



OFFICE OF RAIL REGULATION

# Reform of access contractual arrangements

## Schedule 5 conclusions

May 2012



# Contents

|   |           |
|---|-----------|
| <b>1. Executive summary</b>                     | <b>3</b>  |
| <b>2. Introduction</b>                          | <b>6</b>  |
| Purpose   | 6         |
| Background                                      | 6         |
| The January consultation                        | 7         |
| Structure of this document                      | 8         |
| Next steps                                      | 8         |
| <b>3. ORR's response to consultation issues</b> | <b>10</b> |
| Introduction                                    | 10        |
| Overview  | 10        |
| The level of specification                      | 10        |
| Responsibility for the timetabling process      | 15        |
| 'Commercial purpose' clause                     | 17        |
| Simplification of Schedule 5                    | 18        |
| Freight model TAC                               | 23        |
| Other areas for review                          | 24        |
| <b>Annex A: list of consultees</b>              | <b>26</b> |
| <b>Annex B: revised passenger Schedule 5</b>    | <b>29</b> |
| <b>Annex C: revised freight Schedule 5</b>      | <b>63</b> |

# 1. Executive summary

1.1 This document sets out our conclusions on proposals for reforming Schedule 5<sup>1</sup> of model track access contracts<sup>2</sup> (“TACs”), which we consulted on as part of our January 2012 “[Reform of access contractual arrangements – seeking your views](#)” document. It provides an overview of the issues raised by consultees, ORR’s response to these comments and the ensuing conclusions. Where appropriate, it also outlines the associated changes that will be made to the model TACs, and provides a clean version of Schedule 5 reflecting our conclusions.

## Context

1.2 The objective of this work is to ensure that best use is made of the available capacity on the GB rail network in the public interest to the benefit of all users, providers and funders of railway services. Best use of capacity drives value for money on the network by avoiding the costs that would otherwise be incurred by allowing more services to be run. Therefore, in arriving at our conclusions, we have had particular regard to:

- (a) providing train operators with the certainty and the assurances they require to run their businesses and meet their contractual commitments;
- (b) the findings of the the [Rail Value for Money Study](#) (“RVfM Study”)<sup>3</sup>, ensuring that our policies, approach and the associated legal and contractual framework processes provide a simple and transparent mechanism for setting out a train operator’s rights to run services. Our policies and processes must also represent value for money, remain fit for purpose and appropriate for the changing requirements of the railway and its passengers and customers, particularly as the network becomes fuller and competition for space increases;
- (c) making sure that TACs do not contain specification that is so hard wired that it comes close to specifying a timetable in order to preserve the integrity of future growth and best use of the network; and
- (d) ensuring that parts of the network are not ossified, thereby reducing the industry’s ability to make changes to train services and the timetable, which is not the most effective and efficient use of capacity.

## Our conclusions

1.3 We believe that less prescriptive rights and a move towards a quantum-only rights system remains the correct way to proceed, and we will continue to look at opportunities, in consultation with the industry, to

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<sup>1</sup> Schedule 5 contains the access rights an operator has to run services on the GB rail network

<sup>2</sup> A track access contract (between Network Rail and an access beneficiary) covers the rights and responsibilities each party has in terms of access to the GB rail network.

<sup>3</sup> The RVfM study was an independent study chaired by Sir Roy McNulty and commissioned by the Secretary of State for Transport. The report was jointly sponsored by the Department for Transport and ORR (Office of Rail Regulation) to examine the opportunities and barriers to improve the value for money of GB rail for taxpayers, passengers and freight customers.

move in this direction. However, we acknowledge that there are reasons why now may not be the right time to introduce significant changes, for example:

- (a) ongoing industry concerns with Network Rail's management of the timetabling process – Network Rail recognises that considerable improvement is required before train operator confidence is at a level where it would be prepared to accept any change;
- (b) ongoing uncertainty over the future form of franchises; and
- (c) the need for greater alignment with franchise specification.

1.4 However, taking account of our statutory duties, we must consider both the wider needs of the industry and its customers, whilst recognising that the current position does not facilitate the most efficient use of capacity. As such, we have decided to proceed with the following changes. Although explained in detail in this document, briefly we have decided to:

- (a) make only limited changes to the level of specification in TACs. However, for all new TACs and extensions to existing TACs we will look to include a suitable reopener provision to ensure that there is sufficient flexibility, particularly within TACs that expire beyond commissioning dates for major projects and events, to enable optimal use to be made of such investments in the network. Following commissioning of these projects, optimal use of the resulting network capability may require changes to the timetable that would be constrained if current access rights in TACs were simply extended without review;
- (b) make a number of limited changes to the passenger model contract Schedule 5 to reduce unnecessary detail and improve accessibility;
- (c) make some minor drafting changes to the freight model contract Schedule 5; but
- (d) make no change to who is responsible for timetabling, i.e. the role remains with Network Rail.

## **Our review**

1.5 In particular, our review of access rights looked at:

- (a) the level of specification in Schedule 5 and the barriers which might prevent a move towards a less prescriptive regime (i.e. a regime where Network Rail has sufficient flexibility to make best use of the available network capacity);
- (b) what changes could be made to Schedule 5 to simplify its format and content; and
- (c) where responsibility for the timetabling process should lie.

1.6 These proposals were informed by the series of informal meetings that took place with various stakeholders in the last quarter of 2011. However, it subsequently became apparent, first at the industry seminar held on 15 February 2012, and then through the January consultation responses, that the appetite for change was not as strong as we were led to believe. Indeed, we are extremely disappointed that the industry, in particular train operators, has expressed such a strong desire to retain the status quo. Such a view is clearly at odds with what the Rail Delivery Group ("RDG") and train operator owning groups are looking to achieve to meet the challenges set by the RVfM Study.

1.7 Whilst it is disappointing that the industry has not taken the opportunity available to it to seek to make real change, we recognise that there are extraneous factors (such as those surrounding refranchising, the role of alliancing and issues around Network Rail's handling of the timetable process). Whilst many parties have assured us that there is an appetite for change, we have seen very little in the way of suggestions for how change could be brought about.

1.8 As we said at the industry seminar in February, whilst it will not fetter our discretion, we will not have a lot of sympathy for those that subsequently complain or make representations about a particular process or mechanism that we proposed should be reviewed. If such concerns do arise, the onus will be squarely on the industry to resolve the problem itself.

### **The challenge for the industry**

1.9 Although we consider that we have gone some way to achieving our overall objective and that our proposals will significantly improve the way in which access rights are expressed and used, this is certainly not the end of the story. As this document explains, there is much more that can and must be done. Our conclusions, which are consistent with our statutory duties and published policies, should be seen as the first stage in a more sweeping and radical change process over the next year or so aimed at meeting the challenging recommendations set by the RVfM Study. We expect the industry, under the leadership of RDG, to pick up the baton and look for these further changes.

1.10 In doing so, RDG and the industry must look at the issues more strategically; not only in the context of the wider needs of the railway, its passengers, customers, other users and the taxpayer, but also against the background of the significant change that is taking place in the industry at the moment, including a move towards more partnership working and alliancing. This is why in this document we challenge the industry, particularly Network Rail, to work together to develop a programme of work looking at resolving the issues around timetabling and compliance with the Part D timetabling process. The document also challenges Network Rail to pick up on a number of specific workstreams. For our part, ORR would be happy to work with the industry and, where appropriate, facilitate and provide resource and support. In the meantime, we will continue to consider access right issues on a basis that is fair to all and provides industry parties with the certainty that they require to run their businesses, recognising the commercial issues involved.

### **Cost savings**

1.11 Whilst a number of consultees commented that our proposals would not necessarily lead to significant cost savings, we believe there is still merit in pursuing certain agreed changes to the structure and content of Schedule 5 for the purposes of simplification and accessibility. We would add that, whilst these changes alone may not bring about large cost savings, as part of a wider, cross-industry package, any reforms in this area will contribute to the overall drive for value for money.

### **Next steps**

1.12 We will restart our consideration with those operators who asked that their applications for extensions to contracts be suspended pending publication of these conclusions. In parallel we will finalise and publish the revised freight and passenger Schedule 5s and develop a suitable 'reopener' provision for inclusion in the TACs, which will form the model for all future applications for new or extended TACs.

1.13 More generally, we will be looking to publish conclusions on the remaining proposals contained in our January 2012 consultation document at the end of May 2012. At the same time we will publish a revised [Criteria and Procedures](#) document.

**Office of Rail Regulation  
May 2012**

## 2. Introduction

### Purpose

2.1 This document sets out our final conclusions on the proposals for reforming Schedule 5 of the passenger and freight model track access contracts, including a revised Schedule 5.

2.2 For ease of reference, the following abbreviations are used throughout this document:

- (a) track access contract (“TAC”);
- (b) train operating company (“TOC” – unless otherwise stated, this term refers to both passenger and freight operators);
- (c) freight operating company (“FOC”);
- (d) the [Department for Transport](#) (“DfT”);
- (e) the [Rail Delivery Group](#) (“RDG”);
- (f) a [Route Utilisation Strategy](#) (“RUS”);
- (g) [The Railways Act 1993](#) (“the Act”);
- (h) [The Railways Infrastructure \(Access and Management\) Regulations 2005](#) (“the Regulations”);
- (i) the [Rail Value for Money Study](#) (“the RVfM Study”);
- (j) a proposal for change to the network code (“a Pfc”);
- (k) the [consultation](#) on a [review of access contractual arrangements](#) in January 2012 (“the January consultation”);
- (l) our [criteria and procedures for the approval of track access contracts](#) (“the C&Ps”);
- (m) a Calendar of Events, as defined in [Part D of the network code](#) (“a CoE”);
- (n) an Event Steering Group, as defined in [Part D of the network code](#) (“an ESG”).

2.3 For ease of cross-referencing to the questions which we asked, you may find it useful to read these conclusions alongside [the January consultation](#).

### Background

2.4 In 2009, as part of a business plan commitment on reviewing the efficient use of capacity on the network, the industry undertook a [review of access planning](#). An Industry Working Group (“IWG”) conducted the review, which considered, amongst other things, how track access rights were expressed (in Schedule 5 of TACs) and put forward proposals to make track access rights less specific with the detail being addressed as part of the timetable process - the objective being to enable more effective optimisation of capacity utilisation whilst allowing TOCs to retain/obtain the paths that they need.

2.5 A wide range of views was expressed by consultees, with no consensus on the way forward. Some stakeholders were not prepared for TOCs to hold less prescriptive rights because of the impact they believed it would have on revenue, arising from the reduced certainty and increased risks. It was thought that factoring in greater risk might reduce the level of premium offered by bidders in the franchise renewal process, whilst Network Rail might also take advantage of the situation to downgrade the timetable.

2.6 The final conclusions of the review said that:

*“whilst no overall agreement was reached across the industry in relation to the proposals put forward, we [ORR] still believe that there is scope for simplifying the expression of access rights.”*

It continued:

*“however, given current views, we [ORR] think it would not be appropriate to pursue this workstream at present”,*

and concluded that:

*“ORR will continue to consider the level of detail required in Schedule 5 of track access contracts on a case by case basis”.*

2.7 Further work on reviewing Schedule 5 was put on hold pending the outcome of the RVfM Study. The C&Ps set out clear, concise and transparent processes and guidance on how we expect the industry to deal with track access applications and how we will decide them. They include very clear guidance about the importance of using our model contracts, including Schedule 5, in respect of which the C&Ps state:

*“We generally require the adoption of the expression of rights as set out in the model Schedule 5s because of the benefits that flow from a standardised expression of rights in terms of clarity for the operator and Network Rail’s future ability to model illustrative timetables and establish the extent of available capacity.”*

## The January consultation

2.8 Our January consultation, which launched on 25 January 2012 and closed on 7 March 2012, invited consultees’ views on a number of questions related to the specification of access rights in Schedule 5:

- (a) the level of specification in Schedule 5 of TACs and the specific barriers which might prevent a move towards a less prescriptive specification of rights (Question 2);
- (b) where the responsibility for conducting the timetable process should lie and why (Question 3);
- (c) whether the inclusion of a ‘commercial purpose clause’ would assist in moving towards a less prescriptive specification (Question 4); and
- (d) whether there was scope to simplify and reduce the amount of information currently provided in Schedule 5 (Question 5).

2.9 To help inform the consultation, we held an industry seminar at our London office on 15 February 2012, part of which was used to discuss these issues in more detail, in an open forum environment.

2.10 We received 24 responses to this aspect of the January consultation from a range of stakeholders (see Annex A), all of whom gave permission for us to publish their responses and are available on our [website](#).

2.11 The process to arrive at these conclusions has been exhaustive, giving the industry every opportunity throughout to comment and contribute. They have been arrived at following comments received through

our [review of access planning](#) and [review of access policy](#). We held a number of informal meetings over the final three months of 2011 to gather views and a list of issues for the January consultation. We also held an industry seminar on 15 February 2012 to gather and share views more formally. In addition to inviting formal responses through the January consultation, we met again with some organisations following the deadlines for responses, but prior to publication of these final conclusions.

2.12 We are grateful to the industry for its contributions throughout this process. We have tried to respond to the points made by consultees in a reasonable degree of detail. Even so, the overall volume and detail of responses received means this document cannot deal with every individual point raised although we can assure consultees that all issues raised with us have been considered in finalising these conclusions.

2.13 It should be noted that consultees raised a number of other suggestions on areas which could be considered alongside or instead of a review of Schedule 5. This document deals only with those matters raised which are directly related to Schedule 5, and it is not intended to constitute ORR's response to question 1 of the January consultation, which will be dealt with in our separate final conclusions document, to be published before the end of May 2012.

## Structure of this document

2.14 This document is structured as follows:

- (a) chapter 3 provides an overview of consultation responses, general issues arising and sets out ORR's response to and conclusions on the consultation issues;
- (b) annex A lists respondents to the January consultation;
- (c) annex B contains a clean version of the new passenger Schedule 2;
- (d) annex C contains a clean version of the new passenger Schedule 5; and
- (e) annex D contains a clean version of the new freight Schedule 5.

## Next steps

2.15 Alongside this document, we are publishing clean passenger and freight versions of Schedule 5, reflecting our conclusions. We expect these new versions of Schedule 5 to be used for all new contracts or extensions to existing contracts from this point forward, including those which have already been submitted to ORR for approval (but have not yet been approved). This does not of course affect existing contractual arrangements, but we would encourage TOCs to bring their current Schedule 5 into line with the new policy at the earliest suitable opportunity.

2.16 As already indicated, we intend to recommence our consideration of those applications for extensions to contracts which were suspended at the request of the applicants pending publication of these conclusions. This will include the development of a suitable 'reopener' provision for inclusion in the TACs, which will form the model for all future applications for new or extended TACs – see paragraph 3.20 below.

2.17 We will make the necessary revisions to our C&Ps, which will be republished at the end of May 2012. We have already undertaken to make significant changes to the C&Ps, including, but not limited to, the revisions required by the January consultation.

2.18 A number of other themes and issues covered in this document will form part of our action plan, which will be published at the end of May 2012, outlining all of the outputs which will be taken forward as a result of the January consultation.



2.19 If any party has comments on these conclusions, the revised Schedule 5 or any other aspect of ORR's industry reform work, it should address them in the first instance to Paul Stone, who can be contacted in the following ways:

By post:

Paul Stone  
Access Executive  
Office of Rail Regulation  
London  
WC2B 4AN

Email to: [paul.stone@orr.gsi.gov.uk](mailto:paul.stone@orr.gsi.gov.uk)

Telephone: 0207 282 0112

# 3. ORR's response to consultation issues

## Introduction

3.1 This chapter provides:

- (a) an overview of the key issues;
- (b) an overview of responses received; and
- (c) our views and conclusions on these.

## Overview

3.2 We held an industry seminar on 15 February 2012, which was attended by 46 delegates, representing a wide range of industry parties. An agreed [note](#) of the seminar has been published on our website. The overall impression from both the industry seminar and the consultation responses was the importance of retaining the status quo regarding:

- (a) the level of prescription; and
- (b) the responsibility for constructing the timetable.

Some consultees provided very helpful views on how the structure and content of the model Schedule 5 itself could be simplified.

3.3 Although a number of consultees commented that our proposals would not necessarily lead to cost savings, we believe there is still merit in pursuing certain agreed changes to the structure and content of Schedule 5 for the purposes of simplification and accessibility. We would further agree that these changes alone will not bring about the large cost savings envisaged by the RVfM Study. We would instead encourage the industry to consider any reform of access contractual arrangements in its wider context as part of a large, cross-industry package, which will contribute to the overall drive for value for money envisaged in the RVfM Study.

## The level of specification

3.4 We asked consultees to comment on the level of specification in Schedule 5 of TACs and the specific barriers which, in their view, might prevent a move towards a less prescriptive specification of rights. We set out our position in paragraphs 4.6 to 4.9 of the January consultation. Briefly, our view is that:

- (a) the over prescription of access rights in Schedule 5 reduces the flexibility available to the industry to make changes to the timetable and train services;
- (b) over prescription leads to inefficient use of capacity;
- (c) we have to have regard to the requirements of the Regulations in terms of the content and format of TACs (framework agreements); and

(d) contractual protections are already in place for the industry through the Network Code and Network Rail's licence.

### Consultees' views

3.5 With the exception of Network Rail, consultees were generally not supportive of any changes to the level of prescription of access rights. Nearly all franchised TOCs said that clearly defined rights were vital in providing them with a degree of certainty about their ability to deliver their funders' service level commitments and franchise specifications.

3.6 TOCs argued that any loosening of the current level of specification may introduce ambiguity and confusion into the timetable process and, more importantly, import a risk to franchises which would be reflected in an increased risk premium in future franchising bids and lead to a subsequent increase in industry costs. Many TOCs commented that having clearly defined access rights also helped to guarantee the expectations of both the general public and politicians.

3.7 Arriva said that individual TOCs value the levels and nature of specification differently, depending on their geographical location, customer base and types of area served and considered that there might be latitude for TOCs to cede some less-highly valued protections, which would serve to simplify contracts, and decrease the overall level of specification. Arriva also said that it was not aware of any specific evidence to suggest that the expression of rights creates a barrier to change or development of the timetable, but noted that out of date sectional running times, rarely used paths in the working timetable, unnecessary speed restrictions and restrictive signalling and platform practices are far greater obstacles to timetable change.

3.8 RFG said that there was a case for considering whether changes to the Schedule 5 requirements could release capacity whilst still protecting key commercial outcomes. They said that there would be merit in understanding how capacity could be increased through access and timetabling which might include;

- (a) more rapid progress on identification of Strategic Capacity, which will help pursue growth and encourage operators (particularly FOCs) to release unused paths under Part J and other mechanisms;
- (b) consideration of technical factors which constrain and are likely to be net consumers of capacity;
- (c) specific targeted action at capacity hot spots to determine whether particular features of access rights are causing constraints and can be re-negotiated.

It noted that such a programme may not be wholly within ORR's remit, but it may wish to consider whether it should seek to encourage such an approach within the industry.

3.9 Transport Scotland, whilst supportive of more flexibility, did not wish to see a reduction in the detail necessary to ensure that services can deliver outputs. It agreed with Arriva that it is for TOCs and Network Rail to work together to decide the required level of detail.

3.10 DfT accepted that less detailed specification of rights would give Network Rail more flexibility and, subject to Network Rail's application of Part D, lead to more optimum use of capacity. However, it pointed out that the purpose of access rights is to provide some certainty and limit commercial risk, and without this protection a larger risk premium would be incurred during franchise bidding. DfT did not agree that the need for detailed specification of rights arises from over-prescriptive franchise agreements and stated that it was Government policy to move to a looser specification in future franchises to produce more imaginative bids and to give TOCs more flexibility to respond to market conditions. However, a number of TOCs were clear that the highly-specified nature of franchises prohibit any relaxation of the level of prescription of rights and that they restrict innovation and the advance of timetable capacity development.

3.11 Alliance/Grand Central challenged the presumption that Network Rail requires more flexibility saying that it does not use the full extent of the Flex already available to it as part of the timetable planning process. It also suggested that in some cases the level of specification might breach the Regulations and has been used as a blocking right and that ORR's 'hands-off' approach may have contributed to drafting errors leading to some TACs being more prescriptive than they need to be. As a result it was concerned by the possibility of ORR 'stepping back' further.

3.12 FOCs felt that the current levels of prescription in the model freight TACs were about right, and gave the requisite certainty to FOCs to allow them to plan their businesses with a reasonable degree of certainty, and to provide their customers with certainty over delivery and collection times. It was generally felt that the current level of prescription struck the correct balance between commercial certainty and Network Rail's need for flexibility to plan the timetable. GBRf said it would prefer to see less Flex for FOCs (+/- 15 minutes as opposed to the current +/- 30 minutes). It also said that passenger TOC Schedule 5s are too prescriptive and would like to see the difference in degrees of contractual flex brought closer together.

3.13 Whilst many TOCs acknowledged that less detailed prescription of rights would give Network Rail more flexibility to construct the timetable, Greater Anglia thought that such an approach could lead to more timetable disputes. ATOC said that well-defined rights have not inhibited the development of any timetables to date. Many consultees also felt that the industry's appeal mechanisms, including those in the Network Code, did not provide adequate protection, and increased the level of uncertainty, given the lack of ability to predict an outcome. It was also noted that appeal processes may take time to resolve satisfactorily (particularly if the matter is referred to ORR) which may impact on the construction of the timetable and lead to late alterations or removals.

3.14 Network Rail's view was that some TACs contain over-prescribed rights, which:

- (a) do not provide the flexibility required to meet the changing demands of the railway, including the work being carried out through RDG, particularly on alignment of incentives;
- (b) do not lead to the development of an optimal timetable or efficient use of capacity; and
- (c) create a bureaucratic, administrative and costly exercise at each timetable change. Network Rail says that being overly prescriptive makes for a time-consuming and complex process to assess whether all rights have been satisfied with each timetable change and leads to the possibility of error. It also feels that there are possible competition implications of retaining the status quo through operators artificially constructing timetables to limit competition from others.

3.15 Network Rail would prefer to see an approach that is more consistent with the Regulations, whereby the longer the contract, the looser the level of specification in the later years of the contract.

3.16 Network Rail acknowledges TOC concerns over the gradual erosion of services, journey times and connectivity as a result of any move toward a looser specification, but points to its licence obligations and the protections available to the industry through the Network Code. Its preferred specification would be just quantum, calling patterns and specified equipment, but recognising that there may be exceptional circumstances justifying variations to this.

3.17 Network Rail also recognises the need for greater alignment with DfT on franchise specification, and wishes to remain involved in franchise reform discussions. Network Rail's view is that the nature of future franchise specification will be a key driver for Schedule 5 – its view is that Schedule 5 should flow from the RUS, through the franchise and into the timetable.

3.18 On freight rights, Network Rail's view is that there is an inefficiency in offering rights and specific paths (where based on volume rather than time slots) to FOCs, as they gain no advantage for holding specific rights for volume-based traffic (such as coal haulage). Network Rail considers that FOCs require visibility and assurance that capacity exists on core routes to accommodate volumes, which Network Rail will then allocate in line with demand. It recommends a re-think on the nature, scope and mechanics behind freight rights, and a review of whether a FOC or Network Rail should 'hold' paths for these trains in the timetable. Further, it would expect a FOC to justify any specific request for detailed rights.

3.19 Network Rail also favours the use of Schedule 5 reopener provisions, but limited to use in major projects, rolling stock, RUSs, and significant timetable change and aligned with the Part D timetabling process, including Events Steering Groups ("ESGs") and the Calendar of Events ("CoE"). Finally, Network Rail suggests that it should be able to propose changes to access rights. It says that TOCs have more negotiating levers, e.g., through the use of a section 22A application; Network Rail believes it should also have a similar facility. It acknowledges that this would require primary legislation, and that it would have to demonstrate a public interest justification based around efficiency or competition. Network Rail also acknowledges that this may lead to greater ORR involvement in the contractual process (although greater ORR involvement may be the result of an increasingly crowded network anyway). On that basis, it sees value in revisiting the buyback debate, albeit with a rigorous criteria-based approach, with protection built in through ORR.

### **ORR's conclusion**

3.20 We recognise TOCs' concerns and agree that it is not the correct time to make sweeping changes to the current system, given:

- (a) ongoing industry concerns with Network Rail's management of the timetabling process – Network Rail recognises that considerable improvement is required before train operator confidence is at a level where it would be prepared to accept any change;
- (b) ongoing uncertainty over the future form of franchises; and
- (c) the need for greater alignment with franchise specification.

3.21 However, having also had regard to the matters specified at paragraph 3.4, we believe that it is appropriate to make some changes to the current Schedule 5.

3.22 We have concluded that a reopener provision is the most appropriate and fairest way of ensuring that the industry has the flexibility to make changes to the timetable and train services when major projects are completed. This will allow the maximum benefit to be realised and ensure optimum use of available capacity. In the majority of cases all parties should benefit from changes. It will also incentivise closer working and co-operation between Network Rail and TOCs. Furthermore, such a provision should also go some way to allaying our own concerns about compliance with the Regulations. Work has started on the development of a suitable reopener provision, which will be as far as possible generic in nature because we want it to:

- (a) be the same for everyone and suitable for use by all TOCs so that no one is disadvantaged (whilst respecting necessary differences between freight and passenger contracts);
- (b) capture all relevant projects whilst remaining suitable to allow for slippages in timescales, changes to projects or the introduction of new projects. Although we will provide guidance on what we consider constitutes a major project we are firmly of the view that the responsibility for identifying such projects should rest with Network Rail and the industry. We certainly agree with Network Rail that the reopener should be limited to use in those major projects that will result in significant timetable changes and

benefits to the industry. Such projects must be clearly identified in the CoE. We would also expect that in most cases there would be an associated ESG to ensure that there is a seamless, transparent approach with no surprises for any industry stakeholder and one that ensures that the reopener should be limited to use in major projects, significant rolling stock upgrades, RUS recommendations and refranchising which involve major investment and which will result in significant timetable changes and benefits to the industry. We also agree that the reopener should be aligned with the Part D timetabling process, particularly the ESG and the CoE; and

(c) provide the industry with the certainty and assurance that it requires. As well as wanting to reduce the financial risk to the industry we want to ensure that there is a transparent and efficient process in place. Therefore the reopener will include a formal process requiring Network Rail to serve an initial notice on a TOC advising it why it is activating the reopener, including information on what access rights are affected and the dates from which any changes will take place. The parties will then be required to negotiate the necessary changes and either submit them to ORR for approval if they reach agreement, or for our determination if they cannot reach agreement.

3.23 To be clear, the reopener provision:

(a) will **not** apply to existing access rights;

(b) will **not** affect rights sought up until the completion of a major project when the benefits are available; and,

(c) will **not** affect rights on a TOC's other routes where no major projects which affect the available capacity are to be delivered.

3.24 As we have already emphasised, we do not consider this to be the end of the story, and the challenge for RDG and the industry is to use this as a stepping stone for achieving further change. We would also like to see Network Rail and TOCs take a more urgent and collaborative and proactive approach by establishing a programme of work to look at resolving the issues around timetabling and compliance with the Part D timetabling process. We worked closely with the industry to produce a clearer timetabling process and it is important that it is now followed by all parties. That programme of work could also look at how to resolve Arriva's points about the obstacles to timetable change. Whilst ORR has no specific remit in this area, we would remind the industry that we still believe that no stone should be unturned in delivering real reform and that it should take the initiative and lead from the front. For its part, ORR would be happy to facilitate any work in this area, providing resource and support as far as it is able.

3.25 We also consider that Network Rail should:

(a) pick up with RFG its suggestions about how capacity could be increased through access and timetabling, including its point about strategic capacity;

(b) pick up with Alliance its point about the extent to which all available Flex is taken into account as part of the timetabling process;

(c) put forward detailed proposals about what it has in mind in terms of a review of the nature, scope and mechanics of freight rights, including how it proposes to take the work forward, particularly in terms of how it intends to involve FOCs and their customers. Given that this relates directly to capacity and access rights ORR would wish to be closely involved; and

(d) put forward a detailed proposition for consideration by ORR and the industry on proposals for Network Rail to have the right to buy back access rights.

3.26 Some consultees said that a key issue to be considered was how (indeed, if at all) the industry identified usable spare capacity, and how the timetable was planned as a result, particularly given the various types of usage on the network. More focus should be placed on how Network Rail delivers its obligations to identify capacity and plan the timetable and we were reminded of our statutory duty to promote the efficient use of the railway. ORR agrees with this, but notes Network Rail's ongoing work to improve its timetabling capability - indeed, Network Rail referred to this work in its [response](#) to this consultation. We believe that this work could also take on board RFG's and Arriva's issues.

3.27 In terms of ORR's statutory duties, we always have regard to these when considering the allocation of capacity. If parties have specific concerns in this area, they should discuss them with us.

3.28 In terms of franchise specification, this is clearly a matter for the DfT and is not an area over which ORR has any control. However, we would welcome any move to loosen franchise specifications to provide bidders with an opportunity to make more innovative bids to improve the customer experience and, which allow Network Rail greater flexibility to construct the timetable. We also believe that it is important that funders and TOCs share more closely with Network Rail their franchise specifications and service level commitments, to give Network Rail a greater understanding of the drivers behind a TOC's business needs.

3.29 More generally, a number of consultees said that they would be concerned by any 'stepping back' by ORR in respect of its consideration of access agreements and access rights as a result of this reform work. They saw ORR as a valuable safeguard against any exploitation by Network Rail of its monopoly position. As we have always made clear and reiterated at the industry seminar, and in the January consultation, there is no question of ORR 'stepping back' to the stage where it is no longer fulfilling its duties and responsibilities. It has taken, and will continue to take, regular legal advice to ensure that any proposals which are adopted do not compromise our statutory duties or core regulatory functions and leave us open to any form of challenge. Furthermore, irrespective of any changes in this area, ORR wishes to assure the industry that it will continue to provide advice and guidance, where it is requested, by any party. Additionally, the industry will continue to have access to the pre-existing appeal and dispute mechanisms.

3.30 We will add the issues discussed above to the action plan that we intend to publish at the end of May 2012 with a view to establishing a number of specific workstreams with clear milestones and outputs.

## Responsibility for the timetabling process

3.31 Prior to the January consultation, a number of representations were made as to whether Network Rail was still the appropriate body to compile the timetable. We asked for formal comments in the January consultation, but made it clear that we remained of the view that Network Rail should remain as the body responsible for providing capacity, timetabling and performance services to the rail industry.

### Consultees' views

3.32 Consultees generally came out strongly in favour of Network Rail remaining responsible for the construction of the timetable, as did Network Rail itself. Many pointed out that neither ORR nor TOCs are permitted to construct the timetable (by the Act and the Regulations respectively). Some noted that in instances where TOCs have constructed timetables, these have been highly subjective with the Rail Freight Group ("RFG") making the point that past operator-developed timetables have failed to take into account third party requirements. ATOC also supported the view that Network Rail should continue to carry out the timetabling process, but with a greater emphasis on its resources and capability, saying that it is Network Rail's role to identify capacity and develop the timetable in response to the demands of customers.

3.33 There were a number of suggestions made that Network Rail move to decentralising its timetable functions as a result of devolution. East Coast said that it was not convinced that timetabling should be the responsibility of a central function of Network Rail because it has no direct relationship with the final customer, and should be devolved to Network Rail routes, with scope for alliancing with TOCs. It was felt that this more 'local' view would be beneficial in taking into account TOCs' specific needs. The benefits of devolution may be increased further by alliancing, although this would be a matter for further down the line.

3.34 However, Go-Ahead said that a lack of a unified system may lead to disbenefits, particularly on core sections of the network. ATOC too thought that alliancing may bring opportunities to combine timetabling and planning expertise from TOCs and Network Rail. DB Schenker ("DBS") was concerned to ensure that Network Rail's impartial role in the timetable process was not undermined by Network Rail devolution and proposed alliancing with operators on some routes. First Group considered that the current division of responsibilities is satisfactory and that any alteration to TOC/Network Rail responsibilities should be by mutual agreement (such as through alliancing, for example).

3.35 Whilst all consultees supported the view that Network Rail should remain responsible for the timetable process, several raised concerns over Network Rail's current capability, experience and resourcing. For example, Greater Anglia said that the moving of timetable planners from London to Milton Keynes had left a shortfall in timetable planning expertise in their geographical area which had not been filled. Freightliner said that the current level of train planning services was poor which, in their view, was a result of inadequate resourcing and an inability to retain both new and experienced train planners, adding that Network Rail needed to place more importance on this function. Freightliner also said that improvement was needed in the management of strategic rights as work to date had not provided one meaningful long distance freight path.

3.36 There were also concerns over Network Rail's level of engagement. Transport for London ("TfL") felt that Network Rail did not engage (particularly on an informal basis) at an early enough stage to gauge requirements and to avoid issues cropping up for the first time only at the consultation stage. Freightliner made a similar comment. Virgin felt that a more collaborative approach to timetable construction and capacity development was required, but that this would only work if Schedule 5 allowed for more innovation and negotiation. It was felt that Network Rail needs to communicate better at 'nuts and bolts' level with TOC representatives.

3.37 Some consultees said that Network Rail did not apply Part D of the Network Code correctly. For example, DBS and Alliance point to Network Rail's failure to use the Prior Working Timetable as a starting point; instead the new timetable was started from scratch. DBS questioned whether Network Rail's timetable development staff were aware of the new Part D process. DBS also made the point that passenger rights (both firm and contingent) were accommodated before any freight rights, even firm ones, leading to inefficient freight pathing. GBRailfreight ("GBRf") echoed this view and said that Network Rail did not allow space to accommodate future freight growth. It also said that Network Rail does not properly implement the Regulations and its planners do not apply the Decision Criteria correctly.

3.38 Arriva made a number of pertinent remarks about the obstacles arising from Network Rail's management of the timetabling process, which we require Network Rail to take note of and work with Arriva and other operators to resolve. Arriva resists suggestions that Network Rail should have sole responsibility for the timetable process, making the point that timetables should be created in partnership, but recognising that each party has different roles.

3.39 Network Rail's view is that an ESG and publication of a CoE, combined with the new Part D are effective in managing timetable change, and provide enough transparency. It also noted that engineering



access is tied into the timetabling process. However, Network Rail acknowledges that there is room for improvement in terms of its resourcing and streamlining of its processes and recognises the opportunity for it to develop market, revenue and economic expertise in terms of allocation of train paths and in better articulating trade-offs. However, whilst justifiable criticism had been levelled at Network Rail, it also experiences problems with TOCs during the timetabling process. It cites a lack of project management discipline at some TOCs, out of date processes, duplication of resources and inconsistent presentation of access proposals as frustrating timetable construction efforts. It proposes that TOCs consider aligning some of their train planning resource alongside its own, with Network Rail maintaining overall objectivity in decision making. It envisages a 'Centre of Excellence' for train planning which would improve communication, reduce duplication, align processes and save costs. Network Rail also noted that there was a reluctance amongst TOCs to give up unused paths or rights and rolling stock details were often not provided at the appropriate time.

### **ORR's response and conclusion**

3.40 ORR does not consider that there is a satisfactory alternative to Network Rail continuing to construct the timetable. As we said in the January consultation, we remain firmly of the view that Network Rail has a clear responsibility to provide capacity, timetabling and performance services to the rail industry and should be resourced to provide the necessary assessments to a high professional standard. We agree that only Network Rail is able to take an impartial, whole-market view with regard to the effective selling of capacity. We therefore welcome the views of consultees that Network Rail should remain responsible for the timetabling process.

3.41 However, we also recognise that there are shortcomings within the process, particularly in terms of Network Rail ensuring that it has the appropriate resources, capability and experience in place. We expect Network Rail to address the concerns raised by consultees, engage collaboratively with TOCs, including on its own proposal to align some TOC resource alongside its own on a regional basis. We believe that such a move would bring about real benefits to all parties. We expect to hear from Network Rail as soon as possible about its plans for establishing a programme of work. For our part, we would be happy to work with Network Rail and TOCs if it is felt that we would add value and secure greater confidence in the overall timetabling process, and Network Rail's processes and decisions.

### **'Commercial purpose' clause**

3.42 We asked whether consultees felt that there was merit in the insertion of a 'commercial purpose' clause into Schedule 5. Such a clause would involve a short amount of text being added to Schedule 5 to outline the commercial purpose of a TOC and explaining the rights it required with specific reference to its franchise obligations, particularly its service level commitment (for passenger TOCs) or commercial contracts (for FOCs).

### **Consultees' views**

3.43 The commercial purpose question prompted a mixed response. ATOC, TfL and some TOCs were in favour of it, and felt that it would add value, but did not see it as a replacement for access rights. Indeed, many consultees, whether supportive or not, added the caveat that a commercial purpose clause should not replace any contractual protection, and was certainly not a substitute for well-defined access rights.

3.44 East Coast said that a commercial purpose clause can help Network Rail understand the business objective of a train operator. First Group said that it could be useful when invoking the Decision Criteria. North Yorkshire Moors Railway ("NYMR") felt that such a clause suited the nature of its business. Transport Scotland too was supportive because it would allow Scottish Ministers to outline the public benefit and enable the industry to better take account of social benefits. Virgin responded that it had specific

experience of a commercial purpose provision, which was contained within the PUG2<sup>4</sup> agreement. Virgin said that it found such a provision very useful in providing an overarching contractual framework and would support its inclusion in the access agreement structure.

3.45 Conversely, Go-Ahead said such a clause is only of value if the parties to the TAC are fully aligned towards the delivery of that commercial purpose. DB Regio Tyne & Wear (“DBRT&W”) said that a commercial purpose clause could only work on a hierarchy basis, to differentiate and prioritise rights. DfT said that it would not be practical to devise a brief clause in a way that would have a real impact on the timetabling process, as a general description would not provide enforceable constraints and anything more specific would be self-defeating.

3.46 Network Rail said that it would not add value to the overall process and could detract from the simplicity of a less prescribed set of rights. Furthermore, it would likely be subjective, and therefore unlikely to be measurable, quantifiable or objective. DfT said that it would not be practical to devise a clause in a way that would have a real impact on the timetabling process - a general description would not provide enforceable constraints, and anything more specific would be self-defeating. In any event such a clause may also be at odds with Government policy, particularly in relation to devolution of service specification to local government. Alliance said that such a clause would not suit it because it would effectively be a duplication of its Schedule 5 rights.

3.47 RFG questioned whether a ‘commercial purpose’ clause would apply to FOCs given that the commercial requirements of freight customers will not be the same for all traffic. It felt it could make things more complex rather than simpler. The FOCs themselves were also of the view that such a clause would be of little or no benefit, given the level of specification in their contracts and the fact that the commercial requirements of freight customers will not be the same for all traffic. Freightliner pointed out that it was often difficult for a FOC to provide evidence of customer contracts in many cases and GBRf said that such a clause would be difficult to incorporate and may hamper the construction of the timetable.

### **ORR’s response and conclusion**

3.48 We do not consider that a commercial clause should be adopted by TOCs, or form part of the model Schedule 5. Whilst this question received a substantive response, many were non-supportive, and of those that were supportive, most carried the rider that a commercial purpose could not be seen as a replacement for well-defined rights. There may indeed be some benefits from the introduction of such a clause, but we are not convinced that it would achieve the overall objective of bringing about a reduction in the overall level of specification – something the industry too does not believe is achievable.

3.49 However, in line with our [C&Ps](#), ORR would be happy to consider any application containing a request for a bespoke ‘commercial purpose’ clause based on its individual merits.

## **Simplification of Schedule 5**

3.50 We asked whether it was possible to reduce and/or simplify the information currently provided in the existing Schedule 5 passenger model contract, and for consultees to provide specific examples and proposals. As a result of informal discussions we proposed a number of changes, including the removal and/or simplification of a number of Schedule 5 characteristics (see paragraphs 4.18 and 4.19 of the January consultation.

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<sup>4</sup> Passenger Upgrade 2 was a project to allow the operation of high-quality, high-frequency intercity passenger services on the West Coast Main Line through the procurement of high-speed rolling stock and major investment in the infrastructure.

## Consultees' views

3.51 The February industry seminar group session looking at the content and format of Schedule 5 revealed a range of views about how it might be simplified or clarified. There was not always consensus with some attendees saying Schedule 5 was fine as it was, although there seemed to be a general feeling that there was some scope for simplification, including a number of suggestions around the removal or rationalisation of tables and information. There was some support for amending our C&Ps document to provide more information and clarity on how the Schedule 5 tables should be used. There was also support for a suggestion that it would be helpful if details of all access rights tables were to be held in a single database, controlled and maintained by Network Rail.

3.52 These views were largely reflected in consultees' formal responses with a small number again saying that Schedule 5 did not require any update or changes. However, most consultees felt that there were ways in which Schedule 5 could be simplified or clarified, and we received a number of suggestions from consultees on what they would like to see changed.

(a) **Merging of Schedules 2 and 5** - there were mixed views over whether these Schedules should be merged. However, the balance of responses was in favour of a merger. There was support for a retention of ancillary and diversionary routes, and some consultees felt that Schedule 2 could be removed altogether if ancillary moves were permitted anywhere, or replaced by a general contractual ability to move to any reasonable light maintenance depot. Network Rail was supportive of such an approach, proposing go-anywhere rights for ancillary moves subject to route and gauge clearance, and agreement through normal timetable processes.

(b) **Definitions** – some consultees said that the Schedule 5 definitions were fine as they were. Others saw scope for their simplification and welcomed a move to increase clarity and consistency.

(c) **Footnotes** - many consultees commented on the use of footnotes in the contract, with all but one agreeing that they should be heavily limited – it would not necessarily be possible to remove them altogether. Consultees recognised that ill-used footnotes could defeat the object of presenting information clearly in the first place. Some consultees proposed that numbered footnotes should be changed to lettered footnotes to avoid any confusion.

(d) **Reducing/merging Schedule 5 tables** – a number of suggestions were received on which tables could be altered, removed or combined. Our conclusions on this matter are discussed in further detail below.

(e) **Paragraph 8 tables** - a number of comments were received on the various tables in paragraph 8. It was generally felt that Table 8.1 on platform rights added little value and could be removed and either reinstated on a bespoke basis or replaced with some more general text. Many consultees said that Tables 8.2 (connections) and 8.3 (departure time ranges) were also rarely used and could be deleted from the model template, and reinstated as necessary. Alliance said that Table 3.3 could be removed and those rights protected in Table 8.3 instead.

(f) **Calling patterns** – those consultees who commented felt that calling patterns were important and should be retained. Greater Anglia noted that their completion was often onerous, but once completed, required little ongoing maintenance. Virgin said that a dilution of calling patterns would mean that Firm Rights would become Contingent Rights by default. Arriva said that some calling patterns could adequately be described as 'all stations' if their completion was required.

(g) **Service Groups** - a number of consultees were supportive of providing information by service group. No consultees were opposed to such a step.

(h) **Specified Equipment** - consultees expressed a wide range of views on Specified Equipment. Some consultees said that Specified Equipment should be retained, others said that it could go altogether. Others took a moderate view, suggesting that Specified Equipment could go if it was replaced with a more general clause, or a less highly specified part of the contract. Transport for London said that Specified Equipment was adequately covered by vehicle charge. North Yorkshire Moors Railway noted that seeking amendments to Specified Equipment was time consuming and costly.

(i) **Journey time protection** - all consultees said that journey time protection was essential and should be retained, but many said that journey time protection would benefit from simplification and clarification, including having the definitions reviewed. As well as this simplification, some consultees suggested that ORR should clarify and expand on the section on journey time protection in the C&Ps. This would cut down on the time taken to negotiate journey time rights.

(j) **Earliest and latest** - some consultees said that earliest and latest train slots could be removed from Schedule 5, stating that the contents of this table were covered by the relevant Engineering Access Statement (“EAS”). However, Go-Ahead said that the implied data in the EAS relate to overall network availability rather than train services, and would therefore not always govern earliest and latest trains.

(k) **Stabling** – Network Rail commented specifically on stabling, saying that they believed that this table (8.4) was not necessary. However, Go-Ahead asked that ORR consider the case for reintroducing Rights to Stable.

(l) **Turnaround times** – a number of consultees said that turnaround times were not required, as these were set out in the Timetable Planning Rules (“TPR”). However, two consultees (NYMR and GBRf) said that turnaround times were a key requirement given the nature of their business. Greater Anglia said that whilst turnaround times form part of the TPR, there may be a commercial requirement for turnaround times which differ from those set out in the TPR.

### **ORR’s response and conclusion**

3.53 We are grateful to consultees for their constructive and helpful suggestions. Some of these suggestions conflicted, and others proved unworkable when we attempted the drafting. For reasons of brevity, we are not able to provide a full break down of responses to individual comments we received, but please be assured that we have considered all comments made. As a result of consultees’ comments and our own review, we have come to the following conclusions on the model template Schedule 5.

#### *Schedule 2*

3.54 We have decided to retain Schedule 2, but it has been put into a model clause format which does not require any adaption. This gives the TOC permission to use the routes specified in Table 2.1 and Table 2.2 of Schedule 5. While this may require a little more detail to be added to the “Via” column of those tables to be clear about the route covered by the Firm Right, it removes the requirement for all the routes over which the services are intended to operate to be listed additionally in Schedule 2.

3.55 The new model Schedule 2 also gives the TOC permission to use any reasonable route for diversionary purposes or Ancillary Movements and any reasonable location to Stable railway vehicles, subject to any necessary route clearance. This removes the need to list all possible variations and the requirement to make an amendment to the TAC (usually at short notice) when it is realised that the TOC does not have the necessary route listed.

3.56 Ancillary Movements and stabling are of course subject to Part D of the network code and the Decision Criteria.

### *Footnotes*

3.57 We expect that the use of footnotes should be limited and, where used, they should not be extensive. Frequent and/or long footnotes suggest that tables are not being used correctly. It would not be possible to issue an exhaustive policy on where and how footnotes should be used, and we expect applicants to exercise their common sense and best judgment. If we believe that submissions contain too many or too detailed footnotes, we will advise the parties accordingly. For reasons of clarity, we agree that footnotes should be lettered, rather than numbered.

### *Passenger train slots – Table 2.1 and Specified Equipment – Table 5.1*

3.58 There was general support for including the Specified Equipment for each service in Table 2.1. In order to do this, we have removed Table 5.1 which listed the types of vehicle which could be used for each service and replaced it with a simple list of all railway vehicles which the Train Operator has Firm Rights to operate.

3.59 In Table 2.1 we have added a column specifying a Timing Load. We have amended paragraph 2.1 to give the TOC a Firm Right to operate each service using any Specified Equipment (listed in paragraph 5.1) that is capable of achieving the specified Timing Load. This is similar to the way in which Specified Equipment is included in the model freight access contract.

3.60 We have also added a Contingent Right for the TOC to use any rolling stock registered with Network Rail's rolling stock library, subject to any necessary route clearance. Use of such rolling stock is of course subject to Part D of the network code and the Decision Criteria.

3.61 If the TOC wishes to add rolling stock to the list of vehicles in Paragraph 5.1 in order to obtain Firm Rights, it will need to go through the vehicle change process in Part F of the network code.

### *Additional passenger train slots – Table 2.2*

3.62 We have removed the columns splitting the quantum of additional passenger train slots between peak and off peak times as they are both Contingent Rights. Splitting them in this way makes no difference in terms of whether or not Network Rail will be able to accommodate them at those times. We have also made consequential amendments to paragraph 2.4.

### *Service Intervals – Table 3.1 and Clockface Departures – Table 3.2*

3.63 We have simplified the interval tables by combining Table 3.1 (service intervals) and Table 3.2 (clockface departures). The only real difference between the two is that with clockface departures, individual services can only be flexed later than the set pattern whereas with service intervals, individual departures can be flexed earlier or later than the set pattern. Both can still be accommodated in Table 3.1 by using a positive only flex for those services where a regular "clockface" pattern is required e.g. +2/-0 as opposed to +/-2.

### *Earliest and Latest Passenger Train Slots – Table 3.3*

3.64 We have deleted Table 3.3 and the related provisions as we consider they are not necessary. It takes unnecessary time filling in the table and reviewing the times. We frequently see changes being made to them to reflect minor changes to the timetable to no obvious benefit. They are also often filled in incorrectly. They are, in any case, subject to the EAS and the TPR, so add little value.

3.65 The opening times of the route are set out in the EAS and TPR on which Network Rail consults at the start of each timetable development period. If Network Rail proposed opening a route later in the morning and that later opening was opposed by a TOC, the question as to whether or not the train operator had a

Firm Right which could not be honoured if the later opening time were established as the Firm Rights are subject to the EAS or TPR would be determined in accordance with the Decision Criteria.

#### *Calling Patterns – Table 4.1*

3.66 We have simplified the drafting in paragraphs 4.1 and 4.2 which now explains that the TOC has Firm Rights to the Regular Calling Pattern or any subset of that Calling Pattern referred to as the Reduced Calling Pattern. We have deleted paragraphs 4.3 and 4.4, which relate to journey times rather than calling pattern. However, we have not included this drafting in the journey time provisions as they are unnecessary.

#### *Journey Time Protection – Tables 6.1, 6.2 and 6.3*

3.67 We have simplified journey time protection and reduced the three tables to one. We have removed the Fastest Key Journey Time (“FKJT”) provisions. FKJT protection was intended to protect the fastest service of the day with a “headline” journey time. In order to exercise this right the TOC was required to make an Access Proposal for three Train Slots with the same stopping pattern, only one of which would be guaranteed the specified journey time. Our view is that these provisions were not well understood and Access Proposals may not have been strictly compliant with these provisions. Although we have removed FKJT protection it will still be possible to have protection for one fastest service by specifying this in column 4 of revised Table 6.1 - e.g. “100 [minutes] with one Journey Time not exceeding 95”.

3.68 We have combined Maximum Journey Time (“MJT”) and Maximum Key Journey Time (“MKJT”) protection into one table with an additional column to identify which type of protection each service has. We have removed the Calling Pattern column but added into paragraph 6.1 that the train slots must comply with paragraph 4.1, i.e. the Calling Pattern to which the operator has Firm Rights.

3.69 We have also made consequential changes to paragraph 7.

#### *Paragraph 8 rights*

3.70 We have retained the template provisions in paragraph 8 but added guidance notes to explain that they are for use by exception only and must be fully justified to ORR in each case in order to have the provisions approved.

#### *Stabling*

3.71 We see no good reason to change our policy on this issue. Stabling rights are currently included in paragraph 8. Our C&Ps (paragraphs 8.118 to 8.120) make it clear that these rights may be used, provided that the application contains very clear justification for doing so.

#### **Next steps**

3.72 Our C&Ps will be updated to reflect these changes and where necessary to provide an expanded commentary. We anticipate publication of the latest edition at the end of May, alongside our final conclusions on the other areas of the January consultation. The model Schedule 5 has been updated to reflect our conclusions and is annexed to this document.

3.73 On the suggestion that it would be helpful if details of all access rights tables were to be held in a single database, controlled and maintained by Network Rail. We have discussed this with Network Rail who have said that in principle they would support the idea and they are looking into the feasibility of its development.

#### *Transitional arrangements*

3.74 **The new arrangements come into immediate effect and all applications for new contracts or extensions to existing contracts made from the date of this publication will need to be based on the new model contract Schedule 5.** All other applications seeking new or amended rights to existing TACs will be considered on their merits taking account of the materiality, nature and extent of the rights sought. We would encourage TOCs to amend their Schedule 5s into the new format at the earliest suitable opportunity and may require this for any significant changes to existing Schedule 5s. However, we would be prepared to approve changes to existing Schedule 5s in their existing form where the changes are relatively minor. If in doubt the parties should contact us in advance of submitting any application. We do not expect Network Rail and TOCs to update their existing TACs to take account of these changes, although they are of course welcome to do so.

## Freight model TAC

3.75 Although not strictly part of the January consultation, we are aware of certain drafting anomalies in the existing model freight TAC schedule 5 relating to Network Rail's **Flexing Right** and the **Train Operator Variation Services** provisions. We have previously discussed the flexing issue with relevant stakeholders and consulted on proposed drafting to resolve the issue. We thought it would be useful to close this down now.

3.76 Our interpretation of the flex provision in paragraph 3 of Schedule 5 to the model freight TAC is that it applies to all Level 1, 2 and 3 access rights. Network Rail may only flex these services by +/- 30 minutes from the time in the preceding timetable period, even though Level 2 and 3 access rights are rights to quantum only and therefore do not have any timings associated with them in the Rights Table. From our conclusions on the freight model TAC published in 2003 it is clear that this provision was only intended to apply to services supported by Level 1 access rights. It was not intended to apply to Level 2 and 3 rights which are rights to quantum only. We discussed these proposed changes relating to the flex provision with the industry in 2011.

### Consultees' views on Flex

3.77 The industry had diverging views in this area. DBS said that in its view the provision was already sufficiently clearly drafted, but if ORR was minded to amend the model contract then it would be supportive. Freightliner noted the discrepancy between the drafting of the provision and the intended meaning but was opposed to our proposal because it could make Level 2 rights ineffective and not meet customers' requirements, particularly in the supply of coal to the electricity supply industry. Freightliner also said that its customers relied on a narrow window for the delivery of coal and the removal of the protection afforded by the current drafting would be detrimental to this. If we did implement this change then it would like the opportunity to review its Level 2 rights and convert them to Level 1 where appropriate. GBRf was opposed to the removal of the current drafting because it was concerned about the effect of Network Rail being able to move slots for Level 2 rights from one end of the day to the other and the effect on its business and customers.

### ORR's conclusion on Flex

3.78 We note the differing interpretations of this provision. However, we believe that the effect of the current drafting is to unintentionally restrict Network Rail's ability to make the best use of capacity where access rights were not intended to have timings attached to them. We recognise the effect that this may have on freight operators' ability to meet end-users' requirements but would expect freight operators to seek Level 1 access rights where this is more appropriate for the end users' commercial needs. As such we intend to include additional drafting in the model freight TAC in paragraph 3.1 of Schedule 5 so that it will read (new drafting underlined):

“The Maximum Variation in respect of any Service to which a Level 1 Right applies shall be no more than 30 minutes from the corresponding time for the corresponding Train Slot in the preceding Timetable Period.”

3.79 We consider that this will ensure the drafting better reflects our original intentions and will allow Network Rail to make the best use of capacity when it is formulating the timetable and is considering Access Proposals for Level 2 and Level 3 rights.

3.80 In considering this provision a further issue arose with the drafting of paragraph 3.2 of Schedule 5 of the model freight TAC. This paragraph as currently drafted says that either party may request a variation to Network Rail’s flexing right in respect of any train slot and where such a request is made the other party shall not unreasonably withhold its consent. DBS agreed with our proposal to remove this provision as it undermined the certainty of firm rights. Our view is that this provision creates additional uncertainty for the access rights of freight operators (as well as their end-users) associated with a specific degree of flex. We have concluded that this provision should be removed entirely and the subsequent paragraph should be renumbered accordingly.

### **ORR’s conclusion on Train Operator Variation services**

3.81 We have found that the current drafting of the ‘Train Operator Variation Services’ provision in the model freight TAC could also be improved as it does not set out the circumstances in which the provision can be used. We have therefore decided to incorporate drafting similar to the model charter TAC which sets out clearly that the Train Operator has the right to operate services for which it has made a Train Operator Variation Service Requests in accordance with Part D of the network code and Network Rail has accepted the request. We have also extended the period for which such services may operate to 12 months and removed the need for Network Rail to inform us where services operate under this provision for longer than 3 months. We believe that this better meets freight operators’ commercial requirements and also reduces regulatory involvement where it is not necessarily needed.

3.82 FOCs and Network Rail are encouraged to make changes to their existing TACs to bring them into line with the revised model freight TAC and may use the [Freight Access \(Track Access Contracts\) General Approval 2012](#) to reflect these latest changes. Where freight operators are renewing their TACs, we would expect them to use the revised drafting in the model freight TAC.

### **Other areas for review**

3.83 A number of other suggestions were made for areas which could be considered alongside or instead of a review of Schedule 5. This section deals with those matters raised which are directly related to Schedule 5, and it is not intended to constitute ORR’s response to question 1 of the January consultation, which will be dealt with in our separate final conclusions document, to be published before the end of May 2012.

3.84 The Rail Freight Group said that there was a case for considering whether changes to the Schedule 5 requirements could release capacity whilst still protecting key commercial outcomes. It said that there would be merit in understanding how capacity could be increased through access and timetabling which might include:

- (a) more rapid progress on identification of Strategic Capacity, which will help pursue growth and encourage operators (particularly FOCs) to release unused paths under Part J and other mechanisms;



(b) consideration of technical factors which constrain and as a result are likely to be consume capacity;  
and

(c) specific targeted action at capacity hot spots to determine whether particular features of access rights are causing constraints and can be re-negotiated.

3.85 RFG noted that such a programme may not be wholly within ORR's remit, but it may wish to consider whether it should seek to encourage such an approach within the industry.

3.86 Whilst ORR has no remit in this area, we would remind the industry that we still believe that no stone should be left unturned in delivering real reform. This is not an area of work which ORR has to take forward – there is nothing to stop the industry taking the initiative and leading from the front. For its part, ORR would be happy to facilitate any work in this area, providing resource and support as far as it is able.

3.87 Other consultees said that work on Schedule 5 and access rights more generally should be considered alongside franchise reform.

3.88 ORR agrees with this view to some extent. But for reasons already given, action needs to be taken now to protect the interest of customers, users of the railway and taxpayers, as well as considering the strategic benefits of work in this area.

3.89 Some consultees said that a key issue to be considered was how (indeed, if at all) the industry identified usable spare capacity, and how the timetable was planned as a result. One consultee felt that it was difficult to arrive at a suitable definition of 'capacity', given the various types of usage on the network. More focus should be placed on how Network Rail delivers its obligations to identify capacity and plan the timetable, in the view of one consultee, who also pointed out that ORR has a statutory duty under section 4 of the Act to promote the efficient use of the railway.

3.90 ORR agrees with this point and notes Network Rail's ongoing work to improve its timetabling capability. Network Rail expanded on this point in its response to the January consultation, which can be found [here](#).

# Annex A: list of consultees

We received responses from the following organisations. Their responses are available in full on our [website](#).

| Consultee   | Date received    |
|---|------------------|
| Rail Freight Group                                      | 27 February 2012 |
| Freight Transport Association                           | 29 February 2012 |
| Northern Rail   | 1 March 2012     |
| Go-Ahead Group (London Midland, Southeastern, Southern) | 2 March 2012     |
| Transport for London                                    | 5 March 2012     |
| HS1 Limited   | 5 March 2012     |
| East Coast Main Line Company                            | 6 March 2012     |
| ATOC  | 6 March 2012     |
| North Yorkshire Moors Railway                           | 6 March 2012     |
| DB Regio Tyne & Wear                                    | 6 March 2012     |
| Eurostar International                                  | 7 March 2012     |
| Greater Anglia  | 7 March 2012     |
| DB Schenker   | 7 March 2012     |
| Stagecoach (South West Trains/East Midlands Trains)     | 7 March 2012     |
| Transport Scotland                                      | 7 March 2012     |
| Department for Transport                                | 7 March 2012     |
| GB Railfreight  | 7 March 2012     |

|                          |              |
|--------------------------|--------------|
| Passenger Focus          | 7 March 2012 |
| Network Rail             | 8 March 2012 |
| Alliance / Grand Central | 8 March 2012 |
| First Group              | 8 March 2012 |
| Virgin Trains            | 9 March 2012 |
| Arriva Group             | 9 March 2012 |
| Freightliner             | 9 March 2012 |

# Annex B: revised model Schedule 2

This annex contains a clean version of the new model Schedule 2.

## **SCHEDULE 2: THE ROUTES**

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.
3. In order to make Ancillary Movements, the Train Operator has permission to use any reasonable route, 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, 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 Network Code.

# Annex C: revised passenger Schedule 5

This annex contains a clean version of the new passenger Schedule 5.

## SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

### 1 Definitions

1.1 In this Schedule unless the context otherwise requires:

|                                     |  |
|-------------------------------------|--|
| <b>“Calling Pattern”</b>            | means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;  |
| <b>“Clockface Departures”</b>       | means, in respect of any Service, a pattern whereby departures from the point of origin of that Service, or any specified intermediate point, are fixed at the same number or numbers of minutes past each hour;                         |
| <b>“Contingent Right”</b>           | 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;                                 |
| <b>“Day”</b>                        | 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; |
| <b>“Exercised”</b>                  | has the meaning ascribed to it in Part D of the Network Code;  |
| <b>“Firm Right”</b>                 | has the meaning ascribed to it in Part D of the Network Code;  |
| <b>“Journey Time”</b>               | 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;   |
| <b>“Journey Time Review Notice”</b> | has the meaning ascribed to it in paragraph 7.5;   |
| <b>“Maximum Journey Time”</b>       | means, in respect of a Passenger Train Slot, the corresponding Maximum Journey Time, if any, set out in column 3 of Table 6.1;   |
| <b>“Maximum Key Journey Time”</b>   | means, in respect of a Passenger Train Slot, the corresponding Maximum Key Journey Time, if any, set out in column 3 of Table 6.1;   |
| <b>“Modification Notice”</b>        | has the meaning ascribed to it in paragraph 7.10;  |
| <b>“Network Change”</b>             | has the meaning ascribed to it in Part G of the Network Code;  |
| <b>[“Off-Peak Services”</b>         | means Services Scheduled on any part of a Weekday which are not “Peak Services”, and “Off-Peak” shall be construed accordingly;]   |

|  |  |
|--|--|
| <b>“Passenger Train Slot”</b>            | means a Train Slot intended by the Train Operator to be used for the provision of a Service;   |
| <b>[“Peak Services”</b>                  | means Services Scheduled on a ny Weekday (excluding Public Holidays) (i) to arrive at [ ] between [ ] hours and [ ] hours or (ii) to depart from [ ] between [ ] hours and [ ] hours, and “Peak” shall be construed accordingly;] <b>[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]</b> |
| <b>“Public Holiday”</b>                  | means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;  |
| <b>“Reduced Regular Calling Pattern”</b> | has the meaning ascribed to it in paragraph 4.1;   |
| <b>“Regular Calling Pattern”</b>         | has the meaning ascribed to it in paragraph 4.1;   |
| <b>Rolled Over Access Proposal</b>       | means a Train Slot which was obtained in the Prior Working Timetable and no variation is sought in the New Working Timetable;  |
| <b>“Scheduled”</b>                       | 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;   |
| <b>“Service Group”</b>                   | means any one or more (as the context may require) of the service groups described in this Schedule;   |
| <b>“Timetable Period”</b>                | means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;   |
| <b>"Timing Load"</b>                     | means, in relation to a Service, the timing reference code as defined from time to time in the Working Timetable;  |
| <b>“Train Service Code” or “TSC”</b>     | means the eight character code applied in the Performance Monitoring System and used to identify Services;   |
| <b>“Weekday”</b>                         | means any day (including, except for the purposes of paragraphs 6 and 7, a P ublic Holiday) which is not a Saturday or Sunday; and   |
| <b>“xx20”</b>                            | 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 [nnnn] |    |     |             |     |             |                         |              |                             |                      |          |        |
| Service description  |    |     |             |     |             | Passenger Train Slots   |              |                             |                      |          |        |
| From                 | To | Via | Description | TSC | Timing Load | Peak times <sup>1</sup> |              | Off-Peak times <sup>2</sup> | Weekday <sup>3</sup> | Saturday | Sunday |
|                      |    |     |             |     |             | Morning Peak            | Evening Peak |                             |                      |          |        |
|                      |    |     |             |     |             |                         |              |                             |                      |          |        |
|                      |    |     |             |     |             |                         |              |                             |                      |          |        |
|                      |    |     |             |     |             |                         |              |                             |                      |          |        |
|                      |    |     |             |     |             |                         |              |                             |                      |          |        |

Notes to Table:

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

2 Off-Peak times - arriving at and departing from a relevant station outside Peak times

<sup>3</sup> 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”.

### [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.

For TOCs which do not differentiate between Peak and Off-Peak, those columns and all three footnotes should be deleted.]

### *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 specified in Table 2.1 on the Days and within the Peak and Off-Peak times so listed using Specified Equipment 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 using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Rights for the purposes of Part D of the Network Code.
- 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:
  - (a) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at [*mmm, nnn, III*]; and
  - (b) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at [*kkk, jjj, iii*] [any other station listed in its Calling Pattern].
- 2.3 In order to provide through Services the Train Operator has:
  - (a) Firm Rights to combine Passenger Train Slots at [*nnn, mmm and III*]; and
  - (b) Contingent Rights to combine Passenger Train Slots at [*kkk, jjj and iii*] [all other locations].

Table 2.2: Additional Passenger Train Slots

| 1                   |    |     |             |     | 2                                |          |        |
|---------------------|----|-----|-------------|-----|----------------------------------|----------|--------|
| Service Group [nnn] |    |     |             |     |                                  |          |        |
| Service description |    |     |             |     | Additional Passenger Train Slots |          |        |
| From                | To | Via | Description | TSC | Weekday                          | Saturday | Sunday |
|                     |    |     |             |     |                                  |          |        |
|                     |    |     |             |     |                                  |          |        |
|                     |    |     |             |     |                                  |          |        |
|                     |    |     |             |     |                                  |          |        |

### *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 or 2.2; and
- (b) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.

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

### 3 Intervals

Table 3.1: Service Intervals

| 1                    |    |     |             |     | 2                              | 3                  |           |            |          | 4                               |           |            |          |
|----------------------|----|-----|-------------|-----|--------------------------------|--------------------|-----------|------------|----------|---------------------------------|-----------|------------|----------|
| Service Group [nnnn] |    |     |             |     |                                |                    |           |            |          |                                 |           |            |          |
| Service description  |    |     |             |     | Station where interval applies | Interval (minutes) |           |            |          | Maximum variation (+/- minutes) |           |            |          |
| From                 | To | Via | Description | TSC |                                | Peak1              | Off-Peak2 | Satur-day3 | Sun-day4 | Peak1                           | Off-Peak2 | Satur-day3 | Sun-day4 |
|                      |    |     |             |     |                                |                    |           |            |          |                                 |           |            |          |
|                      |    |     |             |     |                                |                    |           |            |          |                                 |           |            |          |
|                      |    |     |             |     |                                |                    |           |            |          |                                 |           |            |          |
|                      |    |     |             |     |                                |                    |           |            |          |                                 |           |            |          |

Notes to Table:

- 1 “Peak” means in Table 3.1 [start time] to [end time] and [start time] to [end time].
- 2 “Off-Peak” means in Table 3.1 [start time] to [end time]
- 3 “Saturday” means in Table 3.1 [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 desirable for services with limited frequency 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   |               |               | 3  |               |               |
|----------------------|----|-----|-------------|-----|---|---------------|---------------|--|---------------|---------------|
| Service Group [nnnn] |    |     |             |     |   |               |               |  |               |               |
| Service description  |    |     |             |     | Minimum number of Passenger Train Slots arriving at [nnnn] in each specified period [with a maximum variation of +/- [ ] minutes] |               |               | Minimum interval between 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] | [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 where intervals are not relevant insert "n/a" in column 3]

Table 3.1b: Evening Peak Service Intervals

| 1                    |    |     |             |     | 2  |               |               | 3  |               |               |
|----------------------|----|-----|-------------|-----|--|---------------|---------------|--|---------------|---------------|
| Service Group [nnnn] |    |     |             |     |  |               |               |  |               |               |
| Service description  |    |     |             |     | Minimum number of Passenger Train Slots departing from [nnnn] in each specified period [with a maximum variation of +/- [ ] minutes] |               |               | Minimum interval between 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] | [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 where intervals are not relevant insert "n/a" in column 3]



### *Service Intervals*

- 3.1 In respect of each Service specified in column 1 of Tables 3.1(a) and 3.1(b), 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 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.
- 3.4 Network Rail shall be entitled to vary:
- (a) 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
  - (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),
- 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 [ ] 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 [nnnn] |     |     |             |     |                         |                     |
| Service description  |     |     |             |     |                         |                     |
| Between              | And | Via | Description | TSC | Regular Calling Pattern | Additional stations |
|                      |     |     |             |     |                         |                     |
|                      |     |     |             |     |                         |                     |
|                      |     |     |             |     |                         |                     |
|                      |     |     |             |     |                         |                     |

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

"All stations" is an adequate population of this table if appropriate.

Note that this is 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].

### *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*

- 4.5 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.

*Specified Equipment*

5.1 In order to provide the Services specified in this Schedule 5 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]

and

(b) Contingent Rights to operate any railway vehicles registered with Network Rail's rolling stock library, subject to obtaining any necessary route clearance for the route in question.

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                | 4                         |
|----------------------|----|-----|-------------|-----|-------------------------------|------------------|---------------------------|
| Service Group [nnnn] |    |     |             |     |                               |                  |                           |
| Service description  |    |     |             |     |                               |                  |                           |
| From                 | To | Via | Description | TSC | Protection Type (MJT or MKJT) | Days of the week | Journey Time (in minutes) |
|                      |    |     |             |     |                               |                  |                           |
|                      |    |     |             |     |                               |                  |                           |
|                      |    |     |             |     |                               |                  |                           |
|                      |    |     |             |     |                               |                  |                           |

### [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 or Maximum Key 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, being a Maximum Journey Time or Maximum Key Journey Time as specified by MJT or MKJT respectively in column 2, on the days listed in column 3, not exceeding the Journey Time listed in column 4.
- 6.3 Journey Times specified as Maximum Journey Times 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 [date];
  - (b) increase or decrease in the relevant station dwell times applicable as at [date]; 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 Engineering Access Statement and/or the Applicable Timetable Planning Rules.
- 6.4 Journey Times specified as Maximum Key Journey Times are not subject to changes to the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules, otherwise than in accordance with the provisions of paragraph 7.

## **7 Provisions applicable to Journey Time protection**

### *Restriction on changes to the Engineering Access Statement and Timetable Planning Rules*

7.1 In relation to the Applicable Engineering Access Statement and the Applicable Timetable Planning Rules:

- (a) subject to paragraphs 7.1(b) and 7.1(c), Network Rail shall not propose or agree to any amendments to the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules which would prevent it from Scheduling a Journey Time in the Working Timetable which is equal to or less than the relevant Maximum Key Journey Time specified for every Passenger Train Slot specified in Table 6.1;
- (b) paragraph 7.1(a) shall not apply in relation to any such amendment which is proposed by the Train Operator or effected pursuant to the order of an appeal body under Part D of the Network Code or any other competent tribunal; and
- (c) Network Rail shall not be in breach of paragraph 7.1(a) to the extent that the failure to Schedule any Journey Time is the result of any Network Rail Restriction of Use, Competent Authority Restriction of Use, or Operator Restriction of Use, (as these terms are defined in or for the purposes of Part 3 of Schedule 4).

### *Network Change*

7.2 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 Key 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 Network Code shall apply:

- (i) as if such Network Change had been proposed by Network Rail; and
- (ii) as if the revisions to Maximum Key Journey Times agreed under paragraph 7.3, or determined under paragraph 7.4, subject to any modification under paragraph 7.10, constitute the scope of the relevant Network Change,

and compensation shall be payable to the Train Operator accordingly.

### *Agreement of revised Maximum Key Journey Time*

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

### *Referral to ADRR*

- 7.4 If the parties fail to agree such revised Maximum Key Journey Time(s) within 3 months of the request of either party for revision of the relevant Maximum Key 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 Key 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.

### *Provisions applicable to Maximum Key Journey Times and Maximum Journey Times*

- 7.5 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 6.1as are specified in the notice;
  - (b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and
  - (c) containing its reasons for giving it.
- 7.6 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.
- 7.7 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.
- 7.8 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) Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable;
  - (ii) any relevant criteria which may have been published by ORR; and
  - (iii) the reasons for the service of the Journey Time Review Notice given by ORR in that notice.



*Requirement for Office of Rail Regulation's consent*

7.9 Subject to paragraph 7.10, a variation:

- (a) agreed under paragraph 7.3;
- (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 7.7;

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 Regulation's Modification Notice*

7.10 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 7.3;
  - (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 7.7;
- (b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and
- (c) containing its reasons for giving it.

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

*Office of Rail Regulation's notice for substitution of date/period*

7.12 ORR shall be entitled, by notice to the parties and the Secretary of State, to substitute for any date or period specified in paragraph 7.8, 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 7.12*

7.13 No notice under paragraph 7.12 may be given unless:

- (a) ORR has consulted the parties and the Secretary of State;
- (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*

| 1                    |             |     |             |     | 2       | 3         |
|----------------------|-------------|-----|-------------|-----|---------|-----------|
| Service Group [nnnn] |             |     |             |     |         |           |
| Service description  |             |     |             |     |         |           |
| From [or Between]    | To [or And] | Via | Description | TSC | Station | Platforms |
|                      |             |     |             |     |         |           |
|                      |             |     |             |     |         |           |
|                      |             |     |             |     |         |           |
|                      |             |     |             |     |         |           |

**[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.

Table 8.2: Connections

| 1   | 2                |             | 3                 |             | 4                        | 5                                    | 6                                    |
|---|------------------|-------------|-------------------|-------------|--------------------------|--------------------------------------|--------------------------------------|
| Service Group<br>[nnnn] [or Service<br>Groups [nnnn] and<br>[mmmm]] | Arriving Service |             | Departing Service |             |                          |                                      |                                      |
| Station   | From             | Description | To                | Description | Number of<br>connections | Minimum connecting<br>time (minutes) | Maximum connecting<br>time (minutes) |
|   |                  |             |                   |             |                          |                                      |                                      |
|   |                  |             |                   |             |                          |                                      |                                      |
|   |                  |             |                   |             |                          |                                      |                                      |
|   |                  |             |                   |             |                          |                                      |                                      |

**[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.

Table 8.3: Departure time ranges

| 1                    |    |     |             |     | 2    | 3       | 4   |
|----------------------|----|-----|-------------|-----|------|---------|---|
| Service Group [nnnn] |    |     |             |     |      |         |   |
| Service description  |    |     |             |     |      |         |   |
| From                 | To | Via | Description | TSC | Days | Station | Departure time ranges<br>[xx:yy to xx:zz] |
|                      |    |     |             |     |      |         |   |
|                      |    |     |             |     |      |         |   |
|                      |    |     |             |     |      |         |   |
|                      |    |     |             |     |      |         |   |
|                      |    |     |             |     |      |         |   |

**[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.



Table 8.4: Stabling facilities

| 1                 | 2                               | 3                   |
|-------------------|---------------------------------|---------------------|
| Stabling facility | Time available [aa:bb to xx:yy] | Specified Equipment |
|                   |                                 |                     |
|                   |                                 |                     |
|                   |                                 |                     |
|                   |                                 |                     |

**[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 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.

Table 8.5: Turnaround times

| 1                    |            |     |             |     | 2       | 3                          | 4                          |
|----------------------|------------|-----|-------------|-----|---------|----------------------------|----------------------------|
| Service Group [nnnn] |            |     |             |     |         |                            |                            |
| Service description  |            |     |             |     |         |                            |                            |
| From [or<br>Between] | To [orAnd] | Via | Description | TSC | Station | Minimum turnaround<br>time | Maximum turnaround<br>time |
|                      |            |     |             |     |         |                            |                            |
|                      |            |     |             |     |         |                            |                            |
|                      |            |     |             |     |         |                            |                            |
|                      |            |     |             |     |         |                            |                            |

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

Turnaround times 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, or when it is intended to undercut the values in the Timetable Planning Rules.]

*Turnaround times*

- 8.7 At each station in column 2 of Table 8.5, the Train Operator has 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.

Table 8.6: Quantum of Additional Calls

| 1                    |     |     |             |     | 2                   | 3                           |
|----------------------|-----|-----|-------------|-----|---------------------|-----------------------------|
| Service Group [nnnn] |     |     |             |     |                     |                             |
| Service description  |     |     |             |     |                     |                             |
| Between              | And | Via | Description | TSC | Additional Stations | Quantum of Additional Calls |
|                      |     |     |             |     |                     |                             |
|                      |     |     |             |     |                     |                             |
|                      |     |     |             |     |                     |                             |
|                      |     |     |             |     |                     |                             |

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

This table should be used only when it is essential to serve stations a limited number of times each day, and there should normally be a linkage between this table and Table 4.1, column 3, "Additional Stations".]

*Quantum of additional calls*

- 8.8 The Train Operator has Firm Rights to have Scheduled, in respect of each Service specified in column 1 of Table 8.6, the number of calls specified in column 3 at the station(s) specified opposite that Service in column 2, such stations also being listed as “Additional Stations” in column 3 of Table 4.1.

# Annex D: revised freight Schedule 5

This annex contains a clean version of the new freight Schedule 5.

## SCHEDULE 5: SERVICES

### 1. Definitions

#### 1.1 Definitions

In this Schedule 5, unless the context otherwise requires:

“**Access Right Type**” indicates, in relation to each Service shown in the Rights Table, whether that Service is a Level One Right (**L1**), a Level Two Right (**L2**), or a Level Three Right (**L3**);

“**Alternative Specified Equipment (Timing Load)**” means a Specified Equipment (Timing Load) in relation to which the Train Operator has Contingent Rights;

“**Arrival Time**” means the time of arrival of a Service at its Destination having due regard to Network Rail’s Flexing Rights;

“**Arrival Time at Intermediate Point**” means the time of arrival of a Service at an Intermediate Point having due regard to Network Rail’s Flexing Rights;

“**Association**” means a Special Term linking the Planning of two Services at any location or locations;

“**Contingent Right**” means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5;

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

“**Cordon**” means a location on the Network stated in Column 1 of the Table in paragraph 2.2.8;

“**Cordon Cap**” means, in relation to a Cordon, the maximum number of Train Slots in respect of any Service to which a Level Two Right applies per Day in a specified direction whose Routing passes through the Cordon and to which the Train Operator is entitled, as stated in Column 2 of the Table in paragraph 2.2.8;

“**Day**” means any period of 24 hours beginning at 0000 hours and ending immediately before the next succeeding 0000 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;

“**Days per Week**” means

- (a) in relation to any Service other than one described in (b) below, the Days of the week on which the Train Operator has a Firm Right to a Train Slot to operate that Service, expressed as the Days on which the Service is to be Planned to commence from its Origin; or



- (b) in relation to any Level 2 Right to a Service which relates to the delivery of coal to an electricity generating station, the Days of the week on which the Train Operator has a Firm Right to a Train Slot to operate that Service, expressed as the Days on which that Service is to be Planned to arrive at such electricity generating station;

**“Departure Time”** means the time of departure of a Service from its Origin having due regard to Network Rail’s Flexing Rights;

**“Departure Time from Intermediate Point”** means the time of departure of a Service from an Intermediate Point having due regard to Network Rail’s Flexing Rights;

**“Dwell Time”** means, in relation to any Intermediate Point, the minimum amount of time (expressed in minutes) which a Service is to be Planned to stay at such location;

**“Electricity for Traction”** means, where “Y” is marked in the column headed “Electric Traction Y/N” in the Rights Table in relation to a Service, that Network Rail has agreed to provide electricity for traction purposes for that Service, and where “N” is marked in the column headed “Electric Traction Y/N” in the Rights Table in relation to a Service, that Network Rail has not agreed to provide electricity for traction purposes for that Service;

**“Firm Rights”** means:

- (a) in the case of a Timetable Participant, a right under its regulated access agreement in respect of the number (or quantum) of Freight Train Slots in any specified period, including, as appropriate, rights to Freight Train Slots in respect of timing (including Minimum Turn Around Time at Origin, Days per Week, Departure Time, Arrival Time, Minimum Turn Around Time at Destination, Arrival Times at Intermediate Points, Departure Times from Intermediate Points, Minimum Dwell Times at Intermediate Points), Origin, Destination, Routing, Intermediate Points, Total/Maximum Services per Week, Total/Maximum Services per Day, Standard Specified Equipment (Timing Load), Route Availability, Loading Gauge, provision of Electricity for Traction, a specific Maximum Length of Train where this is greater than that contained in the Operating Constraints, Special Terms and Access Right Type; and
- (b) in the case of Network Rail, a right under the Engineering Access Statement or the Timetable Planning Rules,

which, in either case, is not expressed to be a Contingent Right or to be subject to any contingency outside the control of the holder of the right but which is, in a case within paragraph (a) above, subject to:

- (i) the Operating Constraints (except in relation to the length of a Train where a Maximum Length of Train has been agreed);
- (ii) the exercise by Network Rail of any applicable Flexing Right; and

(iii) the operation of any other provision of the Network Code;

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

**“Freight Train Slot”** means a Train Slot intended by a Timetable Participant to be used for the provision of a railway freight service;

**“Level One Right”** or **“(L1)”** means a Firm Right to a Train Slot relating to a Service in respect of which “L1” is noted in the column headed “Access Right Type”, the Service Characteristics of which are set out in the Rights Table;

**“Level Two Right”** or **“(L2)”** means a Firm Right to a Train Slot relating to a Service in respect of which “L2” is noted in the column headed “Access Right Type”, the Service Characteristics of which are set out in the Rights Table;

**“Level Three Right”** or **“(L3)”** means a Contingent Right to a Train Slot relating to a Service in respect of which “L3” is noted in the column headed “Access Right Type”, the Service Characteristics of which are set out in the Rights Table;

**“Loading Gauge”** has the meaning ascribed to it by Section D2 of the **“Working Manual for Rail Staff - Section 2 - Loading and Conveyance of Freight Traffic”** (as defined for each section of the Network within the various sectional appendices to the Working Timetable) and denoted in the Rights Table by the equivalent W number of the Specified Equipment for the relevant Service;

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

**“Maximum Variation”** means the maximum time (expressed in minutes) by which Network Rail may exercise its Flexing Rights to vary Departure Times, Departure Times from Intermediate Points, Arrival Times or Arrival Times at Intermediate Points;

**“Minimum Dwell Times at Intermediate Points”** means the Dwell Time at any relevant Intermediate Point;

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

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

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

**“Rights Table”** means the table annexed to paragraph 4 of this Schedule 5;

**“Route Availability”** has the meaning ascribed to it in the “Working Manual For Rail Staff - Freight Train Operations”;

**“Route Availability Code”** means a code between one and ten given to every vehicle and route or part of a route, denoting the maximum permissible axle loading;

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

**“Service Planning Characteristics”** means the various characteristics, including Timing Load, Maximum Length of Train, Route Availability and Loading Gauge to be used in the Planning of a Service;

**“Special Terms”** means any special characteristic of a Service which is specified as such in a Rights Table;

**“Standard Specified Equipment (Timing Load)”** means, in relation to a Service, a Timing Load to which the Train Operator has Firm Rights;

**“Stanox”** means, in relation to an Origin or Destination, a numeric reference used in Network Rail systems to describe such physical location, either part of the Network or a facility adjoining the Network, and **“Origin Stanox”** and **“Destination Stanox”** shall be construed accordingly;

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

**“Timing Load”** means, in relation to a Service, the timing reference code as defined in the Working Timetable which details the maximum speed and particular combination of traction type and trailing weight, together with whether any vehicles may be conveyed to which local speed restrictions will apply;

**“Total/Maximum Services per Day”** means

(a) in relation to each Service to which a Level One Right applies, the total number of Freight Train Slots per Day to which the Train Operator has Firm Rights; and

(b) in relation to each Service to which a Level Two Right applies, the maximum number of Freight Train Slots per Day to which the Train Operator has Firm Rights;

**“Total/Maximum Services per Week”** means:

(a) in relation to each Service to which a Level One Right applies, the total number of Freight Train Slots per Week to which the Train Operator has Firm Rights; and

(b) in relation to each Service to which a Level Two Right applies, the maximum number of Freight Train Slots per Week to which the Train Operator has Firm Rights.

**“Train Operator Variation Services”** means Services in relation to which Train Operator Variation Requests are made by the Train Operator pursuant to paragraph 2.5

## 1.2 *Days of the Week*

With respect to Services, the following convention shall be used to denote days of the Week:

M - Monday;

T - Tuesday;

W - Wednesday;

Th - Thursday;

F - Friday;

S - Saturday;

SUN - Sunday;

EWD - Monday to Saturday inclusive;

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

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

## 2. **Rights and Services**

### 2.1 *Level One Rights*

The Train Operator shall be entitled to the Level One Rights.

### 2.2 *Level Two Rights*

2.2.1 Subject to paragraphs 2.2.3 and 2.2.7, the Train Operator shall be entitled to the Level Two Rights.

2.2.2 In respect of any Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request relating to a Service to which a Level Two Right applies and which has been accepted by Network Rail, where a Day or Week is specified in the Rights Table in relation to such Service, Network Rail shall secure that:

(a) if the Service relates to the delivery of coal to an electricity generating station, the time of arrival at such generating station shall fall in the Day or Week specified in the Rights Table in relation to such Service; and

- (b) in respect of any other Service, the time of departure shall fall in the Day or Week specified in the Rights Table in relation to such Service .

2.2.3 The Train Operator shall not be entitled on any Day to a number of Train Slots in respect of any Service to which a Level Two Right applies Planned to pass through a Cordon which exceeds the Cordon Cap for that Cordon.

2.2.4 In respect of any Access Proposal or Train Operator Variation Request which:

- (a) relates to a Service to which a Level Two Right applies; and
- (b) is for a number of Train Slots for a Day which could pass through a Cordon and would, if Planned, exceed the Cordon Cap for that Cordon,

the Train Operator shall notify Network Rail at the time of making the relevant Access Proposal or Train Operator Variation Request of the Routing priority or priorities which it places on the Train Slots. In respect of a Rolled Over Access Proposal, the Routing priority for each Train Slot, which is the subject matter of the Rolled Over Access Proposal, shall be deemed to be the route taken by each such Train Slot in the Prior Working Timetable.

2.2.5 Network Rail shall, acting in accordance with Part D of the Network Code, accept an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request as referred to in paragraph 2.2.4 by including Train Slots in the New Working Timetable or the Working Timetable in accordance with the Routing priority notified by the Train Operator up to any relevant Cordon Cap.

2.2.6 Where a Train Slot which is the subject of an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request as referred to in paragraph 2.2.4:

- (a) would pass through a Cordon, if Planned;
- (b) when aggregated with all other Train Slots requested by the Train Operator as referred to in paragraph 2.2.4, would cause the relevant Cordon Cap to be exceeded; and
- (c) is not included by Network Rail in the New Working Timetable or the Working Timetable,

then:

- (i) the Train Operator shall have Level Two Rights to a different Train Slot via any Routing which does not pass through the relevant Cordon; and
- (ii) Network Rail shall endeavour to include such a different Train Slot in the New Working Timetable or the Working Timetable.

2.2.7 Where Network Rail has failed to accommodate any Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request for Train Slots

under paragraph 2.2.6(ii) because such Train Slots would, if Planned, exceed any relevant Cordon Caps, then:

- (a) it shall not be in breach of contract; and
- (b) the Train Operator shall not, for the duration of that Timetable Period, have Level Two Rights to any Train Slots which, if Planned, would have any of the same Routing characteristics as any part of the Train Slots which Network Rail did not include in the New Working Timetable or the Working Timetable because they would, if Planned, exceed any relevant Cordon Caps.

2.2.8 For the purposes of this paragraph 2.2, the Cordons are those locations set out in column 1 of the table below and the Cordon Cap for each such location is the number of Train Slots in respect of any Service to which a Level Two Right applies set out in column 2 of the table below, in the direction indicated in column 2:

| Column 1: Cordon | Column 2: Cordon Cap by direction and number |  |
|------------------|--|--|
|                  |  |  |
|                  |  |  |

2.2.9 For the purposes of paragraph 2.2.8,

- (a) where the location specified is a station, it shall include:
  - (i) track passing through the station, whether or not it passes adjacent to a platform; and
  - (ii) track passing immediately adjacent to the station and parallel to or substantially parallel to the track referred to in (i) above; and
- (b) in respect of Newark Crossing, the location shall include the curve between Newark Crossing East Junction and Newark Crossing South Junction.

### 2.3 *Level Three Rights*

2.3.1 The Train Operator shall be entitled to the Level Three Rights.

## 2.4 *Ancillary Movements*

- 2.4.1 Subject to paragraph 2.4.2 below, any Ancillary Movement not entered in the New Working Timetable by D-26 shall be treated as a Train Operator Variation Request.
- 2.4.2 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 to and from maintenance depots for the purpose of maintaining rolling stock;
  - (b) movements for driver training purposes; and
  - (c) movements which do not convey loaded wagons or empty passenger rolling stock.
- 2.4.3 For the purposes of paragraph 2.4.2, Ancillary Movements shall not include movements of rolling stock for the purpose of testing in furtherance of vehicle acceptance procedures.

## 2.5 *Train Operator Variation Services*

- 2.5.1 Train Operator Variation Services are services for which the Train Operator has made a Train Operator Variation Request in accordance with Part D of the Network Code and which Train Operator Variation Request Network Rail has:
- (a) accepted or been deemed to have accepted; or
  - (b) modified, and that modification has either been accepted or been deemed to have been accepted by the Train Operator.
- 2.5.2 The duration of any Train Operator Variation Service shall not exceed twelve months.
- 2.5.3 For the purposes of paragraph 2.5.1, Train Operator Variation Services:
- (a) shall not include Services for the purpose of testing under vehicle acceptance procedures; but
  - (b) shall include Services for the purpose of testing rolling stock (including testing for the purpose of mileage accumulation) which has secured an engineering acceptance certificate and a certificate of interim operation.
- 2.5.4 For the purpose of this paragraph 2.5, where Train Operator Variation Requests for successive Train Operator Variation Services each having substantially the same characteristics are accepted, such Train Operator Variation Services shall be aggregated for the purpose of ascertaining whether the period of twelve months has been exceeded.

2.5.5 Paragraphs 2.5.1 to 2.5.4 shall not apply to any Service to which an L1, L2 or L3 right applies that has been the subject matter of a Train Operator Variation Request.

## 2.6 *Public holidays*

*[arrangements specifying the treatment of public holidays]*

## **3. Network Rail's Flexing Rights**

### 3.1 *Maximum Variation between Timetable Periods*

The Maximum Variation in respect of any Service to which a Level 1 Right applies shall be no more than 30 minutes from the corresponding time for the corresponding Train Slot in the preceding Timetable Period.

### 3.2 *Associations*

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

## **4. Services**

### 4.1 Services

The Services under this contract comprise:

- (a) the Services having the Service Characteristics set out in the Rights Table;
- (b) any Diverted Services;
- (c) Ancillary Movements;
- (d) any Train Operator Variation Services; and
- (e) any Revised Base Service.

### 4.2 *Service Characteristics: Level One Rights*

4.2.1 Each Service to which Level One Rights apply has the Service Characteristics set out in the Rights Table, namely:

- (a) the characteristics relating to Origin set out in columns 1 to 5 inclusive of the Rights Table, comprising:
  - (i) Minimum Turn Around Time at Origin;
  - (ii) Days per Week;
  - (iii) Departure Time;



- (iv) Origin; and
- (v) Origin Stanox;
- (b) the characteristics relating to Destination set out in columns 6 to 9 inclusive of the Rights Table, comprising:
  - (i) Destination;
  - (ii) Arrival Time;
  - (iii) Destination Stanox; and
  - (iv) Minimum Turn Around Time at Destination;
- (c) the additional characteristics set out in columns 10 to 18 inclusive and column 25 of the Rights Table, comprising:
  - (i) Routing;
  - (ii) Intermediate Points;
  - (iii) Arrival Times at Intermediate Points;
  - (iv) Departure Times from Intermediate Points;
  - (v) Minimum Dwell Times at Intermediate Points;
  - (vi) applicability of Electricity for Traction;
  - (vii) Total/Maximum Services per Week;
  - (viii) Total/Maximum Services per Day;
  - (ix) Special Terms, if any; and
  - (x) Access Right Type.
- (d) the characteristics relating to service planning set out in columns 19 to 23 inclusive of the Rights Table, comprising:
  - (i) Standard Specified Equipment (Timing Load);
  - (ii) Alternative Specified Equipment (Timing Load);
  - (iii) Maximum Length of Train;
  - (iv) Route Availability Code; and
  - (v) Loading Gauge;
- (e) the Maximum Variation set out in column 24 of the Rights Table.

#### 4.3 *Service Characteristics: Level Two Rights and Level Three Rights*

4.3.1 Each Service to which Level Two Rights or Level Three Rights (as the case may be) apply has the Service Characteristics set out in the Rights Table, namely:

- (a) the characteristics relating to Origin set out in columns 1, 2, 4 and 5 inclusive of the Rights Table, comprising:
  - (i) Minimum Turn Around Time at Origin;
  - (ii) Days per Week;
  - (iii) Origin; and
  - (iv) Origin Stanox;
- (b) the characteristics relating to Destination set out in columns 6, 8 and 9 of the Rights Table, comprising:
  - (i) Destination;
  - (ii) Destination Stanox; and
  - (iii) Minimum Turn Around Time at Destination;
- (c) the additional characteristics set out in columns 15 to 18 inclusive and 25 of the Rights Table, comprising:
  - (i) applicability of Electricity for Traction;
  - (ii) Total/Maximum Services per Week;
  - (iii) Total/Maximum Services per Day;
  - (iv) Special Terms, if any; and
  - (v) Access Right Type
- (d) the characteristics relating to service planning set out in columns 19 to 23 inclusive of the Rights Table, comprising:
  - (i) Standard Specified Equipment (Timing Load);
  - (ii) Alternative Specified Equipment (Timing Load);
  - (iii) Maximum Length of Train;
  - (iv) Route Availability Code; and
  - (v) Loading Gauge.

#### *4.4 Specified Equipment*

- 4.4.1 Subject to paragraph 4.4.3, the Train Operator has, in relation to a Service, a Firm Right to use any equipment registered with Network Rail's rolling stock library which has performance characteristics identical to or better than the Standard Specified Equipment (Timing Load) specified in the Rights Table for such Service.
- 4.4.2 Subject to paragraph 4.4.3, the Train Operator has, in relation to a Service, a Contingent Right to use any equipment registered with Network Rail's rolling stock library which has performance characteristics identical to or better than the Alternative Specified Equipment (Timing Load) specified in the Rights Table for such Service.
- 4.4.3 No rolling stock, whether Standard Specified Equipment, Alternative Specified Equipment or equipment registered with Network Rail's rolling stock library, may be used unless and until the rolling stock concerned has achieved vehicle and route acceptance necessary for its use on the Network.

#### *4.5 Information*

The parties make no representations regarding the data set out in columns A, B, C and D of the Rights Table. Such data does not form part of this contract and is included in the Rights Table for convenience only.



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