B shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) pay 90 percent of costs incurred by or on behalf of the other party in assessing and implementing the amendments to Annex B, provided that those costs shall be the minimum reasonably necessary to assess and implement that amendment.~~

6 — RoU Direct Costs compensation for Type 2 Restrictions of Use

~~6.1 Compensation arrangements~~

~~(a) Following receipt of an RoU Claim Notice in respect of a Type 2 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Direct Costs compensation to be paid by one party to the other in respect of such Type 2 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.~~

~~(b) Once the compensation referred to in paragraph 6.1(a) has been agreed or determined (and has been compared against any amounts calculated under paragraph 4 together with any other amounts paid or~~

~~due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:~~

~~(i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Direct Costs actually incurred by the Train Operator less any amounts calculated under paragraph 4 which have already been paid or are due for such Restriction of Use and any other amounts in respect of any RoU Direct Costs received by the Train Operator from Network Rail in respect of such Restriction of Use; or~~

~~(ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraph 4 and the RoU Direct Costs actually incurred by the Train Operator in respect of such Restriction of Use.~~

~~(c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 6 and paragraph 10 to be payable in respect of any Type 2 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.~~

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

~~■ Compensation *arrangements* will be calculated (pari passu) in accordance with the regime set out in Schedule 8 for operational disruption (i.e. with no amendments).~~

~~(a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.~~

~~(b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any~~

~~other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:~~

~~(i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for such Restriction of Use and any other amounts received by the Train Operator from Network Rail in respect of such Restriction of Use; or~~

~~(ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraphs 3 and 4 and the RoU Liability actually incurred by the Train Operator in respect of such Restriction of Use.~~

~~(c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.~~

8 Sustained Planned Disruption payments

8.1 Payment arrangements

~~(a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.~~

~~(b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in respect of such Restriction of Use) then, in the event of:~~

- ~~(i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for Restrictions of Use during the relevant SPD Period and any other amounts received by the Train Operator from Network Rail in respect of such Restrictions of Use; or~~
 - ~~(ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator for Restrictions of Use during the relevant SPD Period and the RoU Liability actually incurred by the Train Operator during the same SPD Period.~~
- ~~(c) Following any agreement or determination of an amount to be paid by one party to the other in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by one party to the other in accordance with paragraph 13.1.~~
- ~~(d) Where a Sustained Planned Disruption applies due to a circumstance which it is agreed or determined affects a part only of the Train Operator's services (including whether by reference to geographic location or Service Group), then in agreeing or determining the RoU Liability in respect of that SPD the RoU Liability in respect of the part of the Train Operator's services not affected by that circumstance shall (unless otherwise proven) be presumed to be equal to the payments made under paragraphs 3 and 4 of this Schedule 4 in respect of those other services.~~

9 Notification Factors

9.1 Early notification

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

- ~~(a) the Network Rail Restriction of Use is reflected in the New Working Timetable; or~~

~~(b) —~~

- ~~(i) — details of the Network Rail Restriction of Use are notified to the Train Operator on or before D-26 for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by Network Rail), are not reflected in the New Working Timetable; and~~
- ~~(ii) — subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or~~
- ~~(iii) — where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.~~

~~9.2 — Notification by TW-22~~

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

~~(a) — details of the Network Rail Restriction of Use are notified to the Train Operator by TW-22; and~~

~~(b) —~~

- ~~(i) — the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or~~
- ~~(ii) — where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.~~

~~9.3 — Late Notification~~

~~The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column~~

~~E of Annex A to this Part 3 if and to the extent paragraphs 9.1 and 9.2 do not apply but the Network Rail Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by Network Rail to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i) respectively, notwithstanding the Train Operator having given a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code.~~

~~10 — Dispute resolution~~

~~If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.6 (c), 2.7 (c), 2.10 (g), 2.11, 6, 7 or 8 within 28 days following provision of the RoU Claim Notice, either party may refer the matter for resolution in accordance with the ADRR.~~

~~11 — Schedule 8 application~~

~~If and to the extent that a Network Rail Restriction of Use is not reflected in the Applicable Timetable for the Restriction of Use Day, the amount of compensation (if any) shall be calculated in accordance with Schedule 8 (to the exclusion of any compensation under this Schedule 4 except as provided in paragraph 2.12).~~

~~12 — Restriction of Use Day and Corresponding Day~~

~~12.1 — Information provision~~

~~In respect of any Restriction of Use Day for which compensation may be payable in a Period under paragraphs 3 and 4, Network Rail shall accurately record such information as it uses and as may properly and reasonably be required to make the calculations required under paragraphs 3 and 4 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i)). Network Rail shall maintain that information until the compensation payable under paragraphs 3 and 4 in respect of that Period is finally agreed or determined and provide such information to the Train Operator at its reasonable request.~~

~~12.2 — Corresponding Day~~

~~(a) — If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition “Corresponding Day” and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Timetable Change~~

~~Date then either party may require that the identification of the Corresponding Day be resolved as a dispute in accordance with the ADRR.~~

~~(b) The parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum's remit shall be to:~~

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

~~(ii) identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D-26 in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or~~

~~(iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Forum may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.~~

13 — Payment procedures

13.1 — Network Rail Restrictions of Use

~~(a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the "Day 42 Statement") showing:~~

~~(i) all Network Rail Restrictions of Use taken during that Period;~~

~~(ii) any compensation calculated in accordance with paragraphs 3 and/or 4 payable by Network Rail in respect of the Network Rail Restrictions of Use identified; and~~

~~(iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Losses in respect of a Type 2 Restriction of Use, a Type 3 Restriction of Use or a Sustained~~

~~Planned Disruption (as applicable), any payment to be made by one party to the other,~~

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

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

~~13.2 Disputes~~

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

~~13.3 Dispute resolution~~

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

~~(a) within seven days of service of any notice under paragraph 13.2, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;~~

~~(b) if, within seven days of that meeting (the "first meeting"), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;~~

~~(c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;~~

~~(d) if no resolution results within 14 days of that meeting, either party may refer the matter for resolution in accordance with the ADRR.~~

~~13.4 Payments in the event of a dispute~~

Where any amount under paragraph 13.1 is in dispute:

- ~~(a) the undisputed amount shall be paid in accordance with paragraph 13.1;~~
- ~~(b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and~~
- ~~(c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.~~

14 — Indexation

14.1 The formula applicable to this paragraph 14 is:

$$R_t = R_{t-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}}\right)$$

where:

~~R_t is the relevant value in the Relevant Year t ;~~

~~R_{t-1} is the relevant value in the Relevant Year $t-1$;~~

~~RPI_{t-1} means the RPI published or determined with respect to the month of November in Relevant Year $t-1$; and~~

~~RPI_{t-2} means the RPI published or determined with respect to the month of November in Relevant Year $t-2$.~~

14.2 Each of the EBMPR and TMPR (respectively defined in paragraph 4.2) and Defined Service Group Revenues shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2014, R_t shall have the value specified in:

- ~~(a) paragraph 4.2 in respect of the EBMPR, multiplied by the Initial Indexation Factor;~~
- ~~(b) in Annex C to this Part 3 of Schedule 4 in respect of TMPR, multiplied by the Initial Indexation Factor;~~
- ~~(c) in Annex D to this Part 3 of Schedule 4 in respect of the Defined Service Group Revenues, multiplied by the Initial Indexation Factor,~~

~~and in the next following Relevant Year R_{t+1} shall respectively have the same value.~~

~~14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2 shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2014, R_t shall have the relevant value specified in the definition of “SPD Cost Threshold No.1”, multiplied by the Initial Indexation Factor; or “SPD Cost Threshold No. 2”, multiplied by the Initial Indexation Factor; as appropriate, set out in paragraph 1.1 of this Schedule 4 and in the next following Relevant Year R_{t+1} shall respectively have the same value.~~

Annex A to Part 3 of Schedule 4 – Notification Factors

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22

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

Viable Transfer Point [VTP]	Viable Transfer Point [VTP]	Via	Applicable Infrastructure Rules	Other Operating Rules	S4CS Code	Description of Possession Response	Comments	Service Group	% Applicable	FULL Bus Replacement (100%)				PARTIAL Bus Replacement (50% x X%)				No Bus Replacement (0%)	EBMs Total
										From	To	Miles	Trains	From	To	Miles	Trains		
[Description]																			

[Insert map]

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

Service Group	Description	Compensation Rate	Total Train Cost per Mile (Pence)

Annex D to Part 3 of Schedule 4 – Defined Service Group Revenue

Service Group	Description	Defined Service Group Revenue

PART 4: NOT USED

PART 5: ~~ACCESS CHARGE SUPPLEMENT FOR RESTRICTIONS OF USE~~ NOT USED

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

Year	£
2014-2015	[]
2015-2016	[]
2016-2017	[]
2017-2018	[]
2018-2019	[]

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

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

$$ACSRU_{pt} = ACSRU_t \bullet$$

where:

~~ACSRU_{pt}~~ is the actual amount payable in the Relevant Year t;

~~ACSRU_t~~ is the relevant amount specified in paragraph 1 of this Part 5 for the Relevant Year t (before indexation);

~~RPI_{t-1}~~ has the meaning set out in paragraph 14.1 of Part 3 of this Schedule 4; and

~~RPI₂₀₁₃~~ means the RPI published or determined with respect to the month of November 2013;

but so that in relation to the Relevant Year commencing on 1 April 2014, ACSRU_t shall have the relevant value specified in the relevant column of the table in paragraph 1.

SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

1 Definitions

1.1 In this Schedule unless the context otherwise requires:

“Calling Pattern”	means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;
“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;
“Day”	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
“Exercised”	has the meaning ascribed to it in Part D of the Network <u>HAL Network</u> Code;
“Firm Right”	has the meaning ascribed to it in Part D of the <u>HAL</u> Network Code;
“Journey Time”	means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service;
“Journey Time Review Notice”	has the meaning ascribed to it in paragraph 7.4;
“Maximum Journey Time” or “MJT”	means, in respect of a Passenger Train Slot, the corresponding Maximum Journey Time, if any, set out in column 4 <u>3</u> of Table 6.1;
“Modification Notice”	has the meaning ascribed to it in paragraph 7.9;
“Network Change”	has the meaning ascribed to it in Part G of the <u>HAL</u> Network Code;
{“Off-Peak Services”	means Services Scheduled on any part of a Weekday which are not “Peak Services”, and “Off-Peak” shall be construed accordingly;}
“Passenger Train Slot”	means a Train Slot intended by the Train Operator to be used for the provision of a Service;

["Peak Services"]	means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at [] Heathrow Terminal 4 Station between [] 0605 and 0904 hours and [] 1633 and 1932 hours or (ii) to depart from [] Heathrow Terminal 4 Station between [] 0628 and 0927 hours and [] 1528 and 1827 hours, and "Peak" shall be construed accordingly; [Explanatory note (to be deleted from completed contract): If this definition is required and is common to all relevant Service Groups, it may be populated here. If it is not common to all such Service Groups, delete and populate the footnotes to Table 2.1]
"Public Holiday"	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
"Reduced Regular Calling Pattern"	has the meaning ascribed to it in paragraph 4.1;
"Regular Calling Pattern"	has the meaning ascribed to it in paragraph 4.1;
"Scheduled"	means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;
"Service Group"	means any one or more (as the context may require) of the service groups described in this Schedule;
"Timetable Period"	means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
"Timing Load"	means, in relation to a Service, the timing reference code as defined from time to time in the Working Timetable;
"Train Service Code" or "TSC"	means the eight character code applied in the Performance Monitoring System and used to identify Services;
"Weekday"	means any day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday; and
"xx20"	means, as an example of this notation, 20 minutes past the hour.

- 1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two specific times that period shall be inclusive of both such times.
- 1.3 The Train Operator's rights under this Schedule as to numbers of Passenger Train Slots per Day are calculated by reference to departures from the Scheduled start point on the Day in question, notwithstanding that a

Passenger Train Slot may not be Scheduled to arrive at its end point until the immediately succeeding Day.

2 Passenger Train Slots

Table 2.1: Passenger Train Slots

1						2					
Service Group XXXX- [To be confirmed] ⁶⁵											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC ⁶⁶	Timing Load	Peak times ¹		Off-Peak times ²	Weekday ³	Saturday ³	Sunday ⁴
						Morning Peak	Evening Peak				
Heathrow Tunnel Junction	Heathrow Terminal 4 Station	N/A	All Stations	[To be confirmed]	345	12	12	52	76	76	75
Heathrow Terminal 4 Station	Heathrow Tunnel Junction	N/A	All Stations	[To be confirmed]	345	12	12	52	76	76	75

⁶⁵ [The Service Group description for each applicable Table in this Schedule 5 should be inserted once confirmed. The Service Groups is not in dispute for the purposes of this regulation 29/30 application as they will be determined in due course.](#)

⁶⁶ [The Train Service Codes for each applicable Table in this Schedule 5 should be inserted once confirmed. As with the Service Group descriptions, these are not in dispute for the purposes of this regulation 29/30 application as they will be determined in due course.](#)

Notes to Table:

~~1 Peak times — arriving [station] between [time] and [time], departing [station] between [time] and [time]~~

1 Peak times – arriving at Heathrow Terminal 4 Station between 0605 and 0904 hours and 1633 and 1932 hours and departing from Heathrow Terminal 4 Station between 0628 and 0927 hours and 1528 and 1827 hours.

2 Off-Peak times - arriving at and departing from ~~a relevant station~~ Heathrow Terminal 4 Station outside Peak times.

3 “Saturday” means in Table 2.1 the period of 24 hours beginning at 0200 hours on Saturday and ending immediately before the next succeeding 0200 hours.

4 “Sunday” means in Table 2.1 the period of 24 hours beginning at 0200 hours on Sunday and ending immediately before the next succeeding 0200 hours.

~~3 Table 2.1A: Passenger Train Slots listed under the sub-headings “Peak times” and “Off-Peak times” are the constituent parts of, and are not in addition to, those listed under the sub-heading “Weekday” on Boxing Day~~

<u>1</u>					<u>2</u>
<u>Service Group - [To be confirmed]</u> ⁶⁷					
<u>Service description – Boxing Day</u>					<u>Passenger Train Slots</u>
<u>From</u>	<u>To</u>	<u>Via</u>	<u>Description</u>	<u>TSC</u> ⁶⁸	<u>Boxing Day</u>
<u>Heathrow Tunnel Junction</u>	<u>Heathrow Terminal 4 Station</u>	<u>N/A</u>	<u>All stations</u>	<u>[To be confirmed]</u>	<u>63</u>
<u>Heathrow Terminal 4 Station</u>	<u>Heathrow Tunnel Junction</u>	<u>N/A</u>	<u>All stations</u>	<u>[To be confirmed]</u>	<u>63</u>

⁶⁷
Please see footnote 65 above.

⁶⁸
Please see footnote 66 above.

~~[Guidance Notes (to be deleted from the completed contract)]~~

~~Populate note 1 only if the definition of "Peak Services" in Paragraph 1 has not been populated. If it has, delete notes 1 and 2.~~

~~For TOCs with distinct summer and winter services, some Schedule 5 tables could have separate summer and winter versions.~~

~~Where rights are not split between Peak and Off-Peak, those columns and all three footnotes should be deleted.~~

~~The "Via" column should be used to identify a Firm Right by a specific route where there are alternatives. If not required, use "N/A".~~

~~The Timing Load should be as used in the WTT e.g. "123", not "Class 123", or "HST8-125", not "Two Class 43 power cars and eight Mark III coaches".~~

Passenger Train Slots

2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service:

(a) specified in Table 2.1 on the Days and within the Peak and Off-Peak times so listed; and

(b) specified in Table 2.1A on the Day so listed.

using any Specified Equipment included in paragraph 5.1.(a) that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 or Table 2.1A using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights subject to the Access Proposal or Rolled Over Access Proposal (as applicable) will be treated as Contingent Rights for the purposes of Part D of the HAL Network Code.

~~(a) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at [mmm, nnn, III]; and~~

~~(b) —:~~

2.2 In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 the Train Operator has Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at ~~[kkk, jji, iii] [any other station listed in its Calling Pattern]~~ Central Terminals Area Station.

~~(a) Firm Rights to combine Passenger Train Slots at [nnn, mmm and III]; and~~

~~(b) —:~~

2.3 In order to provide through Services the Train Operator has Contingent Rights to combine Passenger Train Slots at ~~[kkk, jji and iii] [all other locations]~~ Central Terminals Area Station.

Table 2.2: Additional Passenger Train Slots

1					2		
Service Group = [#### <u>To be confirmed</u>] ⁶⁹							
Service description = <u>Driver Training</u> ⁷⁰					Additional Passenger Train Slots		
From	To	Via	Description	TSC ⁷¹	Weekday	Saturday	Sunday
<u>Heathrow Tunnel Junction</u>	<u>Heathrow Terminal 4 Station</u>	<u>N/A</u>	<u>All stations</u>	<u>[To be confirmed]</u>	<u>5</u>	<u>5</u>	<u>5</u>
<u>Heathrow Terminal 4 Station</u>	<u>Heathrow Tunnel Junction</u>	<u>N/A</u>	<u>All stations</u>	<u>[To be confirmed]</u>	<u>5</u>	<u>5</u>	<u>5</u>

⁶⁹ Please see footnote 65 above.

⁷⁰ Driver training rights are expected to be required from December 2017. As noted in the covering letter to this regulation 29/30 application, at this stage TfL is primarily seeking rights for the passenger services from May 2018, with a limited number of driver training rights from December 2017. However, further rights may be required once the driver training requirement is known and to facilitate the trial running and trial operations. Furthermore, Bombardier Transportation is likely to require access rights for testing and mileage accumulation purposes. TfL notes that driver training rights will not be required indefinitely. The driver training programme remains to be confirmed (including start and end dates). As the rights required become more certain, amended rights are likely to be sought.

⁷¹ Please see footnote 66 above.

Additional Passenger Train Slots

- 2.4 The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in Table 2.2 and on the Days so listed.
- 2.5 A Contingent Right for an additional Passenger Train Slot under paragraph 2.4 includes:
- (a) a Contingent right to call at any station listed in Table 4.1;
 - (b) a Contingent Right to have Scheduled part only of the Passenger Train Slot in question; and
 - (c) a Contingent Right to combine Passenger Train Slots to provide a through Service.

Ancillary Movements

- 2.6 The Train Operator has 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, including:
- (a) movements for the purpose of maintenance of rolling stock to and from maintenance depots;
 - (b) movements for driver training purposes; and
 - (c) empty stock movements.
- 2.7 For the purpose of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:
- (a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the route in question; or
 - (b) where the route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the route without passengers on board.

Relief Passenger Train Slots

- 2.8 The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to:
- (a) the relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in ~~Table 2.1~~ Table 2.1A or Table 2.2; and

- (b) Each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.⁷²

2.9 NOT USED

~~2.9 [any necessary special arrangements for 25 and 26 December.]~~

~~2.10 [arrangements specifying the treatment of Public Holidays—whether as Saturday, Sunday or Weekday services or mixture.]~~

2.10 The Train Operator has the following Firm Rights in the Working Timetable in respect of a Service Group as listed against each Service in respect of Public Holidays:

- (a) on Christmas Day, no Firm Rights to any Passenger Train Slots;
- (b) on Boxing Day, Firm Rights to the number of Passenger Train Slots set out in Table 2.1A;
- (c) on any Public Holiday falling between Christmas Day (exclusive) and New Year's Day (inclusive) (other than Boxing Day), Firm Rights to the number of Passenger Train Slots set out in Table 2.1 for the equivalent Day upon which such Public Holiday falls; and
- (d) on Public Holidays other than those within paragraphs (a) to (c) above, Firm Rights to the number of Passenger Train Slots set out in Table 2.1 for Saturdays.

2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1 or Table 2.1A.

⁷²
To be confirmed once the detail of Schedule 7 has been prepared.

3 Intervals

Table 3.1: Service Intervals

1					2	3				4			
Service Group XXXX [To be confirmed] ⁷³													
Service description					Station where interval applies	Interval (minutes)				Maximum variation (+/- minutes)			
From	To	Via	Description	TSC ⁷⁴		Peak ¹	Off-Peak ²	Satur-day ³	Sun-day ⁴	Peak ¹	Off-Peak ²	Satur-day ³	Sun-day ⁴
Heathrow Tunnel Junction	Heathrow Terminal 4 Station	N/A	All stations	[To be confirmed]	Heathrow Terminal 4 Station	15	15	15	15	+/-1	+/-1	+/-1	+/-1
Heathrow Terminal 4 Station	Heathrow Tunnel Junction	N/A	All stations	[To be confirmed]	Heathrow Terminal 4 Station	15	15	15	15	+/-1	+/-1	+/-1	+/-1

⁷³ [Please see footnote 65 above.](#)

⁷⁴ [Please see footnote 66 above.](#)

Notes to Table:

1 “Peak” means in Table 3.1 ~~[start time] to [end time] and [start time] to [end time]~~ arriving at Heathrow Terminal 4 Station between 0605 and 0904 hours and 1633 and 1932 hours and departing from Heathrow Terminal 4 Station between 0628 and 0927 hours and 1528 and 1827 hours.

2 “Off-Peak” means in Table 3.1 arriving at and departing from Heathrow Terminal 4 Station outside Peak times.

~~2~~ “Off-Peak” ~~3~~ “Saturday” means in Table 3.1 ~~[start time] to [end time]~~ the period of 24 hours beginning at 0200 hours on Saturday and ending immediately before the next succeeding 0200 hours.

~~3~~ “4” “Sunday” means in Table 3.1 the period of 24 hours beginning at 0200 hours on Sunday and ending immediately before the next succeeding 0200 hours. ~~at [start time] to [end time]~~

4 “Sunday” means in Table 3.1 [start time] to [end time]

~~[Guidance Notes (to be deleted from the completed contract)]~~

~~These footnotes indicate the period within which the interval is to apply.~~

~~If Tables 3.1(a) and 3.1(b) are used for morning and evening peak services, delete the Peak columns.~~

~~For TOCs which do not differentiate between Peak and Off-Peak, those columns should be merged and headed “Weekday”.~~

~~Where it is intended for services to be capable of being flexed only after the standard departure time, to give repeating “clockface” pattern, a positive only flex should be used in column 4, e.g. +2/-0]. Where it is intended for services to be capable of being flexed only after the standard departure time, to give repeating “clockface” pattern, a positive only flex should be used in column 4, e.g. +2/-0].~~

Table 3.1(a): Morning Peak Service Intervals

1					2		
Service Group [nnnn]							
Service description					Minimum number of Passenger Train Slots arriving at [nnnn] in each specified period [with a maximum variation of +/- [] minutes]		
From	To	Via	Description	TSC	[07:00-07:59]	[08:00-08:59]	[09:00-09:59]

Notes to Table:

Where application of the permitted variation shown in columns 2 and 3 above causes a Passenger Train Slot to fall within another defined hour or immediately before or immediately after the first and last times respectively shown above, the Train Operator's Firm Rights under paragraphs 3.1 and 3.2 shall be deemed to have been met.

[Guidance Notes (to be deleted from the completed contract)]

[for one-off or irregular services within a service group where intervals are not relevant, insert "n/a" in column 3]

Table 3.1b: Evening Peak Service Intervals

1					2		
Service Group [nnnn]							
Service description					Minimum number of Passenger Train Slots departing from [nnnn] in each specified period [with a maximum variation of +/- [] minutes]		
From	To	Via	Description	TSC	[16:00-16:59]	[17:00-17:59]	[18:00-18:59]

Notes to Table:

~~Where application of the permitted variation shown in columns 2 and 3 above causes a Passenger Train Slot to fall within another defined hour or immediately before or immediately after the first and last times respectively shown above, the Train Operator's Firm Rights under paragraphs 3.1 and 3.2 shall be deemed to have been met.~~

~~[Guidance Notes (to be deleted from the completed contract)~~

~~[for one-off or irregular services within a service group where intervals are not relevant, insert "n/a" in column 3]~~

Service Intervals

3.1 NOT USED

~~3.1.3.2~~ In respect of each Service specified in column 1 of ~~Tables 3.1(a) and 3.1(b),~~ Table 3.1 and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to

~~the minimum number of Passenger Train Slots during the times shown in column 2 of Table 3.1(a) and Table 3.1(b), arriving at the station shown in column 2 of Table 3.1(a) and departing from the station shown in column 2 of Table 3.1(b), being the component parts of, and not additional to, the quanta shown in column 2 of Table 2.1.3.2. In respect of each Service specified in column 1 of Table 3.1, [3.1(a) and 3.1(b),] and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to:~~

(a) the interval between Passenger Train Slots shown in column 3 of Table 3.1 from the station shown in column 2 of that Table, being a station of origin or an intermediate station;

~~(b) the minimum interval between Passenger Train Slots shown in column 3 of Table 3.1(a) arriving at the station shown in that column, being a destination station or an intermediate station; and~~

~~(c) the minimum interval between Passenger Train Slots shown in column 3 of Table 3.1(b) departing from the station shown in that column, being a station of origin or an intermediate station.~~

3.3 The Firm Rights specified in ~~paragraphs 3.1 and~~ paragraph 3.2 may only be Exercised if the Access Proposal or Rolled Over Access Proposal for each such Service complies with the Regular Calling Pattern or Reduced Regular Calling Pattern and the Specified Equipment is capable of achieving the Timing Load specified for each such Service.

~~(b) any one or more arrivals at the station named in column 3 of Table 3.1(a) by up to the number of minutes specified in column 3 of Table 3.1(a);~~

~~3.4 Network Rail shall be entitled to vary:~~

(a) 3.4 HAL shall be entitled to vary any one or more departures from the station named in column 2 of Table 3.1 ~~and named in column 3 of Table 3.1(b)~~ by up to the number of minutes specified in column 4 of Table 3.1 ~~and column 3 of Table 3.1(b)~~; and with the effect that the interval between any two or more of such Passenger Train Slots may be less than or more than that specified in column 3 of Table 3.1, ~~[3.1(a) and 3.1(b)]~~ provided that the cumulative effect of such flexing over a period of ~~[]~~ 60 minutes shall not reduce the Train Operator's entitlement to its full quantum of Passenger Train Slots.

4 Calling Patterns

Table 4.1: Calling Patterns

1					2	3
Service Group XXXX - [To be confirmed] ⁷⁵						
Service description						
Between or From	And or To And	Via	Description	TSC ⁷⁶	Regular Calling Pattern	Additional stations
Heathrow Tunnel Junction	Heathrow Terminal 4 station	N/A	All stations	[To be confirmed]	Central Terminals Area Station, Heathrow Terminal 4 Station	Heathrow Terminal 5 Station⁷⁷

⁷⁵ [Please see footnote 65 above.](#)

⁷⁶ [Please see footnote 66 above.](#)

⁷⁷ [Trains may need to call at Heathrow Terminal 5 Station in the event of an emergency, engineering works, unplanned disruptions or other unforeseen circumstances. TfL therefore requires Contingent Rights in respect of this station.](#)

~~[Guidance Notes (to be deleted from the completed contract)]~~

~~"All stations" may be used in column 2 if appropriate instead of listing all the individual stations.~~

~~Note that this is intended to be a bi-directional table; there is no reason to populate it in both directions unless stopping patterns are not mirror image, in which case change the words "Between", "And" to read "From", "To" respectively and insert separate entries for each direction].~~

Calling Patterns

4.1 In respect of each Service specified in column 1 of Table 4.1, the Train Operator has Firm Rights to the corresponding Calling Pattern listed in column 2 of that Table (the "**Regular Calling Pattern**") or any subset of the Calling Pattern (the "**Reduced Regular Calling Pattern**").

Additional calls

4.2 The Train Operator has Contingent Rights to have Scheduled, in respect of any Passenger Train Slot, calls at one or more of the stations set out opposite the Service in column 3 of Table 4.1 being stations which do not form part of the Regular Calling Pattern.

5 Specified Equipment

Specified Equipment

5.1 In order to provide the Services specified in this Schedule 5, subject to obtaining any necessary route clearance for the route in question, the Train Operator has:

(a) Firm Rights to operate the following railway vehicles:

~~[List here all rolling stock to which Firm Rights are being given]~~

[Class 345](#)

and

(b) Contingent Rights to operate any railway vehicles registered with Network Rail's rolling stock library.

For the purposes of this contract the railway vehicles specified in paragraph 5.1(a) and 5.1(b) are known as the "Specified Equipment".

Train length

5.2 The Train Operator has a Firm Right to the maximum train length in metres which the Network can from time to time accommodate, ~~subject to a right of Network Rail to vary the train length in cases where the Network cannot accommodate all Access Proposals and Rolled Over Access Proposals to operate to the maximum length.~~

5.3 Nothing in paragraph 5.2 precludes the operation of trains in excess of platform lengths where appropriate measures have been taken to control, so far as is reasonably practicable, any risks introduced by the use of such longer trains.

6 Journey Time Protection

Table 6.1: Journey Time Protection

1					2	3	
Service Group - [#### To be confirmed] ⁷⁸							
Service description							
From	To	Via	Description	TSC ⁷⁹	Protection Type	Days of the week	Journey Time (in minutes)
<u>Heathrow Tunnel Junction</u>	<u>Heathrow Terminal 4 Station</u>	<u>N/A</u>	<u>All stations</u>	<u>[To be confirmed]</u>	<u>MJT</u>	<u>Monday to Sunday</u>	<u>10</u>
<u>Heathrow Terminal 4 Station</u>	<u>Heathrow Tunnel Junction</u>	<u>N/A</u>	<u>All stations</u>	<u>[To be confirmed]</u>	<u>MJT</u>	<u>Monday to Sunday</u>	<u>9.5</u>

⁷⁸ [Please see footnote 65 above.](#)

⁷⁹ [Please see footnote 66 above.](#)

~~[Guidance Notes (to be deleted from the completed contract)]~~

~~Services with the same service description can have different Journey Times in Column 4 e.g. "100 with one journey time not exceeding 95" or "100 with 20% not exceeding 110".~~

~~Peak and Off-Peak Services may also be given different Journey Times.]~~

Journey Time protection

- 6.1 The Train Operator has Firm Rights to Maximum Journey Times under this paragraph 6 only in relation to Passenger Train Slots which are the subject of and comply with Firm Rights under paragraph 2.1 and paragraph 4.1.
- 6.2 In respect of each Service listed in column 1 of Table 6.1, the Train Operator has Firm Rights to a Journey Time on the days listed in column 2, not exceeding the [Maximum](#) Journey Time listed in column 3.
- 6.3 The [Maximum](#) Journey Times specified in column 3 shall be increased or decreased (as the case may be) by an amount equal to any:
 - (a) increase or decrease in the relevant sectional running times applicable as at the date of this contract;
 - (b) increase or decrease in the relevant station dwell times applicable as at as at the date of this contract; and
 - (c) increase or decrease in the relevant performance allowances, engineering recovery allowances or any other allowances,as such sectional running times, station dwell times or allowances are established and may change in accordance with the Applicable [HAL](#) Engineering Access Statement and/or the Applicable [HAL](#) Timetable Planning Rules.

7 Provisions applicable to Journey Time protection

Network Change

7.1 If:

- (a) in any Timetable Period, 90 per cent or more of train movements which:
 - (i) are Scheduled in that Timetable Period; and
 - (ii) are Services to which in each case a Maximum Journey Time applies,
exceed the applicable Scheduled Journey Time; and
- (b) the failure of such train movements to achieve those Scheduled Journey Times is attributable to the condition or operation of the Network,

then a Network Change within the meaning of paragraph (iii) of the definition of Network Change shall be treated as having occurred and the provisions of Part G of the [HAL](#) Network Code shall apply:

- (i) as if such Network Change had been proposed by **Network Rail**[HAL](#); and
- (ii) as if the revisions to Maximum Journey Times agreed under paragraph 7.2, or determined under paragraph 7.3, subject to any modification under paragraph 7.9, constitute the scope of the relevant Network Change,

and compensation shall be payable to the Train Operator accordingly.

Agreement of revised Maximum Journey Time

7.2 If under paragraph 7.1 a Network Change is treated as having occurred, the parties will try to agree a revised Maximum Journey Time for each such Maximum Journey Time affected by such Network Change.

Referral to ADRR

7.3 If the parties fail to agree such revised Maximum Journey Time(s) within 3 months of the request of either party for revision of the relevant Maximum Journey Time(s), either party may refer the matter for resolution in accordance with the ADRR. The parties shall agree in a Procedure Agreement, as defined in the ADRR, that in performing its function the relevant ADRR Forum must have regard to the following criteria:

- (a) Maximum Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable; and
- (b) any relevant criteria which may have been published by ORR.

Journey Time Review Notice

- 7.4 A Journey Time Review Notice is a notice given to the parties by ORR:
- (a) requiring them to enter into negotiations in good faith to vary such Journey Times set out in Table 6.1 as are specified in the notice;
 - (b) after consultation with the parties, the Secretary of State ~~-,~~ [Transport for London \(or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network\)](#) and such other persons as it considers appropriate; and
 - (c) containing its reasons for giving it.
- 7.5 As soon as reasonably practicable after the service of a Journey Time Review Notice, the parties shall begin and in good faith diligently pursue the negotiations in question.
- 7.6 If the parties reach agreement on the variations in question, they shall send a copy of them to ORR for its consent, together with a note of the reasons for them and an explanation of how they are consistent with its statutory duties.
- 7.7 If the parties fail to reach agreement on the variations in question within 45 days of the giving of a Journey Time Review Notice, either party may refer the matter for resolution in accordance with the ADRR. In such a case, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall reach a determination that is fair and reasonable on the basis of the following criteria:
- ~~(i)~~ [\(a\)](#) Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable;
 - ~~(ii)~~ [\(b\)](#) any relevant criteria which may have been published by ORR; and
 - ~~(iii)~~ [\(c\)](#) the reasons for the service of the Journey Time Review Notice given by ORR in that notice.

Requirement for Office of Rail and Road's consent

- 7.8 Subject to paragraph 7.9, a variation:
- (a) agreed under paragraph 7.2;
 - (b) agreed or determined as an outcome of a referral for resolution in accordance with the ADRR under any of the provisions of this paragraph 7; or
 - (c) agreed under paragraph 7.6;
- shall have effect:
- (i) only if ORR has given its consent to it; and
 - (ii) from such date as is specified in that consent.

Office of Rail and Road's Modification Notice

7.9 A Modification Notice is a notice given to the parties by ORR:

- (a) specifying the changes which ORR requires be made to the proposed variations which have been:
 - (i) agreed under paragraph 7.2;
 - (ii) agreed or determined as an outcome of a referral for resolution in accordance with the ADRR under any of the provisions of this paragraph 7; or
 - (iii) specified in an agreement of the kind referred to in paragraph 7.6;
- (b) after consultation with the parties, the Secretary of State ~~and~~ Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network) and such other persons as it considers appropriate; and
- (c) containing its reasons for giving it.

7.10 If a Modification Notice is given, this contract will have effect with the variations referred to in paragraph 7.9(a) as modified in accordance with the terms of the notice.

Office of Rail and Road's notice for substitution of date/period

7.11 ORR shall be entitled, by notice to the parties ~~and~~ the Secretary of State and Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network), to substitute for any date or period specified in paragraph 7.7, a date which is not more than 180 days later, or a period which is not more than 180 days longer, than that so specified.

Requirements for notice under paragraph 7.11

7.12 No notice under paragraph 7.11 may be given unless:

- (a) ORR has consulted the parties ~~and~~ the Secretary of State and Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network);
- (b) ORR has taken into account any representations or objections which have been made to it within such period as it has specified for the purpose; and
- (c) where the notice is given after the date or the expiry of the period to which it relates, it is given no later than 30 days after such date or expiry.

~~[Guidance Note (to be deleted from the completed contract)]~~

~~All rights in this paragraph 8 are for use by exception only and will require justification in each case. Please refer to the relevant sections of the C&P documents]~~

8 Other rights

Table 8.1: Platform Rights

4				
Service Group {nnnn}				
Service description				
From {or Between}	To {or And}	Via	Description	TSC

~~[Guidance Note (to be deleted from the completed contract)]~~

~~Only to be used if it is essential that trains run from or to particular platforms — e.g., because of special facilities, such as road access for Motorail services, that are only available on those platforms.]~~

Platform rights

~~8.1 Subject to paragraph 8.2, the Train Operator has Firm Rights to have the Services specified in column 1 of Table 8.1, when departing from, calling at or terminating at the station specified in column 2, Scheduled to use the platforms set out in column 3.~~

~~8.2 Where the application of paragraph 8.1 would prevent Network Rail from providing Train Slots to satisfy another train operator's Firm Rights, Network Rail shall be entitled to vary the platform arrangements specified in Table 8.1 so as to provide the Train Operator with the best available alternative platform arrangements, being alternative platform arrangements which have the least detrimental effect on the Train Operator.~~

[8.1 NOT USED](#)

[8.2 NOT USED](#)

Table 8.2: Connections

1	2		3		4	5
Service Group [nnnn] [or Service Groups [nnnn] and [mmmm]]	Arriving Service		Departing Service			
Station	From	Description	To	Description	Number of connections	Minimum time (m)

[Guidance Note (to be deleted from the completed contract)]

This table may only be used for connections between the Train Operator's own services
 Separate columns for Weekday and weekend services may be required]

Connections

~~8.3 — At each station in column 1 of Table 8.2, the Train Operator has Firm Rights to the number of connections specified in column 4 between the Services described in column 2 and the Services described in column 3.~~

~~8.4 — A connection shall be deemed to have been made if the time Scheduled in the Working Timetable between the arrival of the Service in column 2 and the departure of the Service in column 3 is at or between the minimum and maximum connecting times set out in columns 5 and 6.~~

8.3 NOT USED

8.4 NOT USED

~~Table 8.3: Departure time ranges~~

1					2	3
Service Group {nnnn}						
Service description						
From	To	Via	Description	TSC	Days	Station

~~[Guidance Note (to be deleted from the completed contract)]~~

~~Only to be used when essential to the business, e.g. for school hours when a limited service is provided. This table may be adapted for Arrival time ranges in a similar format, for the same reasons]~~

~~Departure time ranges~~

~~8.5 For each Service specified in column 1 of Table 8.3, the Train Operator has Firm Rights, on the Days specified in column 2, to departure times from the station specified in column 3 within the range specified in column 4.~~

8.5 NOT USED

Table 8.4: Firm Rights to Stabling facilities

1	2	3
Stabling facility	Time available [aa:bb to xx:yy]	Specified Equipment
<u>Heathrow Terminal 4 Station</u>	<u>Monday to Saturday from 2330 to 0530</u>	<u>One Class 345 unit</u>
<u>Heathrow Terminal 4 Station</u>	<u>Sunday from 2330 to 0700</u>	<u>One Class 345 unit</u>

Table 8.4A: Contingent Rights to Stabling facilities⁸⁰

<u>1</u>	<u>2</u>	<u>3</u>
<u>Stabling facility</u>	<u>Time available</u>	<u>Specified Equipment</u>
<u>Heathrow Terminal 5 Station</u>	<u>At all times</u>	<u>One Class 345 unit</u>

⁸⁰ Trains may need to call at Heathrow Terminal 5 Station in the event of an emergency, engineering works, unplanned disruptions or other unforeseen circumstances. TfL therefore requires Contingent Rights in respect of this station.

~~[Guidance Note (to be deleted from the completed contract)~~

~~Only to be used when essential for the efficient operation of the business, where the Train Operator is the minority user in the area or there are other specific constraints]~~

Stabling facilities

8.6 The Train Operator has:

- (a) Firm Rights to use the Stabling facility specified in column 1 of Table 8.4 between the hours specified in column 2 for the purposes of Stabling the Specified Equipment specified in column 3: and
- (b) Contingent Rights to use the Stabling facility specified in column 1 of Table 8.4A for the purposes of Stabling the Specified Equipment specified in column 3.

Table 8.5: Firm Rights to Turnaround times

1					2	3	4
Service Group - [#### <u>To be confirmed</u>] ⁸¹							
Service description							
From {or Between}	To <u>{or And}</u> <u>And</u>	Via	Description	TSC ⁸²	Station	Minimum turnaround time	Maximum turnaround time
<u>Heathrow Tunnel Junction</u>	<u>Heathrow Terminal 4 Station</u>	<u>N/A</u>	<u>All stations</u>	<u>[To _____ be confirmed]</u>	<u>Heathrow Terminal 4 Station</u>	<u>7 minutes</u>	<u>28 minutes</u>

⁸¹ Please see footnote 65 above.

⁸² Please see footnote 66 above.

~~[Guidance Note (to be deleted from the completed contract)]~~

Table 8.5A: Firm Rights to Turnaround times⁸³ are usually defined in the Timetable Planning Rules. This table should only be used when a longer turnaround is required, for, e.g., sleeper services.]

<u>1</u>					<u>2</u>	<u>3</u>	<u>4</u>
<u>Service Group - [To be confirmed]</u> ⁸⁴							
<u>Service description</u>							
<u>Between</u>	<u>And</u>	<u>Via</u>	<u>Description</u>	<u>TSC</u> ⁸⁵	<u>Station</u>	<u>Minimum turnaround time</u>	<u>Maximum turnaround time</u>
<u>Heathrow Tunnel Junction</u>	<u>Heathrow Terminal 5 Station</u>	<u>N/A</u>	<u>All stations</u>	<u>[To be confirmed]</u>	<u>Heathrow Terminal 5 Station</u>	<u>7 minutes</u>	<u>28 minutes</u>

⁸³ Trains may need to call at Heathrow Terminal 5 Station in the event of an emergency, engineering works, unplanned disruptions or other unforeseen circumstances. TfL therefore requires Contingent Rights in respect of this station.

⁸⁴ Please see footnote 65 above.

⁸⁵ Please see footnote 66 above.

Turnaround times

8.7 The Train Operator has:

(a) at each station in column 2 of Table 8.5, Firm Rights for each corresponding Service specified in column 1 to a turnaround time equal to or greater than the minimum time specified in column 3 but not exceeding the maximum time specified in column 4; and

~~8.7 At each station in column 2 of Table 8.5,~~ (b) at each station in column 2 of Table 8.5A, in the event the Train Operator ~~has~~ requires use of that station, Firm Rights for each corresponding Service specified in column 1 to a turnaround time equal to or greater than the minimum time specified in column 3 but not exceeding the maximum time specified in column 4.

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 ~~or the Franchisee~~⁸⁶;
- (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~~ HAL 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~~ HAL 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~~ HAL;
- (f) the Train Operator does not satisfy the conditions precedent specified in Clause 3.3(b) in full by the date specified in Clause 3.1; and⁸⁷
- ~~(g)~~ 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; and
- ~~(h)~~ the ~~Franchise~~ Concession Agreement is terminated.

1.2 Notification

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

1.3 ~~Network Rail~~ HAL Events of Default

The following are ~~Network Rail~~ HAL Events of Default:

⁸⁶ [The reference to the Concessionaire is not necessary as the Train Operator is the Concessionaire in this context.](#)

⁸⁷ [Please see our comments below on Paragraph 1.3\(d\).](#)

- (a) ~~Network Rail~~ (i) HAL ceases to be authorised to be the operator of ~~that part of~~ the Network ~~comprising the Routes~~ 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;
- (ii) if HAL is exempt from the requirement to be authorised under section 7 of the Act and such exemption expires or is otherwise withdrawn:
- (A) HAL fails to obtain a licence permitting it to be the operator of the Network prior to the exemption expiring or being withdrawn; or
- (B) HAL obtains a licence authorising to be the operator of the Network under section 8 of the Act prior to the exemption expiring or being withdrawn but subsequently ceases to be authorised to be the operator of the Network by such licence (whether by revocation or otherwise);⁸⁸
- (b) an Insolvency Event occurs in relation to ~~Network Rail~~ HAL or the Operations Agent⁸⁹;
- (c) (i) any breach by ~~Network Rail~~ HAL of this contract, its obligations under Clause 15A(a), its Safety Obligations or any of the Collateral Agreements;⁹⁰ 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) HAL does not satisfy the conditions precedent specified in Clause 3.3(a) in full by the date specified in Clause 3.1;⁹¹ and

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HAL is currently exempt from holding a licence granted under section 8 of the Act. Whilst the duration of this track access agreement ties in with the expiry of this exemption, it is of course possible that the exemption could be withdrawn earlier, meaning this exemption would not be in place for the duration of the term of this contract. Accordingly, this Event of Default has been updated to address this scenario. This is consistent with the approach taken in the Station Access Agreement.

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This Event of Default recognises that HAL intends to subcontract the majority of its obligations under this contract and that the existence of this subcontractor is essential to HAL fulfilling its obligations under this contract.

90

As discussed above in relation to Clause 10.2, HAL's licence exemption means that it is not otherwise subject to asset stewardship obligations. TfL therefore considers that a specific HAL Event of Default should also be included that arises where HAL breaches one of the "surrogate licence conditions" proposed to be incorporated into this contract.

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As discussed above in relation to Clause 3, TfL considers that a failure by HAL to satisfy the conditions precedent by the specified date should constitute a HAL Event of Default. In the event that this HAL Event of Default occurs, TfL should then be entitled to claim damages to compensate it for the delay in being able to access the Network. This contract will need to be updated to include this mechanism. An equivalent Train Operator Event of Default has been included above as Paragraph 1.1(f) and HAL would be entitled to claim any costs it incurs as a result of such breach.

(de) any breach of this contract or any material breach of any of the Collateral Agreements by ~~Network Rail~~ HAL 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~~ HAL shall notify the Train Operator promptly on becoming aware of the occurrence of a ~~Network Rail~~ HAL Event of Default.

2 **Suspension**

2.1 *Right to suspend*

2.1.1 ~~Network Rail~~ HAL 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~~ HAL 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 ~~Routes or any parts of them or any other part of the~~ Network;
- (d) in the case of a Suspension Notice served on ~~Network Rail~~ HAL, 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 amount due, seven days shall be a reasonable grace period).

2.3 *Effect of Suspension Notice served by ~~Network Rail~~ HAL*

Where ~~Network Rail~~ HAL 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~~ HAL 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 purposes 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~~HAL:

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

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~~(b) in relation to Services suspended by the Suspension Notice, the amount of the Fixed Track Charge (as that term is defined in Schedule 7) shall be abated on a daily basis by an amount equal to the proportion of passenger vehicle miles not run on any day due to the suspension divided by the passenger vehicle miles timetabled for the Corresponding Day to that day (as that term is defined and determined under Part 3 of Schedule 4), as multiplied by the daily amount of the Fixed Track Charge (as so defined);~~

~~(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~~HAL 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 purposes 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;
- (c) ~~Routes~~Network; and
- (d) categories of train movements or railway vehicles,

(or (as the case may be) parts or part of them) to which the relevant Train Operator Event of Default relates.

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This paragraph has been deleted as the Fixed Track Charge is not applicable to this contract. However, this contract will need to include an alternative abatement mechanism or similar so that the Train Operator is not paying for services during a suspension period. The contract will need to be updated accordingly once the charges regime in Schedule 7 has been finalised.

- 2.5.2 A Suspension Notice served under paragraph 2.4 in respect of any of the ~~Network Rail~~HAL 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;
 - (c) ~~Routes~~Network; and
 - (d) categories of train movements or railway vehicles, (or (as the case may be) parts or part of them) to which the relevant ~~Network Rail~~HAL 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~~HAL's right to terminate

~~Network Rail~~HAL 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~~HAL 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~~HAL:

- (a) where ~~Network Rail~~HAL fails to comply with its obligations under paragraph 2.5.3;
- (b) where the ~~Network Rail~~HAL Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or

- (c) where the ~~Network Rail~~ HAL 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~~ HAL 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.

4 Consequence of termination⁹³

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~~ HAL 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~~ HAL 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~~ HAL in taking such steps shall be paid promptly by the Train Operator.

4.3 *Evidence of costs*

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

⁹³

[This contract is currently silent on the costs that will be incurred by TfL in the event these access arrangements are terminated as a result of a HAL Event of Default \(for example costs relating to the reallocation of vehicles and staff, reputational damage and/or compensation claims from connecting operators\). These costs would not be insignificant and TfL proposes that the contract be updated to expressly provide for such compensation to be payable.](#)

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

TfL's principles for its proposed track access charging regime are as follows:

This schedule of the Track Access Contract will set out the Track Access Charge that will be payable for services using the Heathrow Rail Infrastructure to and from HAL's Tunnel Portal to the Terminal 4 station, via the CTA station.

A "per train movement" charge of £25.68 (in 2015/6 prices) for use of the track infrastructure between the Tunnel portal and HAL's Terminal 4 station⁹⁴ (where a train movement represents a single "one-way" trip from the tunnel portal to the Terminal 4 station or vice versa). Such a charge will apply to Class 345 units in standard 9 car formation⁹⁵.

For each 4 weekly railway reporting period, the total track charge that the Crossrail train operator will be required to pay for running this service shall be calculated in accordance with the following formula:

$$\text{Total Track Charge} = \text{Rail Period Movements} * \text{HAL Track Charge}$$

where:

Rail Period Movements is the total number of movements made by Crossrail per railway reporting period; and

HAL Track Charge is the HAL Track Charge per movement of £25.68.

The HAL Track Charge is calculated in 2015/16 prices. For years commencing 1 April 2016 onwards, the Track Charge will follow the standard terms of annual indexation used by Network Rail, as set out below:

$$T_t = T_{t-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

T_t is the Track Charge in year t;

⁹⁴ Whilst there is no scheduled Crossrail service to Terminal 5, it is possible that Crossrail services will need to access the Extended HAL Tunnel (i.e. the track infrastructure extending to Terminal 5 defined in HAL's Network Statement) in exceptional circumstances. For example, in the event that Terminal 4 cannot be accessed by Crossrail services, access to the Extended HAL Tunnel may be required in order to turn trains around. In this event, we propose that the same charge (£25.68 per movement) is levied by HAL on Crossrail services, given that Extended HAL Tunnel is similar in length to the tunnel between the CTA and Terminal 4. Since there are no plans for Crossrail services to call at the Terminal 5 station, we do not (at this stage) propose establishing a Station Charge for access to the Terminal 5 station.

⁹⁵ We propose that HAL levies only a single charge to recover non-station related OMR costs (including electrification assets) rather than two separate charges (one for electrification assets and one for track, civils and signalling assets, as is the case on Network Rail infrastructure) because all Crossrail services will be electrified. Therefore, all Crossrail services should be expected to contribute to the recovery of electrification OMR costs that HAL incurs as a result of them operating.

RPI_{t-1} means the RPI CHAW published or determined with respect to the month of November in relevant year t-1; and

RPI_{t-2} means the RPI CHAW published or determined with respect to the month of November in relevant year t-2.

The payment of charges will follow the same terms (including periodicity, timing and set off) as stated in Schedule 7, Section 10 of Network Rail's model clauses Track Access Agreement.

PART 1: INTERPRETATION

1 — Definitions

~~In Parts 1-7 inclusive, unless the context otherwise requires:~~

“2008 Final Determinations”	means the document entitled “Periodic Review 2008: Determination of Network Rail’s outputs and funding for 2009-14” published by ORR on 30 October 2008;
“2013 Final Determination”	means the document entitled “Periodic Review 2013: Final determination of Network Rail’s outputs and funding for 2014-19” published by ORR on 31 October 2013;
“access charges review”	has the meaning ascribed to it by Schedule 4A to the Act;
“AC System”	means the alternating current system of electricity traction supply on the Network;
“Aggregate Fixed Charges”	means, in any Relevant Year t, the sum of the values of F_t under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;
“Basic Value”	has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;
“Capacity Charge”	means a variable charge, calculated in accordance with paragraph 6 of Part 2;
“DC System”	means the direct current system of electricity traction supply on the Network;
“Deed of Grant”	means the Deed of Grant made on or about 20 December 2013 between the Secretary of State and Network Rail;
“Default Charge”	means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

“Default Period”	<p>means the period from the later of:</p> <p>(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or</p> <p>(b) 1 April 2014,</p> <p>until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;</p>
“Default Rate”	<p>means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge default rates”;</p>
“Default Train Consist Data”	<p>means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;</p>
“Delivery Plan”	<p>means the document, including its supporting documentation, published by Network Rail on or about 31 March 2014 setting out its delivery plan for the period 1 April 2014 – 31 March 2019;</p>
“Efficiency Benefit Share”	<p>means the amount determined in accordance with paragraph 5.1 of Part 2;</p>
“Electrification Asset Usage Charge”	<p>means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;</p>
“English & Welsh Grant Compensation Amount”	<p>has the meaning ascribed to it in paragraph 3.2 of Part 3A;</p>
“English & Welsh Grant Dilution”	<p>has the meaning ascribed to it in paragraph 2.1 of Part 3A;</p>
“English & Welsh Grant Dilution Date”	<p>has the meaning ascribed to it in paragraph 2.2 of Part 3A;</p>
“excluded change”	<p>means, in relation to paragraph 2(a) of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under sections 6 or 8 of the Railways Act 2005;</p>

“Fixed Track Charge”	means a fixed annual charge, calculated in accordance with paragraph 1 of Part 2;
“Fixed Track Charge Indexation”	has the meaning ascribed to it in paragraph 2 of Part 2;
“Geographic Area g”	means, for the purposes of performing the calculations set out in paragraph 4 of Part 2 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;
“Grant Amount”	has the meaning ascribed to it in paragraph 1.2 of Part 3A;
“Gross Tonne Mile”	in relation to a train, means a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question;
“Initial Indexation Factor”	is derived from the following formula: $\text{IIF} = \left(1 + \frac{(\text{RPI}_{2013} - \text{RPI}_{2012})}{\text{RPI}_{2012}} \right)^2$ <p>where:</p> <p>IIF — means the Initial Indexation Factor;</p> <p>RPI₂₀₁₂ means the RPI published or determined with respect to the month of November 2012; and</p> <p>RPI₂₀₁₃ means the RPI published or determined with respect to the month of November 2013;</p>
“kgtm”	means 1000 Gross Tonne Miles;
“kWh”	means kilowatt hours;
“List of Capacity Charge Rates”	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train operator;

~~“Material Alliance Agreement”~~

~~means a legally binding agreement between:~~

- ~~(a) Network Rail and the Train Operator; or~~
- ~~(b) Network Rail, the Train Operator and one or more other train operators; or~~
- ~~(c) Network Rail and one or more other train operators,~~

~~establishing an alliance under which the parties to such legally binding agreement agree to share risk or reward or both on a REBS Route or part thereof on which the Train Operator operates Services and which is likely to have a material direct financial impact on one or more elements of Network Rail’s costs or income included within the Route Baseline;~~

~~“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,~~

~~in either case as specified in Appendix 7D of this Schedule 7 or Appendix 2 or Appendix 4 of the Traction Electricity Rules;~~

~~“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;~~

~~“Network Rail Rebate”~~

~~has the meaning ascribed to it in paragraph 7.1 of Part 2;~~

~~“New Specified Equipment”~~

~~means a type of railway vehicle not included in the section of the Track Usage Price List entitled “Passenger 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;~~

~~“Outperformance Cap”~~

~~means the maximum possible amount in pounds sterling that can be attributed to a REBS Outperformance as published by Network Rail in its Delivery Plan;~~

“Outperformance Sum”	<p>means the lower of:</p> <p>(a) the Outperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and</p> <p>(b) 25% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Outperformance;</p>
“Payment Date”	<p>has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;</p>
“Period”	<p>has the meaning ascribed to it in Schedule 8;</p>
“Power Factor Correction”	<p>means the relevant power factor correction as set out in Appendix 2 of the Traction Electricity Rules;</p>
“Rebatable Amount”	<p>has the meaning ascribed to it in paragraph 7.2 of Part 2;</p>
“REBS Outperformance”	<p>means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has exceeded the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;</p>
“REBS Route”	<p>means a route specified in the table in Appendix 7A for the purposes of the Route Level Efficiency Benefit Share Mechanism;</p>
“REBS Underperformance”	<p>means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has not achieved the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;</p>

“relevant access agreement”	<p>means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:</p> <ul style="list-style-type: none"> (a) a franchise operator; or (b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or (c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or (d) any other person who benefits from a franchise exemption (within the meaning of section 24(13) of the Act) in relation to services for the carriage of passengers by railway; or (e) a relevant franchising authority (as defined in section 30(3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act;
“Relevant Year”	<p>means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;</p>
“Route Baseline”	<p>means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan;</p>
“Route-Level Efficiency Benefit Share”	<p>has the meaning ascribed to it in paragraph 1.1 of Part 3;</p>
“Route-Level Efficiency Benefit Share Mechanism”	<p>means the provisions for the calculation and payment of the Route-Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1 of Part 3;</p>
“route type k”	<p>means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;</p>

“RPI”	means the General Index of Retail Prices All Items measured by CHAW and published each month, or:
	(a) if the 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 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;
“Schedule of Fixed Charges”	means the document entitled “Schedule of Fixed Charges” published by Network Rail on or about 20 December 2013;
“Service Coded Group”	means any Service or collection of Services or Ancillary Movements operating under a service code specified in the List of Capacity Charge Rates and any Ancillary Movements relating to such Services;
“tariff band j”	means the tariff zone and time band in which the train in question is operated;
“Tolerance Factor”	means the relevant Tolerance Factor as set out in Appendix 4 of the Traction Electricity Rules;
“Track Usage Price List”	means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train operator;
“Traction Electricity Charge”	means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;

“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 2013 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 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train operator;
“train category i”	means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List, being either: <ul style="list-style-type: none"> (a) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled “Passenger Traction Electricity Modelled Consumption Rates for CP5”; or (b) in respect of any other passenger vehicle type not referred to in paragraph (a), the relevant category set out in the table entitled “Generic Traction Electricity Modelled Consumption Rates for CP5”;
“Train Consist Data”	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
“Train Mile”	in relation to a train, means a mile travelled by that train on the Network;
“Train Service Code”	has the meaning ascribed to it in paragraph 1.1 of Schedule 5;
“Underperformance Cap”	means the maximum possible amount in pounds sterling that can be attributed to a REBS Underperformance as published by Network Rail in its Delivery Plan;

“Underperformance Sum”	means the lower of: (a) the Underperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and (b) 10% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Underperformance;
“Variable Charges”	means the Capacity Charge, the Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity Charge;
“Variable Usage Charge”	means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;
“Volume Reconciliation”	has the meaning ascribed to it in the Traction Electricity Rules; and
“Weekday”	has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

2 Interpretation

The provisions of Clause 1.2(e) of this contract shall not apply to any references to the Deed of Grant in this Schedule 7.

PART 2: TRACK CHARGES

1 Principal formula

During each Relevant Year (and, in respect of F_t , prorated for each day of any period of this contract comprising less than a full Relevant Year), Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = F_t + V_t + D_t + E_t + K_t + EAV_t - BS_t - W_t$$

where:

T_t means Track Charges in Relevant Year t ;

~~F_t means an amount in respect of the Fixed Track Charge in Relevant Year t, which shall be:~~

~~(a) in respect of the Relevant Year commencing on 1 April 2014, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation calculated in accordance with paragraph 2.1; and~~

~~(b) in respect of any Relevant Year t commencing on or after 1 April 2015, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation for that year calculated in accordance with paragraph 2.2;~~

~~V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;~~

~~D_t means an amount (if any) in respect of the Default Charge in Relevant Year t which is calculated in accordance with paragraph 3.3;~~

~~E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4;~~

~~K_t means an amount in respect of the Capacity Charge in Relevant Year t which is derived from the formula in paragraph 6;~~

~~EAV_t means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8;~~

~~BS_t means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 5.1; and~~

~~W_t means an amount (which shall not be a negative value) in respect of the Network Rail Rebate in Relevant Year t, calculated in accordance with the provisions of paragraph 7.1.~~

~~2 Fixed Track Charge Indexation~~

~~2.1 The Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2014 shall be derived from the following formula:~~

$$~~FTCI_{2014} = \text{Initial Indexation Factor}~~$$

~~where:~~

~~FTCI₂₀₁₄ means the Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2014.~~

~~2.2 The Fixed Track Charge Indexation in respect of any Relevant Year t commencing on or after 1 April 2015 shall be derived from the following formula:~~

$$FTCI_t = \left(1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \bullet \text{Initial Indexation Factor}$$

where:

$FTCI_t$ means the Fixed Track Charge Indexation in Relevant Year t;

RPI_{t-1} means the RPI published or determined with respect to the month of November in Relevant Year t-1; and

RPI_{2013} means the RPI published or determined with respect to the month of November 2013.

3 Variable Usage Charge

3.1 Variable Usage Charge

For the purposes of paragraph 1, the term V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the following formula:

$$V_t = \sum V_{it} \bullet UV_{it}$$

where:

V_{it} means an amount for vehicle type i for Relevant Year t which is derived from the following formula:

$$V_{it} = V_{it-1} \bullet \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

— where:

— RPI_{t-1} has the meaning set out in paragraph 2.2 above; and

RPI_{t-2} means the RPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2014, V_{it} shall have, in respect of vehicle type i, the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year V_{it+1} shall have the same value;

UV_{it} means the actual volume of usage (in Vehicle Miles) in Relevant Year t of vehicle type i (referred to in the Track Usage Price List) operated by or on behalf of the Train Operator; and

Σ means the summation across all relevant categories of vehicle types i.

3.2 Not used

3.3 Default Charge

For the purposes of paragraph 1, the term D_t means the amount of Default Charge payable in respect of New Specified Equipment in Relevant Year t which is derived from the following formula:

$$D_t = \sum D_{nt} \cdot UD_{nt}$$

where:

D_{nt} means the Default Rate for that New Specified Equipment for Relevant Year t which is derived from the following formula:

$$D_{nt} = D_{nt-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} has the meaning set out in paragraph 2.2 above; and

RPI_{t-2} has the meaning set out in paragraph 3.1 above;

but so that in relation to the Relevant Year commencing on 1 April 2014, D_{nt} shall have, in respect of New Specified Equipment, the corresponding Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt+1} shall have the same value;

UD_{nt} means the actual volume of usage of New Specified Equipment in Vehicle Miles during the Default Period in Relevant Year t operated by or on behalf of the Train Operator; and

Σ means the summation across all relevant New Specified Equipment.

4 Traction Electricity Charge

4.1 For the purposes of paragraph 1, the term E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t , which is derived from the following formula:

$$E_t = E_{tmo} + E_{tme} + E_{tmuAC} + E_{tmuDC}$$

where:

E_{tmo} means an amount calculated in accordance with paragraph 4.1.2 below;

~~E_{tme} means an amount calculated in accordance with paragraph 4.1.3 below;~~

~~E_{tmuAC} means an amount calculated in accordance with paragraph 4.1.4(a) below; and~~

~~E_{tmuDC} means an amount calculated in accordance with paragraph 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*~~

~~4.1.1 E_{tme} shall be calculated in respect of all trains other than those identified in the table at Appendix 7D, and E_{tme} , E_{tmuAC} and E_{tmuDC} shall be calculated in respect of the trains identified in the table at Appendix 7D.~~

~~*Calculation of modelled consumption*~~

~~4.1.2 E_{tme} is derived from the following formula:~~

$$~~E_{tme} = \sum E_{tmog}~~$$

~~where:~~

~~\sum means the summation across all Geographic Areas g , as appropriate;~~

~~E_{tmog} is derived from the following formula: _____~~

$$~~E_{tmog} = \sum C_i \bullet EF_{gjt} \bullet UE_{igt}~~$$

~~where:~~

~~\sum means the summation across all relevant train categories i (determined in accordance with paragraph 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, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;~~

~~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_{igt} 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.~~

~~Calculation of consumption using metered consumption data~~

~~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:~~

~~$$E_{tmeg} = \sum [(CME_{mgjt} \bullet PF_m \bullet EF_{gjt}) - (RGB_{mgjt} \bullet PF_m \bullet EF_{gjt})] \bullet (1 + \delta_m)$$~~

~~where:~~

~~\sum means the summation across all relevant Metered Trains m (determined in accordance with paragraph 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;~~

~~PF_m means the Power Factor Correction for the relevant train type for Metered Train m;~~

~~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;~~

~~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; and~~

~~δ_m means the Tolerance Factor for the relevant train type for Metered Train m.~~

~~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:~~

~~$$E_{tmugAC} = \Sigma[(CME_{mgjtAC} \bullet PF_m \bullet EF_{gjt}) \bullet (1 + \delta_m)] \bullet \lambda_{ACg}$$~~

where:

~~Σ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 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 ;~~

~~PF_m means the Power Factor Correction for the relevant train type for Metered Train m ;~~

~~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;~~

~~δ_m means the Tolerance Factor for the relevant train type for Metered Train m ; 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:~~

~~$$E_{tmuDC} = \Sigma E_{tmugDC}$$~~

where:

~~Σ means the summation across all Geographic Areas g , as appropriate;~~

~~E_{tmugDC} is derived from the following formula:~~

~~$$E_{tmugDC} = \Sigma[(CME_{mgjtDC} \bullet EF_{gjt}) \bullet (1 + \delta_m)] \bullet \lambda_{DCg}$$~~

where:

~~Σ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 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;~~
- ~~δ_m means the Tolerance Factor for the relevant train type for Metered Train m; and~~
- ~~λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g.~~

~~*Election to introduce On-Train Metering for a vehicle or vehicle type*~~

- ~~4.2 (a) 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.~~
- ~~(b) Any notice under sub-paragraph 4.2(a) 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.~~
- ~~(c) Promptly following any response served by Network Rail under sub-paragraph 4.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.~~
- ~~(d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a), 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.~~
- ~~(e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.~~
- ~~(f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 4.2(a), 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.~~

~~(g) Where ORR determines the matter pursuant to sub-paragraph 4.2(f), 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.~~

~~4A Volume and Cost Reconciliation for the Relevant Year ending on 31 March 2014~~

~~4A.1 For the purposes of the volume and cost reconciliation to be carried out for the Relevant Year ending on 31 March 2014, the provisions in paragraph 5 (volume and cost reconciliation) of Part 2 of Schedule 7 to this contract (and such definitions and other provisions as are relevant to that paragraph 5) in force as at that date shall continue to apply to the extent (and only to the extent) necessary to enable the calculation and payment of the supplementary amounts $S1_t$ and $S2_t$.~~

~~4A.2 For subsequent Relevant Years, paragraph 18 of the Traction Electricity Rules shall apply.~~

~~5 Efficiency benefit share~~

~~5.1 The Efficiency Benefit Share:~~

~~(a) is an amount (which shall not be a negative value) representing a return of Track Charges which shall be identified in the ORR's annual assessment of Network Rail as the "Efficiency Benefit Share", if any, to be rebated to the Train Operator, such amount to be determined in accordance with the methodology and principles set out in paragraphs 27.34 to 27.53 (inclusive) of the 2008 Final Determinations; and~~

~~(b) shall only be payable in respect of Relevant Years ending on or before 31 March 2014.~~

~~5.2 If, pursuant to paragraph 5.1, the Train Operator is entitled to payment of an Efficiency Benefit Share in respect of Relevant Year t , then, subject to paragraph 5.3, such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which it is determined by the ORR that such payment should be made.~~

~~5.3 If, in respect of any Relevant Year t , an Efficiency Benefit Share is payable in accordance with paragraph 5.2 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t , the Train Operator shall be entitled to a pro rata payment of the Efficiency Benefit Share payable in respect of that Relevant Year t . Such pro rata payment (which shall be payable in accordance with paragraph 5.2) shall be calculated as follows:~~

$$\text{Pro rata BS}_t = \left(\frac{\text{EBS}}{13} \right) \times \text{CP}$$

~~where:~~

~~EBS means the total amount of the Efficiency Benefit Share that would have been payable to the Train Operator in respect of the whole of the Relevant Year t in question had this contract been in force for the entire Relevant Year t; and~~

~~CP means the number of Periods during that Relevant Year t either:~~

~~(a) where this contract commences during the course of that Relevant Year t, following commencement of this contract; or~~

~~(b) where this contract expires or is otherwise terminated during the course of that Relevant Year t, prior to the expiry or other termination of this contract;~~

~~provided that, in each case:~~

~~(i) if this contract expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP';~~

~~(ii) if this contract expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP';~~

~~(iii) if this contract commences on or before the fourteenth day of a Period, such Period shall be included in the calculation of 'CP'; and~~

~~(iv) if this contract commences on or after the fifteenth day of a Period, such Period shall not be included in the calculation of 'CP'.~~

~~5.4 Without prejudice to the generality of Clause 16.3.1, any payment of an Efficiency Benefit Share (an "**EBS payment**") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the EBS payment is consideration for a supply for VAT purposes Network Rail shall in addition pay to the Train Operator an amount equal to the amount of VAT due in respect of that EBS payment and either:~~

~~(a) the Train Operator shall issue a VAT invoice to Network Rail in respect of the relevant amount; or~~

~~(b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the Value Added Tax Regulations 1995 (the "**VAT Regulations**") that continues in force then Network Rail shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.~~

~~6 Capacity Charge~~

For the purposes of paragraph 1, the term K_t means an amount in respect of the Capacity Charge in Relevant Year t which shall be derived from the following formula:

$$K_t = \left[\sum (Pg_{twdi} \cdot Tg_{twdi}) + (Pg_{twei} \cdot Tg_{twei}) \right]$$

where:

\sum means the sum across all Service Coded Groups i ;

Pg_{twdi} means the Weekday rate per Service Coded Group i in respect of Relevant Year t shown in the List of Capacity Charge Rates and indexed in accordance with the following formula:

$$Pg_{twdi} = Pg_{t-1wdi} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} has the meaning set out in paragraph 2.2 above; and

RPI_{t-2} has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year t commencing on 1 April 2014, Pg_{twdi} shall have the value for the Weekday rate per Service Coded Group i shown for the Train Operator in the List of Capacity Charge Rates, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year, Pg_{t-1wdi} shall have the same value;

Pg_{twei} means the weekend rate per Service Coded Group i in respect of Relevant Year t shown in the List of Capacity Charge Rates and indexed in accordance with the following formula:

$$Pg_{twei} = Pg_{t-1wei} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} has the meaning set out in paragraph 2.2 above; and

RPI_{t-2} has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year t commencing on 1 April 2014, Pg_{twei} shall have the value for the weekend rate per Service Coded Group i shown for the Train Operator in the List of Capacity Charge Rates, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year, Pg_{t-1wei} shall have the same value;

Tg_{twdi} means the actual Train Miles run on Weekdays by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t ; and

Tg_{twei} means the actual Train Miles run on weekends by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t .

7 Network Rail Rebate

~~7.1 For the purpose of paragraph 1, the Network Rail Rebate in respect of any Relevant Year t (W_t) is an amount (which shall not be a negative value) by way of a return of Track Charges paid in accordance with paragraph 7.5, derived from the following formula:~~

$$W_t = RA_t \cdot \frac{F_t}{AF_t}$$

~~where:~~

~~RA_t means the Rebatable Amount declared by Network Rail in relation to Relevant Year t under paragraph 7.2;~~

~~F_t has the meaning ascribed to it in paragraph 1 for Relevant Year t; and~~

~~AF_t means the Aggregate Fixed Charge in Relevant Year t.~~

~~7.2 The Rebatable Amount shall be the amount, if any:~~

~~(a) which represents such proportion of Network Rail's total income for Relevant Year t as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;~~

~~(b) which Network Rail, acting reasonably, considers it appropriate to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and~~

~~(c) which Network Rail notifies as such to ORR within 9 months after the end of each Relevant Year t.~~

~~7.3 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR has consented to such rebate.~~

~~7.4 Paragraph 5.4 shall apply to a payment of Network Rail Rebate in the same way as it applies in relation to a payment of an Efficiency Benefit Share, as if references in paragraph 5.4 to "Efficiency Benefit Share" and "EBS payment" were instead references to, respectively, "Network Rail Rebate" and "Network Rail Rebate payment".~~

~~7.5 If, pursuant to paragraph 7.1, the Train Operator is entitled to payment of a Network Rail Rebate in respect of Relevant Year t, then such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which ORR gives its consent under paragraph 7.3.~~

~~7.6 If, pursuant to paragraph 7.2, Network Rail notifies ORR of the Rebatable amount in respect of Relevant Year t after this contract has expired or has otherwise been terminated then, notwithstanding the expiration or termination of this contract, paragraph 7.5 shall apply.~~

~~7.7 If Network Rail has, prior to 31 March 2014 and pursuant to the provisions of this contract in force as at that date, notified ORR of a Rebatable Amount for the Relevant Year ending on that date, then such provisions shall continue to apply to the extent (and only to the extent) necessary to enable determination and~~

payment (where applicable) of a Network Rail Rebate based on that Rebatable Amount.

~~8 Electrification Asset Usage Charge~~

~~For the purposes of paragraph 1, the term EAV_t means an amount for electrification asset usage which is derived from the following formula:~~

$$\text{Electrification Asset Usage Charge} = \sum EV_{tk} \cdot UV_{tk}$$

~~where:~~

~~\sum means the summation across all route types;~~

~~EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t which is derived from the following formula:-~~

$$EV_{tk} = EV_{t-1k} \cdot \left(1 + \frac{RPI_{t-1} - RPI_{t-2}}{RPI_{t-2}} \right)$$

~~where:~~

~~RPI_{t-1} has the meaning set out in paragraph 2.2 above; and~~

~~RPI_{t-2} has the meaning set out in paragraph 3.1 above,~~

~~but so that in relation to the Relevant Year commencing on 1 April 2014, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year EV_{t+1k} shall have the same value; and~~

~~UV_{tk} means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator.~~

~~9 Bilateral supplements to the List of Capacity Charge Rates, Traction Electricity Modelled Consumption Rates List and Track Usage Price List~~

~~9.1 Where the Train Operator intends to use New Specified 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.~~

~~9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay Network Rail the relevant Default Charge during the Default Period.~~

~~9.3 No supplement to the Traction Electricity Modelled Consumption Rates List, Track Usage Price List or List of Capacity Charge Rates shall have effect unless it has been:~~

~~(a) agreed between the parties and ORR has consented to it; or~~

~~(b) determined by ORR.~~

- ~~9.4 — 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 rate in respect of a new train category;~~
 - ~~(b) — the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or~~
 - ~~(c) — the List of Capacity Charge Rates be supplemented as necessary to take account of changes in the pattern and number of Services or to include rates in respect of new Services.~~
- ~~9.5 — Any proposal of a kind referred to in paragraph 9.4 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.~~
- ~~9.6 — 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.~~
- ~~9.7 — Where the parties agree to a supplement following a proposal under paragraph 9.4, 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.~~
- ~~9.8 — If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.~~
- ~~9.9 — Following a reference to ORR under paragraph 9.8, 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.~~
- ~~9.10 — ORR may:~~
- ~~(a) — consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or~~
 - ~~(b) — following a referral to ORR under paragraph 9.8, determine the supplement that should apply.~~
- ~~9.11 — In the case of a supplement to the Traction Electricity Modelled Consumption Rates List or List of Capacity Charge Rates, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that:~~
- ~~(a) — in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, 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; and~~
 - ~~(b) — in the case of a supplement to the List of Capacity Charge Rates, such date shall not be a date falling prior to 1 April 2014.~~

~~9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the Default Period.~~

~~9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:~~

~~(a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 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 the amount paid by the Train Operator for the Default Charge during the Default Period and the amount that it would have paid during the Default Period in respect of the Variable Usage Charge had the supplement been in place at the time 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.~~

~~9.14 Any supplement to the Traction Electricity Modelled Consumption Rates List, Track Usage Price List or List of Capacity Charge Rates which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.~~

10 Payment of Track Charges and other sums due under the contract⁹⁶

10.1 Payment of Track Charges and other sums due under the contract

(a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to ~~Network Rail~~ HAL of:

(i) the Variable Usage Charge;

(ii) the Traction Electricity

~~Charge;~~(iii) ~~the Capacity Charge;~~

~~(iv) the Electrification Asset Usage Charge;~~

~~(v) the Default Charge; and~~

(vi) any other sums which have fallen due in accordance with any provision of this contract,

⁹⁶

[We have included the Network Rail template payment terms in this document \(amended as appropriate to reflect the arrangements under this contract\).](#)

attributable to any Period as invoiced by ~~Network Rail~~ HAL on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.

~~(b) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within seven days of the invoice date or seven days after the end of the Period, whichever is later.~~

(b) NOT USED.

(c) Any invoice issued by ~~Network Rail~~ HAL under paragraph 18.5 of the Traction Electricity Rules (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 ~~Train Consist Data~~ NOT USED

~~Network Rail shall calculate the Variable Charges payable by the Train Operator in respect of each Period using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data.~~

10.3 *Invoices and right to object to invoices*

~~(a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.~~

(a) NOT USED

(b) For each Period, ~~Network Rail~~ HAL shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator

~~-during that Period based on either: (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or~~

~~(ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or~~

~~(iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,~~

~~or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data.~~ Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- ~~(c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) (“notice of objection”). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.~~
- ~~(d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.~~
- ~~(e) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.~~
- ~~(f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 4A of this Part 2 or under paragraph 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.~~
- ~~(g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.~~

~~10.4 Unrepresentative Train Consist Data~~

~~(c) NOT USED.~~

~~(d) NOT USED.~~

~~(e) NOT USED.~~

~~(f) NOT USED.~~

~~(g) NOT USED.~~

10.4 NOT USED

- ~~(a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.~~
- ~~(b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, either party may refer the matter for resolution in accordance with the ADRR.~~
- ~~(c) Upon the earlier of agreement between the parties or determination by a relevant ADRR Forum, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the "14 day period") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.~~

10.5 *Disputed amounts repayment and interest rate*

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
 - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.
- ~~(c) For the avoidance of doubt, nothing in this paragraph 10.5 shall apply to any sums which have fallen due in accordance with Part 3A of this Schedule 7.~~

PART 3: ROUTE-LEVEL EFFICIENCY BENEFIT SHARE MECHANISM

1. Route-Level Efficiency Benefit Share Mechanism

Calculation of the Route-Level Efficiency Benefit Share

1.1 The Route-Level Efficiency Benefit Share for Relevant Year t (“ O_t ” or “ U_t ” as the case may be) is the amount (if any) that is payable by Network Rail to the Train Operator or by the Train Operator to Network Rail, as the case may be, in respect of a REBS Route, derived from the following formula:

(a) in the case of a REBS Outperformance:

$$O_t = \left[\frac{V_t + D_t}{AV_t} \right] \bullet \text{Outperformance Sum}$$

and

(b) in the case of a REBS Underperformance:

$$U_t = \left[\frac{V_t + D_t}{AV_t} \right] \bullet \text{Underperformance Sum}$$

where:

O_t means the amount that is payable by Network Rail to the Train Operator in respect of REBS Outperformance on the REBS Route in Relevant Year t;

D_t means the Default Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t;

V_t means the Variable Usage Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t;

AV_t means the aggregate Variable Usage Charge and Default Charge payable by all train operators providing services for the carriage of passengers in respect of the REBS Route in Relevant Year t (and calculated by summing the values of V_t and D_t under paragraph 1 of Part 2 and the corresponding provisions of each relevant train operator's access agreement) and the aggregate amounts payable under items 1 to 4 and 9 of the variable charge payable by all train operators providing services for the carriage of freight in respect of the REBS Route in Relevant Year t (and calculated by summing items 1 to 4 and 9 of the variable charge under paragraph 2.2.1 of Schedule 7 of each relevant train operator's access agreement); and

U_t means the amount that is payable by the Train Operator to Network Rail in respect of REBS Underperformance on the REBS Route in Relevant Year t.

1.2 The Route-Level Efficiency Benefit Share (if any) calculated under paragraph 1.1 shall be payable for each REBS Route for Relevant Year t, unless the Train Operator has exercised a right to opt out in respect of a particular REBS Route in

~~accordance with paragraph 1.3 or 1.4. Where the Train Operator has exercised such a right, no Route Level Efficiency Benefit Share shall be payable by or to the Train Operator, in respect of that REBS Route:~~

- ~~(a) for the Relevant Year in the course of which the notice referred to in paragraph 1.3 was served and all subsequent Relevant Years up to 31 March 2019; and~~
- ~~(b) where Network Rail entered into a Material Alliance Agreement during the course of Relevant Year t and the Train Operator issued an Opt-out Notice pursuant to paragraph 1.4(b) in Relevant Year t+1, in respect of any Period in Relevant Year t commencing on or after the date of the Material Alliance Agreement.~~

~~*Train Operator right to opt out of the Route Level Efficiency Benefit Share Mechanism*~~

~~1.3 The Train Operator may serve a notice, in the form set out in Appendix 7B, on Network Rail (and shall provide a copy to ORR) informing Network Rail that the Route Level Efficiency Benefit Share Mechanism shall not apply to the Train Operator in respect of one or more REBS Routes specified in the notice for the Relevant Year in the course of which the notice was served and all subsequent Relevant Years up to 31 March 2019 (an "Opt-out Notice"). Unless paragraph 1.4 applies, an Opt-out Notice may be served only before 1 July 2014.~~

~~1.4 If any of the following circumstances apply, the Train Operator may serve an Opt-out Notice at any time until 31 March 2019:~~

- ~~(a) the Train Operator commences operating:
 - ~~(i) on one or more REBS Routes, services for the carriage of passengers by railway pursuant to a new franchise agreement. Where the Train Operator was the incumbent franchisee immediately prior to the new franchise agreement being entered into then, for the purposes of this provision, the Train Operator shall be deemed to have commenced operating services on a REBS Route under the new franchise agreement even if it provided them as the incumbent franchisee; or~~
 - ~~(ii) on one or more REBS Routes on which it did not previously operate services, services for the carriage of passengers or freight by railway as a result of entering into a new access agreement or otherwise.~~~~

~~In either of circumstances (i) or (ii) above, such Opt-out Notice may be served only in respect of the REBS Routes on which the Train Operator commences operating those services; or~~

- ~~(b) Network Rail notifies ORR and the Train Operator that it has entered into an agreement which is, in its opinion, a Material Alliance Agreement and ORR confirms in writing that it agrees. In these circumstances the Opt-out Notice may only be served in respect of the REBS Route to which the Material Alliance Agreement applies.~~

~~In the circumstances described in paragraphs 1.4(a) and (b), the Opt-out Notice must be served within two months after:~~

- ~~(i) the date on which the Train Operator commences operating the services described in paragraph 1.4(a); or~~
- ~~(ii) the date of receipt of written confirmation from ORR under paragraph 1.4(b),~~

~~as the case may be.~~

~~1.5 Network Rail shall serve notice on ORR and the Train Operator that it has entered into an agreement which it considers to be a Material Alliance Agreement within 14 days after entering into it.~~

~~1.6 Network Rail shall provide such information, excluding information which is subject to a legally binding duty or obligation of confidentiality (whether arising under the terms of any contract or otherwise), to the Train Operator as the Train Operator may reasonably request in order to determine whether to serve an Opt-out Notice. Network Rail shall provide such information within 14 days of the request, unless not reasonably practicable to do so, in which case it shall provide the information as soon as reasonably practicable.~~

~~*Obligation to pay Route Level Efficiency Benefit Share*~~

~~1.7 If, pursuant to paragraph 1.1, a party is entitled to payment from the other of a Route Level Efficiency Benefit Share in Relevant Year t, then, subject to paragraphs 1.2 and 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 56 days after the date of publication of ORR's annual efficiency and finance assessment of Network Rail for Relevant Year t.~~

~~1.8 If, in respect of any Relevant Year t, a Route Level Efficiency Benefit Share is payable in accordance with paragraph 1.7 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the party entitled to payment shall be entitled to a pro rata payment of the Route Level Efficiency Benefit Share payable in respect of that REBS Route for Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 1.9) shall be calculated as follows:~~

$$\text{Pro rata REBS}_t = \left(\frac{\text{REBS}}{13} \right) \times \text{CP}$$

~~where:~~

~~REBS means either O_t or U_t as the case may be; and~~

~~CP means the number of Periods during that Relevant Year t either:~~

- ~~(a) where this contract commences during the course of that Relevant Year t, following commencement of this contract; or~~
- ~~(b) where this contract expires or is otherwise terminated during the course of that Relevant Year t, prior to the expiry or other termination of this contract,~~

~~provided that, in each case:~~

- ~~(i) if this contract expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP';~~
- ~~(ii) if this contract expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP';~~
- ~~(iii) if this contract commences on or before the fourteenth day of a Period, such Period shall be included in the calculation of 'CP'; and~~
- ~~(iv) if this contract commences on or after the fifteenth day of a Period, such Period shall not be included in the calculation of 'CP'.~~

~~1.9 Without prejudice to the generality of Clause 16.3.1, any payment of a Route-Level Efficiency Benefit Share (a "REBS payment") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the REBS payment is consideration for a supply for VAT purposes the party making that REBS payment shall in addition pay to the party receiving the REBS payment an amount equal to the amount of VAT due in respect of that REBS payment and either:~~

- ~~(a) the party receiving the REBS Payment shall issue a VAT invoice to the party making such REBS payment in respect of the relevant amount; or~~
- ~~(b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the VAT Regulations) that continues in force then the party making the REBS payment shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.~~

~~*Route Baseline Indexation*~~

~~1.10 The indexed Route Baseline in respect of Relevant Year t shall be derived from the following formula:~~

$$~~RBI_t = \text{Route Baseline} \cdot \left(1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}}\right)~~$$

~~where:~~

- ~~RBI_t means the indexed Route Baseline in respect of Relevant Year t;~~
- ~~RPI_t means the RPI published or determined with respect to the month of November in Relevant Year t; and~~
- ~~RPI₂₀₁₂ means the RPI published or determined with respect to November 2012.~~

~~*Outperformance Cap and Underperformance Cap Indexation*~~

~~1.11 The indexed Outperformance Cap and Underperformance Cap in respect of Relevant Year t shall be derived from the following formula:~~

- ~~(a) in the case of the Outperformance Cap:~~

$$OCI_{\text{t}} = OC_{\text{t}} \cdot \left(1 + \frac{(RPI_{\text{t}} - RPI_{2012})}{RPI_{2012}} \right)$$

(b) in the case of the Underperformance Cap:

$$UCI_{\text{t}} = UC_{\text{t}} \cdot \left(1 + \frac{(RPI_{\text{t}} - RPI_{2012})}{RPI_{2012}} \right)$$

where:

~~OCI_t means the indexed Outperformance Cap in respect of Relevant Year t;~~

~~OC_t means the Outperformance Cap in respect of Relevant Year t;~~

~~UCI_t means the indexed Underperformance Cap in respect of Relevant Year t;~~

~~UC_t means the Underperformance Cap in respect of Relevant Year t;~~

~~RPI_t has the meaning set out in paragraph 1.10 above; and~~

~~RPI₂₀₁₂ has the meaning set out in paragraph 1.10 above.~~

~~PART 3A: ENGLISH & WELSH GRANT DILUTION~~

~~1 Grant Amounts~~

~~1.1 Basic Values and Payment Dates~~

~~For the purposes of this Part 3A:~~

~~(a) the Basic Values are the amounts by way of grant under section 6 of the Railways Act 2005 specified in the Deed of Grant as payable by the Secretary of State to Network Rail; and~~

~~(b) the Payment Dates are the dates set out in the Deed of Grant for the payment of grant by the Secretary of State in each of the years 2014, 2015, 2016, 2017, 2018 and 2019, or such other dates for the payment of such grants as may be stipulated in the Deed of Grant.~~

~~1.2 Indexation~~

~~For the purposes of this Part 3A, the Grant Amount for each Payment Date is the Basic Value specified in the Deed of Grant as payable on that date, adjusted in accordance with any applicable indexation provisions of the Deed of Grant.~~

~~2 English & Welsh Grant Dilution~~

~~2.1 Meaning of English & Welsh Grant Dilution~~

~~For the purposes of this Part 3A, there shall be an “**English & Welsh Grant Dilution**” in respect of a Payment Date if:~~

~~(a) the Secretary of State does not, for any reason, pay the whole or any part of the Grant Amount on or before that Payment Date; or~~

~~(b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:~~

- ~~(i) subject to the performance by Network Rail or any other person of any obligation;~~
- ~~(ii) subject to the exercise by the Secretary of State or any other person of any discretion; or~~
- ~~(iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.~~

~~2.2 — *Meaning of English & Welsh Grant Dilution Date*~~

~~In respect of any English & Welsh Grant Dilution:~~

- ~~(a) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(a), the English & Welsh Grant Dilution Date shall be the Payment Date in respect of which the Secretary of State does not pay the whole or any part of the Grant Amount due on that date; and~~
- ~~(b) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
 - ~~(i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or~~
 - ~~(ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii), shall be an English & Welsh Grant Dilution Date.~~~~

~~3. — **English & Welsh Grant Compensation Amount**~~

~~3.1 — *Payment obligation*~~

~~If an English & Welsh Grant Dilution occurs:~~

- ~~(a) Network Rail shall notify the Train Operator and ORR that an English & Welsh Grant Dilution has occurred, and the circumstances in which it has occurred; and~~
- ~~(b) the Train Operator shall:
 - ~~(i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;—~~
 - ~~(ii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the English & Welsh Grant Dilution Date; and~~
 - ~~(iii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each English & Welsh Grant Dilution Date.~~~~

~~3.2 — *Calculation*~~

~~Any English & Welsh Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:~~

where:

~~GC means the English & Welsh Grant Compensation Amount;~~

~~GA_p means the Grant Amount for the Payment Date which is the same date as the English & Welsh Grant Dilution Date;~~

~~P means:~~

~~(a) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within seven days after the English & Welsh Grant Dilution Date, that it has received from the Secretary of State; and~~

~~(b) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), zero;~~

~~F_t has the meaning ascribed to it in paragraph 1 of Part 2; and~~

~~AF_t means the Aggregate Fixed Charge in Relevant Year t.~~

~~**PART 4:** (c) NOT USED~~

~~$$GC = (GA_p - P) \cdot \frac{F_t}{AF_t} \cdot (1.0434^{0.25})$$~~

PART 5: NOT USED

PART 6: SUPPLEMENTAL PROVISIONS

~~Each invoice or credit note issued by Network Rail to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information (as relevant) in respect of the period covered by the invoice or credit note:~~

- ~~(a) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;~~
- ~~(b) the rate of Variable Usage Charge and any Default Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;~~
- ~~(c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged, for the purposes of calculating E_{tmo} in accordance with paragraph 4.1.2 of Part 2;~~
- ~~(d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;~~
- ~~(e) not used;~~
- ~~(f) not used;~~
- ~~(g) the amount of any Efficiency Benefit Share in respect of Relevant Years ending on or before 31 March 2014;~~
- ~~(h) the amount of any sum W_t payable as provided in paragraph 7 of Part 2;~~
- ~~(i) the amount of any sum $S1_{tw}$ and/or $S2_{tw}$ and/or any Charge Correction Amount payable as provided in paragraph 18 of the Traction Electricity Rules;~~
- ~~(j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2;~~
- ~~(k) in respect of any other sums which have fallen due in accordance with any provisions of this contract other than Part 3A, separately the amount payable in respect of each head of charge; and~~
- ~~(l) the amount of any sum $S1_t$ and/or $S2_t$ payable as provided in paragraph 4A of Part 2.~~

PART 7: FUTURE ACCESS CHARGES REVIEWS

1 General

~~ORR may carry out one or more access charges reviews of all or part of this contract as follows:~~

- ~~(a) an access charges review 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 2019 or such later date as may be specified in that review; and~~
- ~~(b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect~~

~~to the conclusions of such an access charges review come into operation before 1 April 2019.~~

~~2 Access charges reviews capable of coming into operation before 1 April 2019~~

~~ORR may carry out an access charges review in relation to any relevant part or parts of this contract at any time where it considers:~~

- ~~(a) that there has been, or is likely to be, a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; and~~
- ~~(b) that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.~~

~~3. Interpretation~~

~~In this Part 7 references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.~~

APPENDIX 7A – REBS ROUTES TABLE

Route	Route definition
Anglia	As defined in Network Rail's Delivery Plan supporting information
East Midlands	
Kent	
London North East	
London North West	
Scotland	
Sussex	
Wales	
Wessex	
Western	

APPENDIX 7B – ROUTE-LEVEL EFFICIENCY BENEFIT SHARE MECHANISM OPT-OUT NOTICE

~~[Name of train operator representative]~~

~~[Position]~~

~~Telephone: [xxx]~~

~~E-mail: [xxx]~~

~~[Date]~~

~~[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]~~

~~Network Rail~~

~~1 Eversholt Street~~

~~London~~

~~NW1 2DN~~

~~Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]~~

~~Opt-out from the Route-Level Efficiency Benefit Share (REBS) Mechanism~~

~~This is an Opt-out Notice in respect of the REBS Mechanism in Schedule 7 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).~~

~~[Enter train operator name here] hereby exercises its right to opt out of the REBS Mechanism in respect of the REBS Routes identified in Table 1 below, pursuant to~~

~~{delete as appropriate [paragraph 1.3 of Part 3 to Schedule 7] or [paragraph 1.4 of Part 3 to Schedule 7]} to the contract.~~

Table 1: REBS opt-out matrix

Route	Route definition	Opt-out (please mark with an 'x')
Anglia	As defined in Network Rail's Delivery Plan supporting information	
East Midlands		
Kent		
London North East		
London North West		
Scotland		
Sussex		
Wales		
Wessex		
Western		

~~I have sent a copy of this notice to the Director of Railway Markets and Economics at the Office of Rail and Road and to the Head of Regulatory Policy at Network Rail [and any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].~~

~~Yours faithfully~~

~~[Name of train operator representative]~~

APPENDIX 7C – DEFAULT TRAIN CONSIST DATA

Train Service Code	Type of Train Movement	Default Train Consist Data

APPENDIX 7D

"METERED TRAINS M" FOR THE PURPOSES OF PARAGRAPH 4.1.1 OF PART 2

Train Type	Train ID	Traction Type
	<p><i>[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".]</i></p>	

SCHEDULE 8: PERFORMANCE REGIME

TfL’s principles for its track access performance regime are as follows:

This schedule of the HAL Track Access Agreement will set out the principles of the performance regime which operates on the Heathrow Rail Infrastructure.

The performance regime details the mechanisms through which industry parties - both the IM, in this case HAL, and train operators (TOCs) - are compensated for poor performance and/or rewarded for good performance.

The performance regime for the Heathrow Rail Infrastructure shall follow the same broad principles as the performance regime set out in Schedule 8 of the Network Rail template (or model clauses) Track Access Agreement. In particular the following principles directly follow those detailed in Schedule 8:

1. **Measure of performance** – performance shall be measured on an “Average Minutes Lateness” basis relative to the published timetable, as defined in Network Rail’s Schedule 8. These minutes will then be attributed to the responsible parties pro rata to so-called “Delay minutes” relative to the published timetable;

2. **Benchmark levels of performance** – actual performance will be assessed against an “expected performance” benchmark⁹⁷ where industry parties are expected to deliver services at a certain “expected” level (this can be adjusted over time and can be aligned to targets set out elsewhere). It should be stressed that “expected”, refers to the level of performance that should be deliverable by industry parties, given (i) the technology, funding etc available to them and (ii) assuming that industry parties are effective and efficient. This is consistent with the type of benchmarks established as part of Network Rail’s Schedule 8;
3. **Timescale of measurement** – performance shall be measured on an average basis over each reporting period as set out in Network Rail’s Schedule 8;
4. **Payment rates** – payment rates, as in Network Rail’s Schedule 8, will be calibrated to reflect the long-term revenue effects associated with a change in performance relative to the benchmark (based on Average Minutes Lateness across the service). These revenue effects include losses experienced “on the day” as well the impact on demand via longer term reputational effects for both on and off network effects⁹⁸. Payment rates will need to be estimated “ex-ante” for May 2018. We propose re-calibrating once Crossrail services are in operation but without a retrospective wash-up;
5. **Indexation** – each payment rate shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

$$R_t = R_{t-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

R_t is the relevant rate in the Relevant Year t;

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

RPI_{t-1} means the RPI CHAW published or determined with respect to the month of November in Relevant Year t-1; and

RPI_{t-2} means the RPI CHAW published or determined with respect to the month of November in Relevant Year t-2.

6. **Sustained Poor Performance (SPP)** – a “lower bound” of performance will also be specified, which if breached, means that a SPP regime comes into force as on Network Rail infrastructure. This would allow industry parties to claim for incremental “actual losses” parties if standard performance payments (under the liquidated sums regime exceed a given amount over a specified time period)⁹⁹ do

⁹⁷ The precise details of which are to be confirmed.

⁹⁸ It should be noted that calibration of payment rates in this way may not completely compensate affected parties for performance payments incurred when presenting to another network. TfL is willing in principle to accept this risk, but notes that this is a problem systemic to all rail network interfaces in Britain. Given the “whole-industry” nature of the issue, TfL believes that such an issue requires a “whole-industry” body such as the ORR or the Rail Delivery Group to organise and determine an appropriate solution.

⁹⁹ Precise threshold level to be determined.

not cover actual losses. However, in contrast to Sustained Poor Performance Regime of Network Rail the IM will also be contractually obliged to put a clear mitigation plan in place; and

7. **“On-network” delay attribution** – the performance regime uses a so-called “TOC-on-self” regime and “star model” for attributing delay “on-network”¹⁰⁰. This works following two key principles: (i) HAL pays out for all performance deviations it causes as well as all TOC-on-TOC deviations (i.e. where the perpetrator TOC and the TOC experiencing delay are different operators) and (ii) TOCs compensate HAL for TOC-on-self deviations (i.e. where the perpetrator TOC and the TOC experiencing delay are the same operator)¹⁰¹.

Given that services which operate on the Heathrow Rail Infrastructure will also run on adjoining Network Rail infrastructure, the principles of Network Rail’s Schedule 8 need to be supplemented to take account of “cross-network” interactions. In particular:

- **“Cross-network” delay attribution** – delay attribution across networks should follow three broad principles:
 - (i) wherever possible, delay is attributed to the prime incident;
 - (ii) delay attribution should be consistent for both performance monitoring and performance regime purposes; but that
 - (iii) *for performance regime purposes (but not necessarily delay attribution purposes) a train operator that presents late to either network (HAL or Network Rail) by X minutes is attributed X minutes of delay, regardless of the root cause.*

In respect of point (iii), train operator benchmarks will need to recognise that infrastructure managers could cause train operators to present late at the infrastructure boundary; and

- **Contractual structure** – the “star” models of each infrastructure manager will effectively be linked through train operators. Each train operator has a contract with the infrastructure manager whose infrastructure it uses (as in the star model implemented by Network Rail), and so by construction, the train operators that use two or more pieces of infrastructure have two or more contractual relations which will “link” the star models. Hence, if a payment is required to be made between infrastructure managers, this will be made through a train operator that uses both pieces of infrastructure.

To date, HAL has maintained that there is no requirement for a Schedule 4 regime, as it only intends to undertake engineering work in so-called “white periods” (i.e. non-service

¹⁰⁰ “on-network” is defined as delays caused on the Heathrow Rail Infrastructure which affect industry parties also operating on the Heathrow Rail Infrastructure.

¹⁰¹ Where TOC-on-self deviations from the performance benchmark are the deviation in performance felt by the TOC that caused the deviation.

periods). Whilst our preference would be that a Schedule 4 regime is established in order to maintain consistency with wider industry practice, we would be willing to accept an arrangement in which compensation for planned disruption is provided under an alternative part of the contract.

However, we emphasise that – regardless of where in the contract the arrangements are set out – it is essential that a regime that provides appropriate compensation in instances of planned disruption during service periods is established in respect of the Heathrow Rail Infrastructure. This will ensure that operators are afforded the appropriate protections in the event of planned disruption affecting their services. Equally importantly, it will mean that HAL is incentivised to manage the operational disruption associated with engineering work efficiently.

We therefore propose that there is no separate possessions regime in Schedule 4. Instead, we propose that the Crossrail operator will be compensated in the case of possessions being made outside of “white periods” in line with arrangements for unplanned disruption, as set out in Schedule 8. Lateness caused by possessions outside of the “white periods” will be calculated by reference to the published timetable for the relevant period and to services cancelled, retimed or otherwise disrupted. Should the nature of the possession mean that the timetable is yet to be published for the relevant period, lateness will be measured against the most appropriate reference timetable available¹⁰².

We expect calibration of the performance regime parameters (payment rates, benchmarks, Sustained Poor Performance thresholds and so forth) – together with detailed legal drafting of the regime – to take place following the endorsement of these principles by ORR. Thereafter, we would anticipate regime parameters and drafting to be validated by ORR.

TfL’s principles for its review process are as follows:

Our proposed review process for Schedule 8 benchmarks and payments rates is set out below. There will not be a review process for track and station access charges levied by HAL on train operators, which will be fixed for the duration of the contract. There will not be a review process for track and station access charges levied by HAL on train operators, which will be fixed for the duration of the contract.

- The onus will be on the party seeking to trigger a review to issue a review notice demonstrating a “material” financial loss would occur, or is continuing to occur.
- In order for payment rates or benchmarks to be subject to review, one of more of the following “material” changes would need to occur:

1. A new entrant operating services on the Heathrow Rail Infrastructure;

¹⁰²

The precise determination of what the most appropriate timetable to use for reference will be made on a case-by-case basis.

2. Actual service volumes being +/- X% above or below the level expected at the time of setting performance benchmarks;
 3. A material error in the underlying data/calculations used in establishing performance regime benchmarks or payment rates is discovered; or
 4. A material enhancement to the capability or capacity of the Heathrow Rail Infrastructure occurs.
- Following completion of the review, the revised payment rates and benchmarks will apply from the date of the “material” change if prospective. If retrospective they will have immediate effect with the parties agreeing an adjustment from the date of the review notice until the completion of the review.
 - Where parties do not agree the case will be dealt with under the contractual dispute resolution mechanism.

1— Interpretation

1.1— Definitions

In this Schedule 8 and its Appendices, unless the context otherwise requires:

“Applicable Timetable”	means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 2200 hours on the day prior to that day, and which is applicable to the Trains;
“Bi-annual Timetable”	means in respect of any day or any Period the Passenger Timetable commencing on either the Principal Change Date or Subsidiary Change Date (as the case may be) in which falls the last day of the Period containing that day or the last day of that Period respectively;
“Cancelled Stop”	means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point);
“Cancellation Minutes”	means, in relation to a Cancelled Stop, the number of Cancellation Minutes specified in column J of Appendix 1 for the Service Group which includes that Train;

“Cap”	means, in relation to a Monitoring Point, or a Train, the cap for the relevant Service Group in column K of Appendix 1;
“Capped Value”	means in relation to any Service Group, the capped value (if any) specified in respect of that Service Group in Appendix 1 (as indexed in accordance with paragraph 9);
“Charter Destination Point”	means any such station so specified in Appendix 2;
“ETCS”	means the European Train Control System;
“Initial Indexation Factor”	has the meaning ascribed to it in Schedule 7;
“Joint Inquiry”	means a formal inquiry which is required by any of the Railway Group Standards to be held or is permitted by any of the Railway Group Standards to be held and is in fact held;
“Minutes Delay”	means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;
“Minutes Late”	means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2;
“Monitoring Point”	means, in relation to a direction of a Service, a point listed in column N of Appendix 1 as a point to be used for recording lateness of Trains in accordance with paragraph 2, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point for the same Service in the opposite direction and/or for other Services;
“Network Rail Performance Point”	means, in relation to a Service Group, the Network Rail performance point specified in column B of Appendix 1;
“Off-Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Passenger’s Charter”	means a commitment to passengers generally (whether or not legally binding) made by the Train Operator or any Passenger Transport Executive (in respect of any services operated by the Train Operator which are the subject of arrangements between the Train Operator and that Passenger Transport Executive) in relation to the punctuality and/or reliability of all or any of the Trains. The foregoing shall not be construed as to include any specific alternative or additional arrangements with any particular passenger (whether or not legally binding);

“Passenger Timetable”	means the timetable referred to within the Performance Monitoring System as the passenger timetable and which reflects the Applicable Timetable;
“Peak”	Where applicable, has the meaning ascribed to it in Schedule 5;
“Performance Data Accuracy Code”	means the version of the Performance Data Accuracy Code referred to in Part B of the Network Code;
“Performance Monitoring System”	means the recording system which Network Rail is required to operate under Part B of the Network Code;
“Performance Sum”	means, in relation to a Service Group, a sum of money which Network Rail or the Train Operator is liable to pay to the other under this Schedule 8, as calculated in accordance with paragraph 9 or 10, as the case may be;
“Period”	means each consecutive period of 28 days during the term of this contract commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from Network Rail to the Train Operator;
“Recording Point”	means a point at which Network Rail records Trains using the Performance Monitoring System;
“Recovery Time”	means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;
“Relevant Year”	has the meaning ascribed to it in Schedule 7;
“Restriction of Use”	has the meaning ascribed to it in Schedule 4;
“RPI”	has the meaning ascribed to it in Schedule 7;
“Season Ticket”	means any ticket valid for unlimited travel on a Service for not less than a period of one calendar month;
“Service Code”	means the third, fourth and fifth digits of an eight character train service code applied in the Performance Monitoring System to Trains and used to identify them;
“Service Group”	means a collection of Services contained within the service groups specified in column A of Appendix 1;

“Train”	means each train operating a Service which is: (a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and (b) used to provide services for the carriage of passengers by railway; but excludes any and all trains making an Ancillary Movement; and
“Train Operator Performance Point”	means, in relation to a Service Group, the Train Operator performance point specified in column F of Appendix 1.

~~1.2 Interpretation~~

For the purposes of this Schedule 8:

- ~~(a) a Train shall be treated as being in a Service Group for that part of its journey during which it satisfies the characteristics specified in columns A, L and N of Appendix 1 as forming a Service which is included in that Service Group;~~
- ~~(b) events in respect of a Train shall be treated as occurring on the day on which the Train is scheduled in the Applicable Timetable to depart from the first point at which it is to pick up passengers; and~~
- ~~(c) save as otherwise provided, each final calculation of minutes shall be accurate to three decimal places.~~

~~1.3 Suspension Notices~~

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 8. Accordingly, for the purposes of this Schedule 8:

- ~~(a) neither Network Rail nor the Train Operator shall be allocated any responsibility for those effects; and~~
- ~~(b) those effects shall not be regarded as causing any Minutes Late or Minutes Delay or Cancelled Stops.~~

~~2 Calculation of Minutes Late~~

The Minutes Late at a Monitoring Point on a day shall be derived from the following formula:

$$\text{—Minutes Late} = \sum L$$

where:

L— in respect of a Train is the lesser of:

- ~~(i) the number of minutes (rounded down to the nearest whole minute) by which the time at which the Train stops at the Monitoring Point is later~~

~~than the time at which that Train is scheduled in the Passenger Timetable to stop at that Monitoring Point; and~~

~~(ii) the Cap;~~

~~provided that no regard shall be had for any Train which is not recorded as stopping at the Monitoring Point; and~~

~~Σ is the sum across all those Trains in the relevant Service Group which are scheduled in the Passenger Timetable to stop at that Monitoring Point on that day which do so stop.~~

~~3 Calculation of Minutes Delay~~

~~The Minutes Delay in respect of a Train when it triggers a Recording Point shall be equal to:~~

~~(a) in respect of the first Recording Point triggered by that Train on any day, the number of minutes (rounded down to the nearest whole minute) by which the time at which that Train triggers the Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and~~

~~(b) in respect of any other Recording Point, the lesser of:~~

~~(i) the number of Minutes Delay in respect of that Recording Point calculated in accordance with paragraph 3(a) (as if that Recording Point were the first Recording Point triggered by that Train); and~~

~~(ii) the greater of $((A_1 - A_2) + B)$ and zero~~

~~where:~~

~~A_1 is the number of minutes between the time at which the Train triggers the Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a Recording Point (rounded down to the nearest whole minute);~~

~~A_2 is the relevant time lapse scheduled in the Applicable Timetable between those same two Recording Points; and~~

~~B is any Recovery Time between those Recording Points incorporated in the Applicable Timetable;~~

~~provided that:~~

~~(1) any Minutes Delay which arise from a single incident or a series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero; and~~

~~(2) if for any Train the aggregate Minutes Delay in respect of all Recording Points caused by a single incident are in excess of the Cap specified in column K of Appendix 1 for that Service Group, then such excess shall be disregarded.~~

~~4—Recording of performance information~~

~~4.1—Recording of lateness, Minutes Delay and Cancelled Stops~~

~~Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use the Performance Monitoring System to record for each day in respect of each Train scheduled in the Applicable Timetable:~~

- ~~(a) the time at which the Train stops to set down passengers at each Monitoring Point;~~
- ~~(b) each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;~~
- ~~(c) the time at which the Train triggers each Recording Point;~~
- ~~(d) the Minutes Delay for that Train at each Recording Point;~~
- ~~(e) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:
 - ~~(i) the incident(s) causing each minute of any delay included in Minutes Delay; and~~
 - ~~(ii) those Minutes Delay for which Network Rail is unable to identify a cause; and~~~~
- ~~(f) for each Charter Destination Point in respect of Trains for which the Charter Destination Point is a destination for the purposes of a Passenger's Charter, the time of the Train's arrival.~~

~~The provisions of this Schedule 8, which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code.~~

~~4.2—Recording of allocated responsibility for Minutes Delay and Cancelled Stops~~

~~Network Rail shall for each day and for each Train scheduled in the Applicable Timetable record separately in the Performance Monitoring System those Minutes Delay and Cancelled Stops caused by incidents:~~

- ~~(a) for which Network Rail is allocated responsibility in accordance with paragraph 5.2;~~
- ~~(b) for which the Train Operator is allocated responsibility in accordance with paragraph 5.3;~~
- ~~(c) for which Network Rail and the Train Operator are allocated joint responsibility, in accordance with paragraph 5.4;~~
- ~~(d) for which no cause can be identified; and~~
- ~~(e) which are planned incidents in accordance with paragraph 5.7.~~

~~4.3 — Failed Recording Points~~

~~Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use all reasonable endeavours:~~

- ~~(a) to restore as soon as reasonably practicable any failed Recording Point; and~~
- ~~(b) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Schedule 8.~~

~~4.4 — Provision of information by Train Operator~~

~~The Train Operator shall record and shall continue to record such information as Network Rail may reasonably require and which it is reasonable to expect the Train Operator to have or procure in connection with any Minutes Delay that may arise and shall provide such information to Network Rail promptly after such information first becomes available to the Train Operator.~~

~~Network Rail shall promptly notify the Train Operator upon Network Rail becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraph 4.1. Any such notification shall be in sufficient detail to enable the Train Operator to institute the recording of such information in connection with the Trains for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. The Train Operator shall institute such recording as soon as it is reasonably able following receipt of the notification from Network Rail and will provide Network Rail with the resulting information no later than 1700 hours two Working Days following the day on which it was recorded.~~

~~5 — Allocation of responsibility for Minutes Delay and Cancelled Stops~~

~~5.1 — Assessment of incidents causing Minutes Delay and Cancelled Stops~~

- ~~(a) In assessing the cause of any Minutes Delay or Cancelled Stop, there shall be taken into account all incidents contributing thereto including:
 - ~~(i) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and~~
 - ~~(ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running;~~~~
- ~~(b) The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident;~~
- ~~(c) Network Rail shall identify:
 - ~~(i) in respect of each incident recorded under paragraph 4.1(e)(i) as causing Minutes Delay, the extent to which that incident caused each of the Minutes Delay; and~~~~

- ~~(ii) in respect of each incident recorded under paragraph 4.1(b), the extent to which that incident caused the Cancelled Stop;~~
- ~~(d) So far as Network Rail is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Stops is to be allocated to Network Rail or to the Train Operator or to them jointly in accordance with the following provisions of this paragraph 5.~~

~~5.2 Network Rail responsibility incidents~~

~~Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to Network Rail. Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:~~

- ~~(a) by breach by Network Rail of any of its obligations under this contract; or~~
- ~~(b) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or~~
- ~~(c) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract.~~

~~5.3 Train Operator responsibility incidents~~

~~Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 5.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7) if that incident:~~

- ~~(a) is caused wholly or mainly:
 - ~~(i) by breach by the Train Operator of any of its obligations under this contract; or~~
 - ~~(ii) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains; or~~
 - ~~(iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance originating in connection with or at any station (other than in connection with signalling under the control of Network Rail at that station or physical works undertaken by Network Rail at that station), any light maintenance depot or any network other than the Network; or~~~~

~~(b) causes delay to:~~

- ~~(i) rolling stock operated by or on behalf of another train operator which is delayed in entering or leaving the Network due to any act, omission or circumstance originating in connection with a light maintenance depot or network other than the Network and, as a result of that delay, rolling stock operated by or on behalf of the Train Operator which is scheduled to leave or enter the Network at the connection with that light maintenance depot or other network is then delayed behind the first mentioned rolling stock; or~~
- ~~(ii) the commencement of a Train's journey, which is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator.~~

~~5.4 Joint responsibility incidents~~

~~(a) Network Rail and the Train Operator shall be allocated joint responsibility for:~~

- ~~(i) any incident which is not a planned incident (as defined in paragraph 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:
 - ~~(1) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and~~
 - ~~(2) prevents the access of passengers through the station to or from the Train;~~~~

~~and paragraphs 5.2 and 5.3 shall not apply to any such incident; or~~

- ~~(ii) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 5.2 or 5.3.~~

~~(b) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator.~~

~~5.5 Unidentified incidents: Minutes Delay~~

~~Responsibility for Minutes Delay on any day in respect of a Service Group caused by incidents which are unidentified, as recorded under paragraph 4.2(d), shall be allocated as follows:~~

- ~~(a) if there are any Minutes Delay in respect of the Service Group recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility:
 - ~~(i) 50% of the unidentified Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail, the Train Operator and joint responsibility~~~~

~~incidents *pro rata* to the aggregate Minutes Delay for that Service Group respectively recorded as being their responsibility under this paragraph 5 for that day; and~~

~~(ii) the balance of the Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail; and~~

~~(b) if no Minutes Delay on that day in respect of the Service Group are recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility, then Network Rail and the Train Operator shall each be allocated 50% of the unidentified Minutes Delay recorded under paragraph 4.2(d).~~

~~5.6 Unidentified incidents: Cancelled Stops~~

~~Responsibility for Cancelled Stops on a day in respect of a Service Group caused by incidents which are unidentified shall be allocated 50% to Network Rail and 50% to the Train Operator.~~

~~5.7 Planned incidents~~

~~An incident shall be treated as a planned incident if and to the extent that:~~

~~(a) such incident was a Restriction of Use notified in accordance with Schedule 4 by Network Rail to the Train Operator; or~~

~~(b) there is Recovery Time in respect of that incident.~~

~~5.8 Allocation of responsibility for Minutes Delay at Service Group level: aggregate Minutes Delay~~

~~In respect of a Service Group, the aggregate Minutes Delay on a day shall be the aggregate of all Minutes Delay recorded under paragraphs 4.2(a) to 4.2(d) in respect of all Trains in that Service Group scheduled in the Applicable Timetable.~~

~~5.9 Allocation of responsibility for Minutes Delay at Service Group level: Network Rail Minutes Delay~~

~~In respect of a Service Group, the Minutes Delay on a day allocated to Network Rail shall be the aggregate of any Minutes Delay allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.5.~~

~~5.10 Allocation of responsibility for Minutes Delay at Service Group level: Train Operator Minutes Delay~~

~~In respect of a Service Group, the Minutes Delay on a day allocated to the Train Operator shall be the aggregate of any Minutes Delay allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.5.~~

~~5.11 Network Rail Cancelled Stops at Monitoring Point level~~

~~In respect of a Monitoring Point, the Cancelled Stops on a day allocated to Network Rail shall be the aggregate of any Cancelled Stops allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.6.~~

~~5.12 — Train Operator Cancelled Stops at Monitoring Point level~~

~~In respect of a Monitoring Point, the Cancelled Stops on a day allocated to the Train Operator shall be the aggregate of any Cancelled Stops allocated to the Train Operator under paragraph 5.3, paragraph 5.4 or paragraph 5.6.~~

~~6 — Statement of allocated responsibility~~

~~6.1 — Initial statement~~

~~For each day, Network Rail shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day:~~

- ~~(a) the allocation of responsibility for incidents made by Network Rail under paragraph 5; and~~
- ~~(b) a summary for each Service Group showing:
 - ~~(i) the aggregate Minutes Delay and Cancelled Stops recorded under each category set out in paragraph 4.2; and~~
 - ~~(ii) a list of the Minutes Delay and Cancelled Stops (in each case broken down by incident) recorded as the responsibility of Network Rail and as the responsibility of the Train Operator.~~~~

~~6.2 — Further statements~~

~~If Network Rail's nominated representative has reasonable grounds to believe that any further incident was the responsibility of the Train Operator or of Network Rail but was not shown as such in the information made available in accordance with paragraph 6.1, then Network Rail may, within seven days after the last Minutes Delay or Cancelled Stop caused by that incident, issue a notice in accordance with paragraph 15 revising the information and/or allocations of responsibility made available under paragraph 6.1.~~

~~6.3 — Adjustment statements~~

~~If Condition B3.3 (adjustment to prior results) applies in respect of all or part of a Period, then Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period, and any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 28 days of Network Rail's statement.~~

~~6.4 — Disputes about statements of allocated responsibility~~

- ~~(a) Except to the extent that it has, within two Working Days of receipt, notified Network Rail in accordance with paragraph 15 that it disputes the contents of a statement under paragraphs 6.1 or 6.2, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.~~
- ~~(b) The parties shall attempt to resolve disputes notified in accordance with paragraph 6.4(a) as follows:~~

- ~~(i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and~~
- ~~(ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.~~
- ~~(c) Negotiations under paragraph 6.4(b)(ii) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 6.4(a) occurred.~~

~~**7 Allocation of Minutes Late to Network Rail**~~

~~In respect of each Monitoring Point, the Minutes Late on a day at that Monitoring Point allocated to Network Rail (MLNR) shall be calculated according to the following formulae:~~

~~if MD is greater than zero~~

$$\text{MLNR} = \frac{(\text{MDNR} \cdot \text{ML})}{\text{MD}} + \text{DMLNR}$$

~~or if MD is equal to zero~~

$$\text{MLNR} = (0.5 \cdot \text{ML}) + \text{DMLNR}$$

~~where:~~

~~ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;~~

~~MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;~~

~~MDNR is that part of such MD allocated to Network Rail in accordance with paragraph 5.9; and~~

~~DMLNR is the deemed minutes late at that Monitoring Point on that day allocated to Network Rail, derived from the following formula:~~

$$\text{DMLNR} = \text{RC} \cdot \text{CM}$$

~~where:~~

~~RC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which Network Rail is allocated responsibility in accordance with paragraph 5.11; and~~

~~CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.~~

~~8 Allocation of Minutes Late to the Train Operator~~

~~In respect of each Monitoring Point, the Minutes Late at that Monitoring Point on a day allocated to the Train Operator (MLT) shall be calculated according to the following formulae:~~

~~if MD is greater than zero~~

$$\frac{\text{MLT} = (\text{MDT} \cdot \text{ML}) + \text{DMLT}}{\text{MD}}$$

~~or if MD is equal to zero~~

$$\text{MLT} = (0.5 \cdot \text{ML}) + \text{DMLT}$$

~~where:~~

~~ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;~~

~~MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;~~

~~MDT is that part of such MD allocated to the Train Operator in accordance with paragraph 5.10; and~~

~~DMLT is the deemed minutes late at that Monitoring Point on that day allocated to the Train Operator, derived from the following formula:~~

$$\text{DMLT} = \text{TC} \cdot \text{CM}$$

~~where:~~

~~TC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which the Train Operator is allocated responsibility in accordance with paragraph 5.12; and~~

~~CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.~~

~~9 Network Rail Performance Sums~~

~~9.1 In respect of a Service Group, the Network Rail Performance Sum (NRPS) for each Period shall be calculated according to the following formula:~~

$$\text{NRPS} = \frac{(\sum \text{NI} \cdot \text{BF} + \sum (\text{MPW} \cdot \text{SD}))}{\text{AS}}$$

~~where:~~

~~NRPP is the Network Rail Performance Point for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;~~

~~NRWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to Network Rail in accordance with the following formula:~~

~~where:~~

~~Σ is the sum across all Monitoring Points in the Service Group;~~

~~MLNR is the Minutes Late allocated to Network Rail in respect of each Monitoring Point in that Period, in accordance with paragraph 7;~~

~~MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1; and~~

~~SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that shall equal zero;~~

~~BF is the relevant busyness factor estimated for the Period according to the following formula:~~

~~where:~~

~~Σ is the sum across all Monitoring Points in the Service Group;~~

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

~~SD is the aggregate number of stops to set down passengers at that Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and~~

~~AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that ~~that $\frac{(MPW \times SD)}{AS}$ shall equal zero; and~~~~

~~NRPR is the relevant Network Rail payment rate for that Service Group specified in column E of Appendix 1 as indexed in accordance with paragraph 13,~~

~~provided that:~~

- ~~(i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of NRPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then the value of NRPS shall be deemed to be equal to the Capped Value in respect of such Period;~~
- ~~(ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;~~
- ~~(iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:~~

$$CV_t = \left(1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \bullet \text{Initial Indexation Factor}$$

~~where:~~

~~CV_t means the CV indexation in Relevant Year t;~~

~~RPI_{t-1} means the RPI published or determined with respect to the month of November in Relevant Year t-1; and;~~

~~RPI₂₀₁₃ means the RPI published or determined with respect to the month of November 2013.~~

~~9.2 Where NRPS is less than zero, Network Rail shall pay the amount of the NRPS to the Train Operator. Where NRPS is greater than zero, the Train Operator shall pay that amount to Network Rail.~~

~~10 Train Operator Performance Sums~~

~~10.1 In respect of a Service Group, the Train Operator Performance Sum (TPS) for each Period shall be calculated according to the following formula:~~

$$TPS = \frac{\sum (MLT \bullet MPW)}{SP}$$

~~where:~~

~~TPS is the Train Operator Performance Point for the Service Group specified in column F of Appendix 1;~~

~~TWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to the Train Operator in accordance with the following formula:~~

~~where:~~

~~Σ is the sum across all Monitoring Points in the Service Group;~~

~~MLT is the Minutes Late allocated to the Train Operator in respect of each Monitoring Point in that Period, in accordance with paragraph 8;~~

~~MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1; and~~

~~SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that~~

~~—shall equal zero; $\frac{(MLT \cdot MPW)}{SP}$~~

~~BF is the relevant busyness factor estimated for the Period according to the following formula:~~

$$\frac{BF = \Sigma(MPW \cdot SD)}{AS}$$

~~where:~~

~~Σ is the sum across all Monitoring Points in the Service Group;~~

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

~~SD is the aggregate number of stops to set down passengers at the Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and~~

~~AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that~~

~~shall equal zero; $\frac{(MPW \cdot SD)}{AS}$~~

~~TPR is the relevant Train Operator payment rate for that Service Group specified in column I of Appendix 1 as indexed in accordance with the provisions in paragraph 13.~~

~~10.2 Where TPS is less than zero, the Train Operator shall pay the amount of the TPS to Network Rail. Where TPS is greater than zero, Network Rail shall pay that amount to the Train Operator.~~

~~11 Notification of Performance Sums~~

~~11.1 Notification~~

~~Within 14 days after the end of each Period, Network Rail shall provide the Train Operator with a statement for each Service Group for that Period showing:~~

~~(a) any Performance Sums for which Network Rail or the Train Operator is liable, together with such supporting information (other than information in~~

~~respect of incidents recorded as the responsibility of Network Rail) as the Train Operator may reasonably require; and~~

- ~~(b) any matter referred to in paragraph 6.1 which the Train Operator has disputed in accordance with paragraph 6.4(a) and which is still in dispute.~~

~~11.2 Disputes~~

~~Within 14 days after receipt by the Train Operator of a statement required under paragraph 11.1, the Train Operator shall notify Network Rail of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 6. Such disputes and any matter referred to in paragraph 11.1(b) shall be resolved in accordance with the procedure in paragraph 16. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.~~

~~12 Payment procedures~~

~~12.1 Payments and set-off~~

- ~~(a) In respect of any and all Performance Sums for which Network Rail and the Train Operator are liable in any Period, the aggregate liabilities of Network Rail and the Train Operator shall be set off against each other. The balance shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of the Period to which the payment relates.~~
- ~~(b) Subject to paragraph 12.2, and save as otherwise provided, all other sums payable under this Schedule 8 shall be paid within 35 days after the end of the Period to which such payment relates.~~

~~12.2 Payments in the event of dispute~~

~~Where any sum which is payable under this paragraph 12 is in dispute:~~

- ~~(a) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 12.1;~~
- ~~(b) 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 Period in which the dispute is resolved or determined; and~~
- ~~(c) from the date at which such balance would but for the dispute have been due to be paid or set off, the disputed balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate, unless the dispute relates to an incident the responsibility for which is the subject of a Joint Inquiry, in which case interest shall be payable at the prevailing base rate of Barclays Bank plc.~~

~~13 Payment rates~~

- ~~13.1 Each payment rate in columns E and I of Appendix 1 shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:~~

$$R_t = R_{t-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

R_t is the relevant rate in the Relevant Year t;

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

RPI_{t-1} has the same meaning as set out in Paragraph 9.1 above of this Schedule 8; and

RPI_{t-2} means the RPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2014, R_t shall have the relevant value specified in the relevant column (either E or I) of Appendix 1, multiplied by the Initial Indexation Factor and in the next following Relevant Year, R_{t+1} shall have the same value.

14 — Not used

15 — Notices

15.1 All notices under this Schedule 8 shall be given in writing and shall be sent by prepaid first class post, email or fax or delivered by hand to the party in question at the address for service last notified by that party.

15.2 Any such notice shall be deemed to have been duly received:

- (a) if sent by prepaid first class post, three days after posting unless otherwise proven;
- (b) if sent by hand, when delivered;
- (c) if sent by facsimile, (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a business day, on the day of transmission and, in any other case, at 0900 hours on the next following business day ("business day" for these purposes being a day which is not a Saturday, Sunday or a public holiday in the place where the transmission is to be received); and
- (d) if sent by email, (unless a notice of non-delivery is received) upon receipt.

16 — Disputes

16.1 If any dispute is notified under paragraph 11.2 it shall be resolved according to the following procedure:

- (a) within seven days of service of the relevant notice (or, if the dispute relates to an incident the responsibility for which is or is to be the subject of a Joint Inquiry, within seven days of publication of the conclusion of that Joint

- Inquiry), the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
- (b) if, for any reason, within seven days of the meeting referred to in paragraph 16.1(a), 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;
 - (c) 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
 - (d) 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.

~~17—Amendments to Appendix 1~~

~~17.1—Circumstances in which parties agree to amend Appendix 1~~

~~Either party may by notice to the other propose that Appendix 1 be amended in accordance with this paragraph 17.~~

~~17.2—Procedure for amendments to Appendix 1~~

- (a) ~~The party who wishes to amend Appendix 1 shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:~~
 - (i) ~~where such change relates to a forthcoming timetable change, on or before the first day of the month six months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and~~
 - (ii) ~~in any other case, prior to the date from which it proposes such change shall have effect.~~
- (b) ~~Any notice under paragraph 17.2(a) shall:~~
 - (i) ~~specify as far as possible that party's proposed amendments to Appendix 1; and~~
 - (ii) ~~be accompanied by information and evidence in reasonable detail supporting the change proposed and setting out the reasons for it.~~
- (c) ~~The party receiving a notice issued under paragraph 17.2(a) shall respond to that notice in writing, in reasonable detail and with reasons for its response, within 56 days of service of such notice.~~
- (d) ~~Promptly (and in any event within 34 days) following the service of any response under paragraph 17.2(c), the parties shall endeavour to agree whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.~~
- (e) ~~If the parties fail to reach agreement within 90 days of service of a notice under paragraph 17.2(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) — if ORR elects to determine the matter, 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) — If ORR does not elect to determine the matter within 56 days of receipt by ORR of notification in accordance with paragraph 17.2(e)(i), either party may refer the matter for resolution in accordance with the ADRR and the parties shall agree in a Procedure Agreement (such term to have the same meaning as in the ADRR) that:~~
 - ~~(i) — the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement issued by ORR including in relation to the introduction of any capped value in respect of any Service Group in Appendix 1; and~~
 - ~~(ii) — that the relevant ADRR Forum will set out its reasoning in any determination.~~
 - ~~(g) — An amendment to Appendix 1 shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 17 (other than a determination by ORR pursuant to paragraph 17.2(e)(ii)), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as ORR requires to decide whether or not to approve the amendment.~~
 - ~~(h) — Any agreed amendment to Appendix 1 in connection with the proposal referred to in paragraph 17.1 which is agreed by the parties or determined by the relevant ADRR Forum, and which is approved by ORR under section 22 of the Act shall apply with effect from either:~~
 - ~~(i) — the relevant Principal Change Date or Subsidiary Change Date (where paragraph 17.2(a)(i) applies); or~~
 - ~~(ii) — the date proposed by the party requesting the change (where paragraph 17.2(a)(ii) applies), unless otherwise agreed by the parties or determined by the relevant ADRR Forum in accordance with paragraph 17.2(f).~~
 - ~~(i) — Where ORR determines the matter subject to paragraph 17.2(e)(ii), it may issue a notice to the parties setting out the amendments to be made to Appendix 1 and the date, which may be retrospective, from which they shall take effect.~~

~~17.3 — Adjustments to the Performance Monitoring System~~

~~Network Rail shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.2 such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance Monitoring System is not made until after that date, Network Rail shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period~~

~~commencing on the date when in accordance with paragraph 17.2 such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement.~~

~~17.4 Costs of implementing amendment~~

~~Network Rail shall (subject to any determination of the relevant ADRR Forum as to costs, where a matter is referred to that forum under paragraph 17.2(f)) be entitled to ninety percent (90%) of costs incurred by or on behalf of Network Rail in assessing and implementing any amendments to Appendix 1 and the Performance Monitoring System, provided that those costs shall be the minimum reasonably necessary for Network Rail to assess and implement that amendment.~~

~~17.5 Relationship with Appendix 3 and remainder of Schedule 8~~

~~References in this paragraph to amendments to Appendix 1 shall include any amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.~~

~~17A ETCS Amendments~~

~~17A.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 of the Routes that the Train Operator has permission to use ("**ETCS Amendments**").~~
- ~~(b) ORR may make ETCS Amendments, subject to complying with paragraph 17A.3.~~

~~17A.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 17A.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 17A.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 17A.2(c); or~~

~~(ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 17A.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.~~

~~17A.3 ORR right to approve, determine or make ETCS Amendments~~

~~(a) If ORR:~~

~~(i) receives a notification under paragraph 17A.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 17A.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.~~

18. Compensation for sustained poor performance

18.1 Definitions

In this paragraph 18, unless the context otherwise requires:

“Average Periodic Liability” means one thirteenth of the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;

“Calculation Term” means the 13 Periods immediately preceding each Periodic Liability Date;

“Periodic Liability Date” means the first day of the first, fourth, seventh and eleventh Periods in each Relevant Year ignoring for these purposes any Period that commences before the Transition Date as referred to in Clause 19; and

~~“SPP Threshold” means the value specified in respect of the end of the relevant Calculation Term in Appendix 3 (as indexed in accordance with paragraph 19).~~

~~18.2 Indemnity~~

~~Network Rail shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the Average Periodic Liability shows Network Rail has exceeded (that is, equalled or been worse than) the relevant SPP Threshold.~~

~~18.3 Determination of Relevant Losses~~

~~Subject to paragraph 18.4, the liability of Network Rail under paragraph 18.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:~~

$$\text{SPPL} = \text{RL} - \text{PS}$$

~~where:~~

~~RL means the Train Operator’s Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3; and~~

~~PS means the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;~~

~~18.4 Restrictions on claims by Train Operator~~

~~The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 18:~~

- ~~(a) if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 18 or otherwise; or~~
- ~~(b) in relation to any Calculation Term or part of it that precedes the Transition Date as referred to in Clause 19.~~

~~19 SPP Indexation~~

~~19.1 SPP Indexation~~

~~Each value specified in Appendix 3 shall be multiplied by the SPP indexation figure for the Relevant Year.~~

~~19.2 Application of SPP Indexation~~

~~The SPP indexation figure in Relevant Year t shall be derived from the following formula:~~

$$\text{SPPI}_t = \left(1 + \frac{(\text{RPI}_{t-1} - \text{RPI}_{2013})}{\text{RPI}_{2013}} \right) \bullet \text{Initial Indexation Factor}$$

where:

SPP_t	means the SPP indexation in Relevant Year t;
RPI_{t-1}	has the meaning as set out in Paragraph 9.1 above of this Schedule 8; and
RPI_{2013}	has the meaning as set out in Paragraph 9.1 above of this Schedule 8.

APPENDIX 1

Network Rail			TOC										
Performance Point	Payment Rate			Performance Point	Payment Rate			Cancellation Minutes	Cap	Service Code		Direction	Monitor
	(Not Used)	(Not Used)	Total		(Not Used)	(Not Used)	Total						

APPENDIX 2 – CHARTER DESTINATION POINTS

Not Used.

APPENDIX 3 – SPP THRESHOLD

	Period:	3	6	10	13
2014/15					
2015/16					
2016/17					
2017/18					
2018/19					

SCHEDULE 9: LIMITATION ON LIABILITY

1 Definitions

In this Schedule

“**Contract Year**” means each yearly period commencing on ~~[insert the date on which Services may first be operated by the Train Operator under this contract]~~¹⁰³ May 2018 and subsequently on each anniversary of such date; and

“**Liability Cap**” means:

- (a) in relation to the first Contract Year, the sum of £~~[]~~155 million¹⁰⁴; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 * \left(\frac{RPI_n}{RPI_1} \right)$$

where:

- (i) C_1 is the sum of £~~[]~~155 million;
- (ii) C_n is the Liability Cap in the nth subsequent Contract Year;
- (iii) RPI_n is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and

¹⁰³

Please see our comments above on Clause 3.1.

¹⁰⁴

This is the liability cap proposed by HAL in the draft Track Access Agreement it provided to TfL in September 2015. This level of liability is acceptable to TfL.

- (iv) RPI₁ is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 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~~ HAL's liability

In relation to any claim for indemnity made by the Train Operator to which this Schedule 9 applies:

- (a) ~~Network Rail~~ HAL 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~~ HAL 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~~ HAL 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 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 ORR 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 seven 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 seven 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 parties¹⁰⁵ and ~~the Secretary of State~~ [Transport for London \(or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network\)](#) 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~~ [Transport for London \(or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network\)](#) 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~~ [Transport for London \(or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network\)](#) 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;

¹⁰⁵

[References to the Secretary of State are not applicable in Schedule 10 \(as the Secretary of State is not the concessioning authority\) and these references have therefore been deleted. Other references to the Secretary of State in this contract have been retained as they do not impose an obligation on the Secretary of State, the Train Operator or HAL.](#)

- (d) ORR has notified the parties and ~~the Secretary of State~~ [Transport for London \(or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network\)](#) 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~~ [HAL](#) shall prepare and send to the Train Operator, ORR and ~~the Secretary of State~~ [Transport for London \(or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network\)](#) 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 either 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:

- “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) 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 requisite adaptations”	has the meaning ascribed to it in paragraph 3.7;
“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 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.

IN WITNESS whereof the duly authorised representatives of ~~Network Rail~~HAL and the Train Operator have executed this contract on the date first above written.

Signed by

Print name

Duly authorised for and on behalf of

~~NETWORK RAIL INFRASTRUCTURE~~ HEATHROW AIRPORT LIMITED

Signed by

Print name

Duly authorised for and on behalf of

~~[NAME OF TRAIN OPERATOR]~~

TRANSPORT FOR LONDON OR A RAILWAY UNDERTAKING NOMINATED BY
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