

**ONE HUNDRED AND FOURTEENTH  
SUPPLEMENTAL AGREEMENT**

**between**

**NETWORK RAIL INFRASTRUCTURE LIMITED**

**and**

**The Chiltern Railway Company Limited**

---

**relating to amendments to the Track Access Contract  
(Passenger Services) dated 05 February 2004**

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**THIS ONE HUNDRED AND FOURTEENTH SUPPLEMENTAL AGREEMENT is dated**  
23-10 2015 and made between

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under company number 02904587, having its registered office at 1 Eversholt Street, London NW1 2DN ("**Network Rail**"); and
- (2) **THE CHILTERN RAILWAY COMPANY LIMITED** a company registered in England and Wales under company number 3007939 having its registered office at 1, Admiral Way, Doxford International Business Park, Sunderland, England, SR3 3XP (the "**Train Operator**").

**Background:**

- (A) The parties entered into a Track Access Contract (Passenger Services) dated 05 February 2004 as amended by various supplemental agreements (which track access contract as subsequently amended is hereafter referred to as the "**Contract**").
- (B) The parties wish to amend the Contract in the manner and on the terms described below.

**IT IS HEREBY AGREED** as follows:

**1. INTERPRETATION**

In this Supplemental Agreement words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise.

"Effective Date" means the later of the Water Eaton Effective Date and the date on which the Office of Rail Regulation gives its approval, pursuant to section 22 of the Act, of the terms of this Supplemental Agreement.

**2. EFFECTIVE DATE AND TERM**

The amendments to the Contract made pursuant to this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect on the Expiry Date or earlier termination of the Contract.

**3. AMENDMENT TO THE REGISTERED OFFICE ADDRESS**

- 3.1 In the parties clause on Page 1 of the Contract, the "(1)" and the words set out against it shall be deleted and replaced with the following:

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

**4. AMENDMENT TO SCHEDULE 1**

- 4.1 Schedule 1 of the Contract, Contact particulars, shall be deleted and replaced with Schedule 1 as set out in Annex 1 of this agreement.

## 5. AMENDMENTS TO CLAUSE 1.1

5.1 The following definitions in Clause 1.1 of the contract shall be deleted in their entirety:

(a) **“SRA”** means the Strategic Rail Authority;

(b) **“the Regulator”** means the officer who was appointed by the Secretary of State under Section 1 of the Act for the purpose of carrying out the functions assigned or transferred to him by or under the Act, which functions were subsequently transferred to the Office of Rail Regulation by virtue of section 16(1) of the Railways and Transport Safety Act 2003;

5.2 In Clause 1.1 of the Contract the definitions of “Specified Equipment” and “Systems Code” shall be deleted and replaced with:

(a) **“Specified Equipment”** means the railway vehicles which the Train Operator is entitled to use in the provision of Services as specified in paragraph 5.1 of Schedule 5;

(b) **“Systems Code”** means the code of practice relating to the management and development of railway code systems as amended from time to time in accordance with its terms;

5.3 The following definitions shall be added to Clause 1.1 of the Contract:

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

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

5.4 In Clause 1.1 of the Contract the definition of **“EG3 Phase 2 Condition Subsequent”** shall be deleted and replaced with:

**EG3 Phase 2 Conditions Subsequent** means:

(a) Actual Proving in relation to EG3 Phase 2 is completed and passed to the satisfaction of Network Rail within the EG3 Phase 2 proving Period;

(b) The Water Eaton Works Completion Certificate has been issued by Network Rail in relation to the Water Eaton Works.

## 6. AMENDMENTS TO CLAUSE 1.2 INTERPRETATION

6.1 In Clause 1.2 of the Contract, in sub-paragraph (p) replace the words “Office of Rail Regulation” with the words “Office of Rail and Road” ;

## 7. AMENDMENT TO CLAUSE 12 GOVERNING LAW

7.1 Clause 12 of the Contract shall be deleted and replaced with the following:

### **“GOVERNING LAW**

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

## 8. AMENDMENTS TO CLAUSE 18.4 NOTICES

8.1 Clause 18.4.2 of the Contract shall be deleted in its entirety and replaced with the following clause:

*“18.4.2 right to modify registered company and communication details*

A party shall be entitled to modify in any respect:

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

(b) the communication particulars which relate to it and which are set out in Schedule 1,

by giving notice of such modification:

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

(ii) to ORR within 14 days of such modification.”

**9. AMENDMENTS TO SCHEDULE 2**

9.1 Schedule 2 to the Contract (The Routes) shall be deleted in its entirety and replaced with Schedule 2 as set out in Annex 2 of this agreement.

**10. AMENDMENTS TO SCHEDULE 5**

10.1 (a) Schedule 5, Appendix 8b of the Contract shall be amended such that:

(i) Tables 2.1(a), 2.1(b), 2.1(c) and 2.1(d)(A) Passenger Train Slots, shall be deleted in their entirety;

(ii) Tables 3.1(a), 3.1(b), 3.1(c) and 3.1(d)(A) Service Intervals, shall be deleted in their entirety;

(iii) Tables 3.3(a), 3.3(b), 3.3(c) and 3.3(d)(A) Earliest and latest Passenger Train Slots, shall be deleted in their entirety;

(iv) Tables 4.1(a), 4.1 (c) and 4.1(d)(A) Calling Patterns, shall be deleted in their entirety;

(v) Tables 5.1(a), 5.1(b), 5.1(c) and 5.1(d)(A) Specified Equipment, shall be deleted in their entirety;

(vi) Tables 6.1(a), 6.1(b), 6.1(c) and 6.1 (d)(A) Journey Times, shall be deleted in their entirety;

(vii) Tables 6.2(a) and 6.2(b)(A) Fastest Key Journey Times, shall be deleted in their entirety;

(viii) Table 8.2 Connections, shall be deleted in its entirety;

(ix) Table 8.4 Stabling facilities, shall be deleted in its entirety.

(b) Schedule 5 (The Services and Specified Equipment), excluding Appendix 8b, which shall be retained as amended above, shall be deleted and replaced with the Schedule 5 set out in Annex 3 of this agreement.

**11. AMENDMENT TO SCHEDULE 7**

11.1 in Schedule 7 of the Contract the following definition shall be deleted in its entirety:

“**CP4** means the control period of five years that commenced at 0000 hours on 1 April 2009 and ends at 2359 hours on 31 March 2014”

11.2 In paragraph 1 of Part 1 of Schedule 7 of the Contract, the definitions of “**Oxford Facility Charge Date**” and “**Water Eaton Facility Charge Date**” shall be deleted and replaced with the following:

- (i) “**Oxford Facility Charge Date** – means with effect from the Oxford Effective Date the earlier of the date upon which the Oxford Services are first to be operated by the Train Operator on the Routes from Bicester South Junction to Oxford via Bicester Village and the date that is six (6) months from the Oxford Effective Date;”
- (ii) “**Water Eaton Facility Charge Date** – means until the Oxford Effective Date the earlier of the date upon which the Water Eaton Services are first to be operated by the Train Operator on the Routes from Bicester South Junction to Oxford Parkway via Bicester Village and the date that is six (6) months from the Water Eaton Effective Date;”

## 12. **EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE CONTRACT**

The parties agree that the Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and with effect from and including the date hereof and during the period in which the amendments made by this Supplemental Agreement are to have effect, all references in the Contract to the "Contract", "herein", "hereof", "hereunder" and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contract as amended by this Supplemental Agreement.

## 13. **LAW**

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with the law of England and Wales.

## 14. **THIRD PARTY RIGHTS**

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

## 15. **COUNTERPARTS**

This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

**IN WITNESS** of which Network Rail and the Train Operator have, by their duly authorised representatives, respectively entered into this Supplemental Agreement on the date first above written.

SIGNED BY ..... *M.S. Froisher* .....

Print name ..... *MARTIN FROISHER* .....

Duly authorised for and on behalf of  
**NETWORK RAIL INFRASTRUCTURE LIMITED**

SIGNED BY ..... *R.W. Bughouse* .....

Print name ..... *R.W. BUGHOUSE* .....

Duly authorised for and on behalf  
**THE CHILTERN RAILWAY COMPANY LIMITED**

## ANNEX 1

### Schedule 1 Contact particulars

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

Network Rail Infrastructure Limited  
1 Eversholt Street  
London  
NW1 2DN  
Tel: 020 7904 4001

Email: [notices@networkrail.co.uk](mailto:notices@networkrail.co.uk)

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to:

The Route Director  
Network Rail London North Western  
100 Wharfside Street  
The Mailbox  
Birmingham  
B1 1RT  
Tel: 0121 345 3085  
Fax: 0121 345 4009

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

The Chiltern Railway Company Limited  
Great Central House  
Marylebone Station  
Melcombe Place  
London  
NW1 6JJ  
Tel: 0207 733 3022  
Fax: 0207 733 3018

All written notices to be marked:

"URGENT: ATTENTION

and copied to: THE MANAGING DIRECTOR



## **Annex 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 3

### Schedule 5 The Services and the Specified Equipment

#### 1 Definitions

1.1 In this Schedule unless the context otherwise requires:

<b>Applicable Timetable</b> <sup>73rd</sup>	means, in respect of a day, that part of the Working Timetable which is required to be drawn up in accordance with Condition D2.1.1 <sup>85th</sup> as at 2200 hours on the day prior to the day, and which is applicable to the services
<b>“Amersham”</b>	means the boundary between the Network and the network operated by LUL at Mantles Wood, Amersham at mileage 25 miles and 21 chains to Aylesbury (via Great Missenden) the corresponding LUL measuring point being 86.925 kilometres;
<b>Base Access Rights</b> <sup>85th</sup>	means those rights approved in the 78 <sup>th</sup> Supplemental Track Access Agreement
<b>Cancellation</b> <sup>73rd</sup>	means a service operated by a train operator that: (a) is cancelled; (b) fails to complete at least 50 per cent of its scheduled mileage; or (c) is omitted from the Applicable Timetable or included in it in a modified form that does not enable the train operator to operate more than 50 per cent of such service's scheduled mileage (including calling at all timetabled stations),  in each case for reasons attributed to that train operator pursuant to its track access contract
<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>Chiltern Services</b> <sup>73rd</sup>	Means all of the Services operated by the Train Operator referred to in this Schedule 5
<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 <sup>MOD A</sup> 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> <sup>MOD A</sup>	has the meaning ascribed to it in Part D of the Network Code

**EG3 Phase 1  
Capacity  
Criteria<sup>73rd</sup>**

means, in respect of the EG3 Phase 1 Capacity Matters, the identification of the number and nature of rights which are compliant with the Timetable Planning Rules<sup>85th</sup> and that can be accommodated as part of the Working Timetable to provide the maximum number of rights, consistent with:

- (a) the rights relating to the relevant Routes set out in other operators' track access agreements on the EG3 Phase 1 Timetable;
- (b) there being no deterioration in the performance standards as a direct result of the EG3 Project when compared to the historic levels of performance on the relevant Routes in the 13 Periods prior to the Commencement Date;
- (c) maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (d) the reservation of capacity equivalent to that available on the EG3 Phase 1 Timetable to other operators whose businesses require short term flexibility; and
- (e) any safety authorisation,

and no greater than the numbers and characteristics of the EG3 Rights Phase 1

**EG3 Phase 1  
Capacity  
Matters<sup>73rd</sup>**

means:

- (a) whether, and if so to what extent, the capacity to allow EG3 Rights Phase 1 to be operated in accordance with the Working Timetable has been created; and
- (b) if the capacity of the Network allows less than the EG3 Rights Phase 1 to be operated, which of those rights should be surrendered to reflect that fact provided that in no circumstances may the net effect of surrendering such rights be that the Train Operator has rights which are less than the Base Access Rights in respect of Service Groups HO01, HO02 and HO03

**EG3 Phase 1  
Related  
Deterioration<sup>73rd</sup>**

means any deterioration of the MAA PPM for Chiltern Services and/or each of the Other Services for which the Train Operator is responsible (as set out in paragraph 15.1(f) of this Schedule 5)

**EG3 Phase 1  
Revised  
Recorded  
Delay<sup>73rd</sup>**

has the meaning ascribed to it in paragraph 15.1(g)(i)(A)6b)

**EG3 Phase 1  
Service  
Implementation  
Date<sup>73rd</sup>**

means the first day of the EG3 Phase 1 Proving Period

**EG3 Phase 1**

means the rights listed in Service Groups HO01, HO02 and HO03

**Services<sup>73rd</sup>**

**EG3 Rights**

**Phase 1**

**Adjustment**

**Process<sup>73rd</sup>**

**EG3 Phase 2**

**Capacity**

**Criteria<sup>73rd</sup>**

relating to rights between Birmingham and London Marylebone means the process referred to in paragraphs 15.2(b) - (f)

means, in respect of the EG3 Phase 2 Capacity Matters, the identification of the number and nature of rights which are compliant with the Timetable Planning Rules<sup>85th</sup> and that can be accommodated as part of the Working Timetable to provide the maximum number of rights, consistent with:

- (a) the rights relating to the relevant Routes set out in other operators' track access agreements on the EG3 Phase 2 Timetable;
- (b) there being no deterioration in the performance standards as a direct result of the EG3 Project when compared to the historic levels of performance on the relevant Routes in the 13 Periods prior to the Commencement Date;
- (c) maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (d) the reservation of capacity equivalent to that available on the EG3 Phase 2 Timetable to other operators whose businesses require short term flexibility; and
- (e) any safety authorisation,

and no greater than the numbers and characteristics of the EG3 Rights Phase 2

**EG3 Phase 2**

**Capacity**

**Matters<sup>73rd</sup>**

means:

- (a) whether, and if so to what extent, the capacity to allow EG3 Rights Phase 2 to be operated in accordance with the Working Timetable has been created; and
- (b) if the capacity of the Network allows less than the EG3 Rights Phase 2 to be operated, which of those rights should be surrendered to reflect that fact provided that in no circumstances may the net effect of surrendering such rights be that the Train Operator has rights which are less than the Base Access Rights in respect of Service Groups HO01, HO02, HO03 and HO04

<b>EG3 Phase 2 Related Deterioration<sup>73rd</sup></b>	means any deterioration of the MAA PPM for Chiltern Services and/or each of the Other Services for which the Train Operator is responsible (as set out in paragraph 16.1(f) of this Schedule 5)
<b>EG3 Phase 2 Revised Recorded Delay<sup>73rd</sup></b>	has the meaning ascribed to it in paragraph 16.1(g)(i)(A)6)b)
<b>EG3 Phase 2 Service Implementation Date<sup>73rd</sup></b>	Means the first day of the EG3 Phase 2 Proving Period
<b>EG3 Phase 2 Services<sup>73rd</sup></b>	Means the rights listed in Service Group HO04 relating to rights between Bicester South Junction and Oxford
<b>EG3 Rights Phase 2 Adjustment Process<sup>73rd</sup></b>	Means the process referred to in paragraphs 16.2 (b) – (f)
<b>“Firm Right”</b>	has the meaning ascribed to it in Part D of the Network Code;
<b>“Harrow”</b>	means the boundary between the Network and the network operated by LUL at South Junction, Harrow on the Hill mileage 197 miles 05 chains the corresponding LUL measuring point being 61.237 kilometres;
<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>Long Term Performance Plan<sup>73rd</sup></b>	means the long term performance plan agreed between Network Rail and the Train Operator issued on 25 March 2009
<b>MAA PPM<sup>73rd</sup></b>	means the moving annual average of the PPM for a train operator calculated by aggregating the number of trains which arrive punctually ("punctually" being as defined in the definition of PPM) and dividing by the number of trains planned for that train operator for each of the last 13 Periods
<b>“Maximum Journey Time”</b>	means, in respect of a Passenger Train Slot, the corresponding Journey Time, if any, set out in column 4 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 4 of Table 6.1;
<b>“Metropolitan</b>	means that part of LUL’s network situated between Harrow and

<b>Line”</b>	Amersham comprising part of the Metropolitan Line;
<b>Minutes Delay</b> <sup>73rd</sup>	has, in relation to a Train Service, the meaning ascribed to it in the track access contract by which the train operator operating that Train Service is granted permission to use the relevant parts of the Network
<b>“Modification Notice”</b>	has the meaning ascribed to it in paragraph 7.10;
<b>“MS Asset Capability Criteria”</b>	<p>means, in respect of the MS Asset Capability Matters, the identification of the number and nature of rights which are compliant with the Timetable Planning Rules<sup>85th</sup> and that can be accommodated as part of the Working Timetable to provide the maximum number of rights, consistent with:</p> <ul style="list-style-type: none"> <li>(a) the rights relating to the relevant Routes set out in other operators’ track access agreements on the Principal Change Date 2009; and</li> <li>(b) any safety authorisation; and</li> <li>(c) maintaining, renewing and carrying out other necessary work on or in relation to the Network</li> </ul> <p>and no greater than the numbers and characteristics of the MS Rights;</p>
<b>“MS Asset Capability Matters”</b>	<p>means</p> <ul style="list-style-type: none"> <li>(a) whether, and if so to what extent, the capacity to allow the whole of the MS Rights to be operated in accordance with the Working Timetable has been created; and</li> <li>(b) if the capacity of the MS Enhanced Assets allows less than the whole of the MS Rights to be operated, which MS Rights should be surrendered to reflect that fact;</li> </ul>
<b>“MS Asset Proving Period”</b>	means the 7 day period commencing on the Post MS Acceptance Timetable Change Date;
<b>“MS Rights”</b>	means those rights shown in the tables and ancillary footnotes attached;
<b>“MS Rights Effective Date”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) if in Network Rail’s reasonable opinion the Principal Change Date in any year is the most likely date for the Post MS Acceptance Timetable Change Date, the Priority Date in that year; or</li> <li>(b) if in Network Rail’s reasonable opinion the Subsidiary Change Date in any year is the most likely date for the Post</li> </ul>

	MS Acceptance Timetable Change Date, the Priority Date in the preceding year; and
<b>“Post MS Acceptance Timetable Change Date”</b>	means the first to occur of the Principal Change Date or the Subsidiary Change Date (as those terms are defined in Part D of the Network Code) immediately following MS Acceptance.
<b>National Rail Franchise Terms<sup>73rd</sup></b>	means the third edition of the document of that name (as may be amended from time to time)
<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>Other Services<sup>73rd</sup></b>	means each and any of the following Services: <ul style="list-style-type: none"> <li>(a) the Services in the Service Group EJ01 provided by London &amp; Birmingham Railway Limited; and</li> <li>(b) the Services in the sub groups 1.11(a) and 1.11(b) and 1.36(a) and 1.36(b) of the Service Group EH01 provided by XC Trains Limited</li> </ul>
<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 any part of a Weekday (i) to arrive at London Marylebone between 0700 hours and 0959 hours or (ii) to depart from London Marylebone between 1600 hours and 1859 hours, and “Peak” shall be construed accordingly;
<b>Period<sup>73rd</sup></b>	means each consecutive period of 28 days commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to 7 days on reasonable prior notice from Network Rail to the Train Operator
<b>PPM<sup>73rd</sup></b>	means the proportion (expressed as a percentage) of the total number of services which are scheduled to be operated by a train operator in the Applicable Timetable and which arrive punctually at their final scheduled destination as specified in that Applicable Timetable and: <ul style="list-style-type: none"> <li>(a) for this purpose "punctually" means within 4 minutes and 59 seconds of the scheduled arrival time for the relevant service; and</li> <li>(b) any service operated by the train operator which is a Cancellation shall be regarded as not arriving punctually or which is not a Cancellation but where the entire planned</li> </ul>

	service is nonetheless not run
<b>Primary Delay</b> <sup>73rd</sup>	means the delay measured in Minutes Delay suffered by a Train Service which is directly caused by the occurrence of an initial incident or unplanned event either at the same or adjacent location and/or occurring in the same or adjacent TRUST section and at the time the incident is live and is not caused by interaction with one or more late running Train Services and is not attributed as Reactionary Delay in accordance with the Delay Attribution Guide
<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>Reactionary Delay</b> <sup>73rd</sup>	means the delay measured in Minutes Delay: <ul style="list-style-type: none"> <li>(a) suffered by a Train Service as a consequence of interaction with a late running Train Service; or</li> <li>(b) suffered by a late running Train Service as a consequence of interaction with a Train Service due to its own late running, and is attributed to the delay code category "Y" in accordance with the Delay Attribution Guide</li> </ul>
<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>“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>Sub-threshold Delay</b> <sup>73rd</sup>	means any delay measured in Minutes Delay which does not exceed the minimum delay threshold set for that Train Service and referred to as 'derived delay' in the Delay Attribution Guide
<b>“Timetable Period”</b>	means the period of time between (and including) one Timetable <sup>MOD A</sup> Change Date and (but excluding) the immediately succeeding Timetable <sup>MOD A</sup> 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</b> <sup>73rd</sup>	Means a service for the carriage of passengers or goods by railway
<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 Public Holiday) which is not a Saturday or Sunday; and



**“xx20”** means, as an example of this notation, 20 minutes past the hour.

- 1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two specific times that period shall be inclusive of both such times.
- 1.3 The Train Operator's rights under this Schedule as to numbers of Passenger Train Slots per Day are calculated by reference to departures from the Scheduled start point on the Day in question, notwithstanding that a Passenger Train Slot may not be Scheduled to arrive at its end point until the immediately succeeding Day.

## 2 Passenger Train Slots

Table 2.1 : Passenger Train Slots

1						2					
Service Group HO01											
Service Description						Passenger Train Slots					
Between	And	Via	Description	TSC	Timing Load	Total Weekday	Peak times		Off Peak Times	Saturday	Sunday
							Morning Peak	Evening Peak			
Aylesbury	London Marylebone	Amersham	1.1	25210004	165	34	4	5	25	32	19
Aylesbury Vale Parkway	London Marylebone	Amersham	1.2	25210004	165	48	6	6	36	35	31
Amersham	Aylesbury	Direct	1.3	25210004	165	0	0	0	0	2	0
Aylesbury Vale Parkway	Amersham	Direct	1.4	25210004	165	0	0	0	0	0	1

1						2					
Service Group HO02											
Service Description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Total Weekday	Peak times		Off Peak Times	Saturday	Sunday
							Morning Peak	Evening Peak			
Banbury	London Marylebone	High Wycombe	2.1	25530004	165	11	0	0	11	0	0
Banbury	London Marylebone	High Wycombe	2.2	25530004	168	1	1	0	0	0	0
Banbury	London Marylebone	High Wycombe	2.3	25530004	165	0	0	0	0	15	0
Banbury	London Marylebone	High Wycombe	2.4	25530004	168	0	0	0	0	2	0
Banbury	London Marylebone	High Wycombe	2.5	25530004	165	0	0	0	0	0	13
London Marylebone	Banbury	High Wycombe	2.6	25530004	165	11 <sup>1</sup>	0	0	11 <sup>1</sup>	17	16
London Marylebone	Banbury	High Wycombe	2.7	25530004	168	1	0	1	0	0	0
Bicester North	London Marylebone	High Wycombe	2.8	25530004	165	1	1	0	0	0	0
Bicester North	London Marylebone	High Wycombe	2.9	25530004	168	2	0	0	2	0	0
London Marylebone	Bicester North	High Wycombe	2.10	25530004	165	4	0	2	2	0	0
Birmingham Snow Hill	London Marylebone	High Wycombe	2.11	25530004	168	15	0	0	15	0	0
Birmingham Snow Hill	London Marylebone	High Wycombe	2.12	25530004	068	2	0	0	2	0	0
Birmingham Snow Hill	London Marylebone	High Wycombe	2.13	25530004	168	0	0	0	0	14	13
London Marylebone	Birmingham Snow Hill	High Wycombe	2.14	25530004	168	19	0	4	15	0	0
London Marylebone	Birmingham Snow Hill	High Wycombe	2.15	25530004	168	0	0	0	0	16	16
Birmingham Moor Street	London Marylebone	High Wycombe	2.16	25530004	168	4	4	0	0	0	0
Birmingham Moor Street	London Marylebone	High Wycombe	2.17	25530004	168	4	0	0	4	13	12

1						2					
Service Group HO02											
Service Description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Total Weekday	Peak times		Off Peak Times	Saturday	Sunday
							Morning Peak	Evening Peak			
Birmingham Moor Street	London Marylebone	High Wycombe	2.18	25530004	068	3	0	0	3	0	0
London Marylebone	Birmingham Moor Street	High Wycombe	2.19	25530004	168	1	0	1	0	0	0
London Marylebone	Birmingham Moor Street	High Wycombe	2.20	25530004	168	8	0	0	8	14	11
London Marylebone	Birmingham Moor Street	High Wycombe	2.21	25530004	068	3	0	0	3	0	0
High Wycombe	Birmingham Moor Street	High Wycombe	2.22	25530004	168	0	0	0	0	1	0
High Wycombe	Bicester North	Direct	2.23	25530004	165	1	0	0	1	0	0
Kidderminster	London Marylebone	High Wycombe	2.24	25530004	168	2	1	0	1	0	0
Kidderminster	London Marylebone	High Wycombe	2.25	25530004	068	2	2	0	0	0	0
Kidderminster	London Marylebone	High Wycombe	2.26	5530004	168	0	0	0	0	4	0
London Marylebone	Kidderminster	High Wycombe	2.27	25530004	068	3	0	3	0	0	0
London Marylebone	Kidderminster	High Wycombe	2.28	25530004	168	1	0	0	1	0	0
Stourbridge Junction	London Marylebone	High Wycombe	2.29	25530004	068	1	1	0	0	0	0
London Marylebone	Stourbridge Junction	High Wycombe	2.30	25530004	168	1	0	0	1	0	0
Stratford upon Avon	London Marylebone	High Wycombe	2.31	25530004	165	2	0	0	2	0	1
Stratford upon Avon	London Marylebone	High Wycombe	2.32	25530004	168	1	1	0	0	1	1
London Marylebone	Stratford upon Avon	High Wycombe	2.33	25530004	165	2	0	0	2	0	1
London Marylebone	Stratford upon Avon	High Wycombe	2.34	25530004	168	1	0	1	0	0	0
Stratford upon Avon	Oxford	Direct	2.35	25530004	165	1	0	0	1	0	0

1						2					
Service Group HO02											
Service Description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Total Weekday	Peak times		Off Peak Times	Saturday	Sunday
							Morning Peak	Evening Peak			
Stratford upon Avon	Leamington Spa	Direct	2.36	25530004	165	5	0	0	5	6	4
Leamington Spa	Stratford upon Avon	Direct	2.37	25530004	165	6	0	0	6	7	4
Stratford upon Avon	Hatton	Direct	2.38	25530004	165	1	0	0	1	0	0
Birmingham Snow Hill	Banbury	Direct	2.39	25530004	165	2	0	0	2	1	0
Oxford	Banbury	Direct	2.40	25530004	165	1	0	0	1	0	0
Birmingham Moor Street	Leamington Spa	Direct	2.41	25530004	165	5	0	0	5	7	5
Leamington Spa	Birmingham Moor Street	Direct	2.42	25530004	165	5	0	0	5	5	5
Banbury	Birmingham Moor Street	Direct	2.43	25530004	165	0	0	0	0	2	0
Bicester	Birmingham Snow Hill	Direct	2.44	25530004	165	1	0	0	1	0	0
Birmingham Snow Hill	Leamington Spa	Direct	2.45	25530004	165	1	0	0	1	0	0
Leamington Spa	Birmingham Snow Hill	Direct	2.46	25530004	165	0	0	0	0	1	0
Stratford upon Avon	Banbury	Direct	2.47	25530004	165	0	0	0	0	1	0

Notes to Table:

<sup>1</sup> On Fridays only, one of these off peak London Marylebone to Banbury services shall be extended to Leamington Spa

1						2					
Service Group HO03											
Service Description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Total Weekday	Peak times		Off Peak Times	Saturday	Sunday
							Morning Peak	Evening Peak			
Aylesbury	Princes Risborough	Direct	3.1	25211004	165	21	0	0	21	19	15
Princes Risborough	Aylesbury	Direct	3.2	25211004	165	25	0	0	25	19	18
Princes Risborough	London Marylebone	High Wycombe	3.3	25211004	168	1	1	0	0	0	0
Princes Risborough	London Marylebone	High Wycombe	3.4	25211004	165	19	4	0	15	0	0
Princes Risborough	London Marylebone	High Wycombe	3.5	25211004	165	0	0	0	0	19	14
London Marylebone	Princes Risborough	High Wycombe	3.6	25211004	165	3	0	3	0	0	0
London Marylebone	Princes Risborough	High Wycombe	3.7	25211004	165	17	0	0	17	0	0
London Marylebone	Princes Risborough	High Wycombe	3.8	25211004	165	0	0	0	0	19	16
High Wycombe	London Marylebone	Direct	3.09	25211004	165	22	4	0	18	1	0
London Marylebone	High Wycombe	Direct	3.10	25211004	165	23	0	5	18	1	0
London Marylebone	High Wycombe	Direct	3.11	25211004	168	1	0	1	0	0	0
Gerrards Cross	London Marylebone	Direct	3.12	25211004	165	15	3	0	12	0	0
Gerrards Cross	London Marylebone	Direct	3.13	25211004	165	0	0	0	0	14	13
London Marylebone	Gerrards Cross	Direct	3.14	25211004	165	3	0	3	0	0	0
London Marylebone	Gerrards Cross	Direct	3.15	25211004	165	11	0	0	11	0	0
London Marylebone	Gerrards Cross	Direct	3.16	25211004	165	0	0	0	0	15	13
West Ruislip	London Marylebone	Direct	3.17	25211004	165	5	2	0	3	0	0
London Marylebone	West Ruislip	Direct	3.18	25211004	165	5	0	3	2	0	0
London Paddington	West Ruislip	Direct	3.19	25211004	165	1	0	0	1	0	0
South Ruislip	London Paddington	Direct	3.20	25211004	165	1	0	0	1	0	0

1						2					
Service Group HO04											
Service Description						Passenger Train Slots					
From	To	Via	Description	TSC		Total Weekday	Peak times		Off Peak Times	Saturday	Sunday
							Morning Peak	Evening Peak			
Oxford Parkway	London Marylebone	High Wycombe	4.1	25535004	168	13	2	0	11	15	12
Oxford Parkway	London Marylebone	High Wycombe	4.2	25535004	068	1	1	0	0	0	0
Oxford Parkway	London Marylebone	High Wycombe	4.3	25535004	168	19	3	0	16	17	16
Oxford Parkway	London Marylebone	High Wycombe	4.4	25535004	165	1	1	0	0	1	0
London Marylebone	Oxford Parkway	High Wycombe	4.5	25535004	168	20	0	3	17	19	16
London Marylebone	Oxford Parkway	High Wycombe	4.6	25535004	165	0	0	0	0	1	0
London Marylebone	Oxford Parkway	High Wycombe	4.7	25535004	168	14	0	2	12	15	14
London Marylebone	Oxford Parkway	High Wycombe	4.8	25535004	068	1	0	1	0	0	0
Bicester Village	Oxford Parkway	Direct	4.9	25535004	165	1	0	0	1	0	0
Haddenham & Thame Parkway	London Marylebone	High Wycombe	4.10	25535004	168	2	0	0	2	0	0
Princes Risborough	London Marylebone	High Wycombe	4.11	25535004	168	1	1	0	0	0	0
High Wycombe	London Marylebone	Direct	4.12	25535004	168	1	1	0	0	0	0
Oxford Parkway	High Wycombe	Direct	4.13	25535004	168	1	0	0	1	0	0

- 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 any Specified Equipment included in paragraph 5.1.(a) that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 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 or terminate at Birmingham Moor Street; and
  - (b) Contingent Rights for;
    - (i) any Service to commence from or terminate at Bicester North;
    - (ii) any Service to commence from or terminate at Princes Risborough;
    - (iii) any Service to commence from or terminate at High Wycombe; and
    - (iv) any Service to commence from or terminate at Gerrards Cross;

provided that any such Service is to terminate at or commence from London Marylebone or London Paddington.

- 2.3 In order to provide through Services the Train Operator has:
- (a) Not used; and
  - (b) Not used.



Table 2.2: Additional Passenger Train Slots

<b>1</b>					<b>2</b>		
<b>Service Group HO04</b>							
<b>Service description</b>					<b>Additional Passenger Train Slots</b>		
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Weekday</b>	<b>Saturday</b>	<b>Sunday</b>
Oxford Parkway	Haddenham & Thame Parkway	Direct	4.14	25535004	2	0	0
Oxford Parkway	Princes Risborough	Direct	4.15	25535004	1	0	0
Oxford Parkway	High Wycombe	Direct	4.16	25535004	1	0	0

### *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 the 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 Trains 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 shall be allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.
- 2.9 Save by prior agreement with Network Rail, the Train Operator shall not be entitled to operate Services on 25 and 26 December in any year. Any prior agreement shall be subject

to such conditions as Network Rail may reasonably impose, including paying for Network Rail's reasonable costs for providing such access.

2.10 Subject to paragraph 2.8, Public Holidays Shall be treated for the purposes of this Schedule as Saturdays

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

2.12 LUL imposed changes

Network Rail shall exercise its Flexing Rights to accommodate any short term alterations which may be imposed on the Services due to unscheduled changes to operations over LUL so far as it is reasonably practicable for it to do so having due regard to the Decision Criteria.

### **3 Service Intervals**

Table 3.1: Not used

Table 3.1a: Not used

Table 3.1b: Not used

Paragraph 3.1 Not used;

Paragraph 3.2 Not used;

Paragraph 3.3: Not used;

Paragraph 3.4: Not used

#### 4 Calling Patterns

Table 4.1: Calling Patterns

1		2			3	
<b>Service Group HO01</b>						
<b>Service description</b>						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
Aylesbury Vale Parkway	London Marylebone	Amersham	1.2 & 1.4	25210004	Aylesbury Stoke Mandeville Wendover Great Missenden	N/A
Aylesbury	London Marylebone	Amersham	1.1 & 1.3	25210004	Stoke Mandeville Wendover Great Missenden	N/A

1					2	3
<b>Service Group HO02</b>						
<b>Service Description</b>						
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Regular Calling Pattern</b>	<b>Additional Stations</b>
Banbury	London Marylebone	High Wycombe	2.1 & 2.2	25530004	Bicester North, Haddenham & Thame Parkway, Princes Risborough, High Wycombe	Kings Sutton, Saunderton, Beaconsfield, Gerrards Cross, South Ruislip, Wembley Stadium
Banbury	London Marylebone	High Wycombe	2.3 & 2.4	25530004	Bicester North, Haddenham & Thame Parkway, Princes Risborough, High Wycombe	Kings Sutton, Beaconsfield, Gerrards Cross, Wembley Stadium
Banbury	London Marylebone	High Wycombe	2.5	25530004	Bicester North, Haddenham & Thame Parkway, Princes Risborough, High Wycombe, Beaconsfield, Gerrards Cross	Kings Sutton, Saunderton, Seer Green & Jordans, Denham, South Ruislip, Northolt Park, Wembley Stadium
London Marylebone	Banbury	High Wycombe	2.6 & 2.7	25530004	Gerrards Cross, Beaconsfield, High Wycombe, Princes Risborough, Haddenham & Thame Parkway, Bicester North	Wembley Stadium, Northolt Park, South Ruislip, West Ruislip, Denham, Denham Golf Club, Seer Green & Jordans, Saunderton, Kings Sutton
Bicester North	London Marylebone	High Wycombe	2.8 & 2.9	25530004	Haddenham & Thame Parkway, High Wycombe, Gerrards Cross	Princes Risborough, Saunderton, Beaconsfield, Seer Green & Jordans
London Marylebone	Bicester North	High Wycombe	2.10	25530004	High Wycombe	Denham, Gerrards Cross, Seer Green & Jordans, Beaconsfield, Saunderton, Haddenham & Thame Parkway
Birmingham Snow Hill	London Marylebone	High Wycombe	2.11 & 2.12	25530004	Birmingham Moor Street, Solihull, Dorridge, Warwick Parkway, Warwick (up to 15 calls), Leamington Spa, Banbury, Bicester North (up to 15 calls)	Widney Manor, Lapworth, Hatton, Kings Sutton, Haddenham & Thame Parkway, High Wycombe
Birmingham Snow Hill	London Marylebone	High Wycombe	2.13	25530004	Birmingham Moor Street, Solihull, Dorridge, Warwick Parkway, Warwick, Leamington Spa, Banbury, Bicester North	Widney Manor, Kings Sutton, Haddenham & Thame Parkway, Princes Risborough, Saunderton, High Wycombe, Beaconsfield, Seer Green & Jordans, Gerrards Cross, Denham, West Ruislip, South Ruislip, Northolt Park, Wembley Stadium
London Marylebone	Birmingham Snow Hill	High Wycombe	2.14	25530004	Bicester North (up to 13 calls), Banbury, Leamington Spa, Warwick (up to 14 calls), Warwick Parkway, Dorridge (up to 13 calls), Solihull, Birmingham Moor Street	Denham, Gerrards Cross, Seer Green & Jordans, High Wycombe, Saunderton, Princes Risborough, Haddenham & Thame Parkway, Kings Sutton, Hatton, Lapworth, Widney Manor, Olton
London Marylebone	Birmingham Snow Hill	High Wycombe	2.15	25530004	Bicester North (up to 14 calls), Banbury, Leamington Spa, Warwick Warwick Parkway, Dorridge, Solihull, Birmingham Moor Street	Gerrards Cross, Beaconsfield, High Wycombe, Princes Risborough, Haddenham & Thame Parkway, Kings Sutton, Hatton, Lapworth, Widney Manor
Birmingham Moor Street	London Marylebone	High Wycombe	2.16	25530004	Solihull, Dorridge (up to 3 calls), Warwick Parkway, Leamington Spa, Banbury, Bicester North	Warwick, Kings Sutton, Haddenham & Thame Parkway
Birmingham Moor Street	London Marylebone	High Wycombe	2.17 & 2.18	25530004	Solihull, Warwick Parkway, Leamington Spa, Banbury, High Wycombe	Dorridge, Lapworth, Hatton, Warwick, Bicester North, Haddenham & Thame Parkway, Princes Risborough, Beaconsfield, Gerrards Cross

1					2	3
Service Group HO02						
Service Description						
From	To	Via	Description	TSC	Regular Calling Pattern	Additional Stations
London Marylebone	Birmingham Moor Street	High Wycombe	2.19	25530004	Haddenham & Thame Parkway, Bicester North, Banbury, Leamington Spa, Warwick, Warwick Parkway, Dorridge, Solihull	N/A
London Marylebone	Birmingham Moor Street	High Wycombe	2.20 & 2.21	25530004	High Wycombe (up to 8 calls Weekdays), Banbury, Leamington Spa, Warwick Parkway, Solihull	Princes Risborough, Haddenham & Thame Parkway Bicester North, Warwick, Hatton, Lapworth, Dorridge, Widney Manor
High Wycombe	Birmingham Moor Street	High Wycombe	2.22	25530004	N/A	Saunderton, Princes Risborough, Haddenham & Thame Parkway, Bicester North, Kings Sutton, Banbury, Leamington Spa, Warwick, Warwick Parkway, Hatton, Dorridge, Solihull
High Wycombe	Bicester North	Direct	2.23	25530004	N/A	Saunderton, Princes Risborough, Haddenham & Thame Parkway
Kidderminster	London Marylebone	High Wycombe	2.24 & 2.25	25530004	Stourbridge Junction, Birmingham Snow Hill, Birmingham Moor Street, Solihull, Warwick Parkway, Leamington Spa	Blakedown, Hagley, Cradley Heath, Rowley Regis, Smethwick Galton Bridge, The Hawthorns, Jewellery Quarter, Dorridge, Warwick, Banbury, Bicester North
Kidderminster	London Marylebone	High Wycombe	2.26	25530004	Stourbridge Junction, Birmingham Snow Hill, Birmingham Moor Street, Solihull, Warwick Parkway, Leamington Spa, Banbury	Cradley Heath, Rowley Regis, Smethwick Galton Bridge, The Hawthorns, Dorridge, Warwick, Bicester North, Princes Risborough, High Wycombe
London Marylebone	Kidderminster	High Wycombe	2.27 & 2.28	25530004	Banbury, Leamington Spa, Warwick Parkway, Solihull, Birmingham Moor Street, Birmingham Snow Hill, Stourbridge Junction	High Wycombe, Dorridge, The Hawthorns, Smethwick Galton Bridge, Rowley Regis, Cradley Heath
Stourbridge Junction	London Marylebone	High Wycombe	2.29	25530004	Birmingham Snow Hill, Birmingham Moor Street, Solihull, Dorridge, Warwick Parkway, Leamington Spa, Banbury	Rowley Regis, Smethwick Galton Bridge, Bicester North, Wembley Stadium
London Marylebone	Stourbridge Junction	High Wycombe	2.30	25530004	N/A	High Wycombe, Bicester North, Banbury, Leamington Spa, Warwick Parkway, Solihull, Birmingham Moor Street, Birmingham Snow Hill, Jewellery Quarter, The Hawthorns, Smethwick Galton Bridge, Langley Green, Rowley Regis, Old Hill, Cradley Heath, Lye
Stratford-upon-Avon	London Marylebone	High Wycombe	2.31 & 2.32	25530004	Wilmcote, Hatton, Warwick, Leamington Spa, Banbury, Bicester North	Stratford-upon-Avon Parkway, Bearley, Claverdon Warwick Parkway, Kings Sutton, Haddenham & Thame Parkway, Princes Risborough, Saunderton, High Wycombe, Beaconsfield, Gerrards Cross, West Ruislip, Wembley Stadium
London Marylebone	Stratford-upon-Avon	High Wycombe	2.33 & 2.34	25530004	High Wycombe, Princes Risborough, Bicester North, Banbury, Leamington Spa, Warwick (up to 2 calls Weekdays), Hatton, Wilmcote	Wembley Stadium, Northolt Park, West Ruislip, Denham, Gerrards Cross, Beaconsfield, Saunderton, Haddenham & Thame Parkway, Kings Sutton, Claverdon, Bearley, Stratford-upon-Avon Parkway

1					2	3
<b>Service Group HO02</b>						
<b>Service Description</b>						
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Regular Calling Pattern</b>	<b>Additional Stations</b>
Stratford-upon-Avon	Oxford	Direct	2.35	25530004	N/A	Stratford-upon-Avon Parkway, Warwick, Leamington Spa, Banbury
Stratford-upon-Avon	Leamington Spa	Direct	2.36	25530004	Wilmcote, Hatton, Warwick	Stratford-upon-Avon Parkway, Bearley, Claverdon,
Leamington Spa	Stratford-upon-Avon	Direct	2.37	25530004	Warwick, Hatton, Wilmcote	Claverdon, Bearley, Stratford-upon-Avon Parkway
Stratford-upon-Avon	Hatton	Direct	2.38	25530004	N/A	Stratford-upon-Avon Parkway, Wilmcote, Bearley, Claverdon
Birmingham Snow Hill	Banbury	Direct	2.39	25530004	Birmingham Moor Street, Tyseley, Acocks Green, Olton, Solihull, Widney Manor, Dorridge, Lapworth, Hatton, Warwick Parkway, Warwick, Leamington Spa	N/A
Oxford	Banbury	Direct	2.40	25530004	N/A	Tackley, Heyford, Kings Sutton
Birmingham Moor Street	Leamington Spa	Direct	2.41	25530004	Solihull, Dorridge, Lapworth, Hatton, Warwick	N/A
Leamington Spa	Birmingham Moor Street	Direct	2.42	25530004	Warwick, Hatton, Lapworth, Dorridge, Solihull	Widney Manor
Banbury	Birmingham Moor Street	Direct	2.43	25530004	Leamington Spa, Warwick, Warwick Parkway, Dorridge, Solihull	Hatton, Lapworth
Bicester North	Birmingham Snow Hill	Direct	2.44	25530004	N/A	Banbury, Leamington Spa, Warwick, Warwick Parkway, Dorridge, Solihull, Birmingham Moor Street
Birmingham Snow Hill	Leamington Spa	Direct	2.45	25530004	N/A	Birmingham Moor St, Acocks Green, Olton, Solihull, Widney Manor, Dorridge, Hatton, Warwick
Leamington Spa	Birmingham Snow Hill	Direct	2.46	25530004	N/A	Warwick, Hatton, Lapworth, Dorridge, Solihull, Birmingham Moor Street
Stratford-upon-Avon	Banbury	Direct	2.47	25530004	N/A	Warwick, Leamington Spa

1					2	3
Service Group HO03						
Service Description						
From	To	Via	Description	TSC	Regular Calling Pattern	Additional Stations
Aylesbury	Princes Risborough	Direct	3.1	25211004	Monks Risborough	Little Kimble
Princes Risborough	Aylesbury	Direct	3.2	25211004	Monks Risborough	Little Kimble
Princes Risborough	London Marylebone	High Wycombe	3.3 & 3.4	25211004	Saunderton (up to 11 calls), High Wycombe, Beaconsfield (up to 19 calls), Seer Green & Jordans (up to 11 calls), Gerrards Cross (up to 19 calls)	Denham Golf Club, Denham, West Ruislip, South Ruislip, Northolt Park, Sudbury Hill Harrow, Sudbury & Harrow Road, Wembley Stadium
Princes Risborough	London Marylebone	High Wycombe	3.5	25211004	Saunderton, High Wycombe, Beaconsfield, Gerrards Cross, Wembley Stadium (up to 3 calls on Saturday)	Seer Green & Jordans, Denham Golf Club, Denham, West Ruislip, South Ruislip, Northolt Park
London Marylebone	Princes Risborough	High Wycombe	3.6	25211004	West Ruislip, Denham, Gerrards Cross, Seer Green & Jordans, Beaconsfield, High Wycombe	N/A
London Marylebone	Princes Risborough	High Wycombe	3.7	25211004	Gerrards Cross, Seer Green & Jordans (up to 14 calls), Beaconsfield, High Wycombe	Wembley Stadium, Northolt Park, South Ruislip, West Ruislip, Denham Golf Club
London Marylebone	Princes Risborough	High Wycombe	3.8	25211004	Wembley Stadium, Denham (up to 18 calls on Saturday and up to 3 calls on Sunday), Gerrards Cross, Seer Green & Jordans (up to 6 calls on Saturday), Beaconsfield, Saunderton, High Wycombe	Northolt Park, South Ruislip, West Ruislip, Denham Golf Club
High Wycombe	London Marylebone	Direct	3.9	25211004	Beaconsfield, Gerrards Cross, Wembley Stadium (up to 16 calls on Weekdays)	Seer Green & Jordans, Denham Golf Club, Denham, West Ruislip, South Ruislip, Northolt Park, Sudbury Hill Harrow
London Marylebone	High Wycombe	Direct	3.10 & 3.11	25211004	Wembley Stadium (up to 10 calls Weekdays), Denham (up to 8 calls Weekdays), Gerrards Cross, Beaconsfield	Northolt Park, South Ruislip, Denham Golf Club, Seer Green & Jordans
Gerrards Cross	London Marylebone	Direct	3.12	25211004	Northolt Park	Denham Golf Club, Denham, West Ruislip, South Ruislip, Sudbury Hill Harrow, Wembley Stadium
Gerrards Cross	London Marylebone	Direct	3.13	25211004	Denham, South Ruislip, Northolt Park, Wembley Stadium	Denham Golf Club, West Ruislip
London Marylebone	Gerrards Cross	Direct	3.14	25211004	Sudbury Hill Harrow, Northolt Park, Denham Golf Club	South Ruislip
London Marylebone	Gerrards Cross	Direct	3.15	25211004	Wembley Stadium, Northolt Park, Denham (up to 9 calls)	Sudbury & Harrow Road, Sudbury Hill Harrow, South Ruislip, West Ruislip, Denham Golf Club
London Marylebone	Gerrards Cross	Direct	3.16	25211004	Wembley Stadium, Northolt Park, South Ruislip, Denham	West Ruislip, Denham Golf Club



1					2	3
Service Group HO03						
Service Description						
From	To	Via	Description	TSC	Regular Calling Pattern	Additional Stations
West Ruislip	London Marylebone	Direct	3.17	25211004	Northolt Park	South Ruislip, Sudbury Hill Harrow, Sudbury & Harrow Road, Wembley Stadium
London Marylebone	West Ruislip	Direct	3.18	25211004	Northolt Park, South Ruislip	Wembley Stadium, Sudbury & Harrow Road, Sudbury Hill Harrow
London Paddington	West Ruislip	Direct	3.19	25211004	N/A	South Ruislip
South Ruislip	London Paddington	Direct	3.20	25211004	N/A	N/A

1					2	3
<b>Service Group HO04</b>						
<b>Service description</b>						
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Regular Calling Pattern</b>	<b>Additional stations</b>
Oxford Parkway	London Marylebone	High Wycombe	4.1 & 4.2	25535004	Bicester Village	Islip, Haddenham & Thame Parkway, Princes Risborough
Oxford Parkway	London Marylebone	High Wycombe	4.3 & 4.4	25535004	Bicester Village, Haddenham & Thame Parkway, High Wycombe	Islip, Princes Risborough, Saunderton, Beaconsfield, Seer Green & Jordans, Gerrards Cross, Denham, West Ruislip, Northolt Park, Wembley Stadium
London Marylebone	Oxford Parkway	High Wycombe	4.5 & 4.6	25535004	High Wycombe, Bicester Village	West Ruislip, Gerrards Cross, Beaconsfield, Princes Risborough, Haddenham & Thame Parkway, Islip
London Marylebone	Oxford Parkway	High Wycombe	4.7 & 4.8	25535004	Haddenham & Thame Parkway, Bicester Village	Islip
Bicester Village	Oxford Parkway	Direct	4.9	25535004	N/A	Islip
Haddenham & Thame Parkway	London Marylebone	High Wycombe	4.10	25535004	N/A	Princes Risborough, High Wycombe, Beaconsfield, Gerrards Cross
Princes Risborough	London Marylebone	High Wycombe	4.11	25535004	N/A	Saunderton, High Wycombe, Beaconsfield, Gerrards Cross
High Wycombe	London Marylebone	Direct	4.12	25535004	N/A	Beaconsfield, Gerrards Cross, West Ruislip, Wembley Stadium
Oxford Parkway	High Wycombe	Direct	4.13	25535004	N/A	Bicester Village, Haddenham & Thame Parkway, Princes Risborough, Saunderton

### *Calling Pattern's*

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

### *Additional calls*

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

## **5 Specified Equipment**

### *Specified Equipment*

- 5.1 In order to provide the Services Specified in this Schedule 5 the Train Operator has:

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

Class 121

Class 165/0

Class 168/0, Class 168/1, Class 168/2, Class 168/3

Class 172

Class 68 plus six Mark III carriages plus Driving Van Trailer

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
<b>Service Group HO02</b>							
<b>Service description</b>							
Between	And	Via	Description	TSC	Protection Type (MJT or MKJT)	Days of the week	Maximum Journey Time (minutes)
Birmingham Moor Street	London Marylebone	High Wycombe	2.25 & 2.27	25530004	MJT	Weekday	105 with one Journey Time per direction not exceeding 99 minutes

1					2	3	4
<b>Service Group HO04</b>							
<b>Service description</b>							
Between	And	Via	Description	TSC	Protection Type (MJT or MKJT)	Days of the week	Journey time (in minutes)
Oxford Parkway	London Marylebone	High Wycombe	4.1, 4.2, 4.7 & 4.8	25535004	MJT	Weekday	64 minutes

### *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 the date of this contract;
  - (b) increase or decrease in the relevant station dwell times applicable as at the date of this contract; and
  - (c) increase or decrease in the relevant performance allowances, engineering recovery allowances or any other allowances,
- as such sectional running times, station dwell times or allowances are established and may change in accordance with the Applicable 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 6.1 as 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.



## **8. Other Rights**

*Platform rights*

*Table 8.1: Platform Rights Not used*

8.1 Not used

8.2 Not used

## 8 Connections

Table 8.2: Connections

Weekdays

1	2		3		4	5	6
Service Group	Arriving Service		Departing service				
Station	From	Description	To	Description	Number of connections	Minimum connecting time (minutes)	Maximum connecting time (minutes)
Princes Risborough	London Marylebone	2.7, 2.14, 2.33 & 4.5	Aylesbury	3.2	5	5	12
Princes Risborough	Aylesbury	3.1	London Marylebone	3.4 & 4.3	2	5	12

Table 8.4: Stabling facilities<sup>73rd</sup>

<b>1</b>	<b>2</b>	<b>3</b>
<b>Stabling facility</b>	<b>Time available</b>	<b>Specified Equipment</b>
Birmingham Moor Street station and sidings	2201 to 0600 each day	Maximum sixteen vehicles on weekdays and thirty vehicles on weekends (each vehicle to be no more than 21 metres in length)

### *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.

### *Departure time ranges*

Table 8.3: Departure time ranges – Not used

- 8.5 Not used

### *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.

### *Turnaround times*

Table 8.5: Turnaround times - Not used

- 8.7 Not used

### *Quantum of additional calls*

Table 8.6: Turnaround times - Not used

- 8.8 Not used

## **12. MS Rights**

- 12.1 In relation to the MS Rights, where paragraphs 2 to 8 of this Schedule refer to Firm Rights, the only contingencies preventing the MS Rights from being Firm Rights are:

- (a) the sign up and entering into the MS Asset Purchase Agreement; and
- (b) the occurrence of MS Acceptance; and
- (c) the outcome of the process in paragraphs 12.4 to 12.10 below.

12.2 and 12.3 not used

### **12.4 MS Asset Proving Period**

The parties agree that during the MS Asset Proving Period their joint objective shall be for them to establish the extent to which the MS Rights can be accommodated on the MS Enhanced Assets. The parties agree to exercise their rights and perform their obligations under this contract with a view to achieving that objective.

### **12.5 Establishing MS Asset Capability Matters**

- (a) The parties shall within 10 Working Days after the end of the MS Asset Proving Period meet and negotiate and attempt to agree the MS Asset Capability Matters, provided that no MS Rights shall be surrendered other than in accordance with paragraph 12.1.

- (b) Each party shall ensure that:
  - (i) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
  - (ii) the MS Asset Capability Criteria are applied in the negotiations.
- (c) The negotiations shall not continue beyond 10 Working Days after the end of the MS Asset Proving Period.

#### 12.6 *MS Asset Capability Matters - failure to agree*

If the parties fail to agree the MS Asset Capability Matters on or before the expiry of 10 Working Days after the end of the MS Asset Proving Period

- (a) the matter shall be submitted to arbitration in accordance with Part C of the Access Dispute Resolution Rules; and
- (b) Network Rail shall within 5 Working Days notify ORR in writing of such submission to arbitration.

#### 12.7 *Arbitration*

If a matter is referred to arbitration under paragraph 12.6, the arbitrator shall be required by the parties to:

- (a) determine the MS Asset Capability Matters having regard to the MS Asset Capability Criteria; and
- (b) provide reasons for his award.

#### 12.8 *MS Asset Capability Matters – notice to ORR*

Not later than 15 Working Days from the end of the MS Asset Proving Period or 5 Working Days from the date of the arbitral award, as the case may be, the result of the process set out in paragraph 12.5 or the arbitration shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the outcome in the case of agreement pursuant to paragraph 12.5 or the arbitrator's reasons for his award in the case of a determination pursuant to paragraph 12.7; and
- (b) giving such other information as ORR may have requested.

#### 12.9 *MS Asset Capability Matters – ORR's consent*

If, having regard to the MS Asset Capability Criteria, ORR is satisfied with the MS Asset Capability Matters submitted to it pursuant to paragraph 12.8 and it gives a notice to that effect, then the provisions of paragraph 12.1 shall have effect.

#### 12.10 *MS Asset Capability Matters – ORR's refusal of consent*

If ORR gives notice to the parties that it is not satisfied with any or all of the proposed MS Asset Capability Matters, it may:

- (a) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 12.5 to 12.7 for agreeing MS Asset Capability Matters (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) following such consultation with the parties as it considers necessary, determine the MS Asset Capability Matters itself, having regard to the MS Asset Capability Criteria, and give a notice specifying such MS Asset Capability Matters in which case paragraph 12.1 shall have effect.

### **13. MS Rights Effective Date**

With effect from the MS Rights Effective Date this Schedule 5 will be supplemented by the MS Rights, subject to the sub-paragraphs set out below:

- i) If, and as soon as, in Network Rail's reasonable opinion it is no longer reasonably certain to be the case that MS Acceptance will occur in time to allow the MS Rights to be operated on the Post MS Acceptance Timetable Change Date which was used to agree or determine the MS Rights Effective Date (the "Anticipated Timetable Change Date") then the MS Rights shall not have effect on the Anticipated Timetable Change Date, provided that if MS Acceptance does in fact occur by a date which in Network Rail's reasonable opinion is in time to allow the MS Rights to be operated on the Anticipated Timetable Change Date, the MS Rights shall be operated from the Anticipated Timetable Change Date.
- ii) If MS Acceptance occurs either after the Anticipated Timetable Change Date or on a date which in Network Rail's reasonable opinion is too late to allow the MS Rights to be operated from the Anticipated Timetable Change Date then the MS Rights shall be operated on the earliest date following MS Acceptance upon which it is possible to operate the MS Rights. For the avoidance of doubt pending operation of the MS Rights the Train Operator shall be entitled to operate in accordance with the Applicable Timetable.
- iii) If the Anticipated Timetable Change Date is the Subsidiary Change Date in any year and MS Acceptance occurs prior to that Subsidiary Change Date but after the Principal Change Date in the previous year, the parties recognise that upon MS Acceptance the Train Operator will be entitled to make one or more Train Operator Variation Requests<sup>85th</sup> to operate the MS Rights, which will be dealt with pursuant to Part D of the Network Code.

### **14. Disputes**

If the Train Operator is dissatisfied with Network Rail's decision given in the context of the MS Rights Effective Date, or paragraph 13 of this Schedule 5 then the Train Operator may refer the matter to the Timetabling Committee for determination in accordance with Condition D5 of the Network Code as though Condition 5.1.1 of the Network Code included a reference to this paragraph 14 as a ground for making an appeal, provided that if MS Acceptance does in fact occur in time to allow the MS Rights to be operated on the Anticipated Timetable Change Date, the MS Rights shall be operated from the Anticipated Timetable Change Date."

**With effect from the EG3 Phase 1 Effective Date, the contract shall be amended as shown in the following new paragraph<sup>73rd</sup>**

**15. Evergreen 3 Phase 1<sup>73rd</sup>**

**15.1 EG3 Phase 1 Proving Period Principles**

(a) Proving Period Duration

The provisions in this paragraph 15.1 and in paragraph 15.2 that relate to EG3 Phase 1 Services shall only apply for the EG3 Phase 1 Proving Period.

(b) Baseline Performance Measure

(i) The baseline PPM for the EG3 Phase 1 Proving Period for the Chiltern Services (**Baseline PPM 1**) shall be either:

(A) the lesser of:

- 1) 93.75%; and
- 2) the average of the PPM for the Chiltern Services in the 26 Periods immediately prior to the first day of the EG3 Phase 1 Service Implementation Date (the **Initial PPM 1**); or

(B) if the PPM in the Long Term Performance Plan (**LTPP**) falls to a level that triggers the formal review process as documented in the LTPP, the percentage determined in accordance with that process.

(ii) The baseline PPM for the EG3 Phase 1 Proving Period for the Other Services (**OS Baseline PPM 1**) shall be the average of the PPM for each of the Other Services in the 26 Periods immediately prior to the first day of the EG3 Phase 1 Service Implementation Date (the **OS Initial PPM 1**).

(iii) Network Rail shall, within 90 days of the end of the relevant Periods, provide the Train Operator with its recorded data (which shall be collected in accordance with the Network Rail performance systems) in respect of:

(A)

- 1) Primary Delay;
- 2) Reactionary Delay; and
- 3) Sub-threshold Delay,

(the **Recorded Delay**) suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project in each of the 26 Periods prior to the EG3 Phase 1 Service Implementation Date; and

(B) the aggregate figures for Recorded Delay in respect of the Chiltern Services and each of the Other Services in the 26 Periods prior to the EG3 Phase 1 Service Implementation Date.

(c) Performance Measurement Procedure

- (i) During the EG3 Phase 1 Proving Period, Network Rail shall collect performance data relating to the Recorded Delay suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project in accordance with normal industry processes.
- (ii) The Train Operator shall, acting reasonably, be entitled to audit the processes described in paragraph 15.1(c)(i).

(d) Reporting

- (i) No later than 30 days after the end of each Period in the EG3 Phase 1 Proving Period, Network Rail shall calculate using the performance data referred to in paragraph 15.1(c)(i) both the PPM in that Period (**Period PPM**) and the MAA PPM for the Chiltern Services and the Other Services and provide to the Train Operator the results of those calculations together with an explanation in reasonable detail of the methodology used by Network Rail in carrying out such calculations.
- (ii) If the Train Operator disagrees with Network Rail's calculations, produced pursuant to paragraph 15.1(d)(i), of any of the following:
  - (A) the Period PPM for the Chiltern Services;
  - (B) the Period PPM for the Other Services;
  - (C) the MAA PPM for the Chiltern Services; and
  - (D) the MAA PPM for the Other Services,

it shall notify Network Rail in writing describing, in reasonable detail, the grounds on which it disagrees with Network Rail's calculations. Within 10 Working Days of Network Rail receiving a notice given by the Train Operator pursuant to this paragraph 15.1(d)(ii), the Train Operator and Network Rail shall meet and seek to agree the calculation that is in dispute. If the Train Operator and Network Rail cannot agree within 40 Working Days of first meeting, either party may refer the matter to arbitration in accordance with Clause 13 of this Contract.

(e) EG3 Phase 1 Proving Period and the Reporting of Recorded Delay

Network Rail shall within 90 days of the end of the EG3 Phase 1 Proving Period provide the Train Operator with:

- (i) the data showing the Recorded Delay suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project during each of the Periods during the EG3 Phase 1 Proving Period; and



- (ii) the aggregate figures for Recorded Delay in respect of the Chiltern Services and each of the Other Services during the EG3 Phase 1 Proving Period.

(f) Allocation of Performance Risk

For the purposes of this paragraph 15.1, to the extent that during the EG3 Phase 1 Proving Period there is a decrease in either or both of:

- (i) the MAA PPM for the Chiltern Services; and
- (ii) the MAA PPM for the Other Services,

the Train Operator shall only be deemed to be responsible for that decrease where such decrease is caused by:

- (A) delay resulting from any action or inaction of the Train Operator or its contractors;
- (B) delay resulting from EG3 Phase 1 failing to facilitate the delivery by the Specified Equipment of the Services set out in this Schedule 5; or
- (C) delay resulting from the Specified Equipment failing to meet the requirements of the applicable Timetable Planning Rules<sup>85th</sup>.

(g) Post Proving Period Assessment

- (i) Subject to the provisions of paragraph 15.1(f), where following the expiry of the EG3 Phase 1 Proving Period, the MAA PPM for the Chiltern Services is below the Baseline PPM 1 and/or the MAA PPM for each of the Other Services is below the OS Baseline PPM 1:

- (A) the Train Operator and Network Rail shall cooperate and undertake an assessment of the performance attributable to EG3 Phase 1 during the EG3 Phase 1 Proving Period in order to determine, with a reasonable level of certainty, the extent to which the reduction in the MAA PPM of the Chiltern Services and/or each of the Other Services was caused by any of the matters described in paragraph 15.1(f)(A) to (C). In undertaking such assessment the parties will consider the causes of any changes to:
  - 1) Primary Delay;
  - 2) Reactionary Delay;
  - 3) the ratio of Primary Delay to Reactionary Delay; and
  - 4) Sub-threshold Delay,

relating to the Chiltern Services and/or each of the Other Services by:

- 5) using the Recorded Delay provided to the Train Operator in accordance with paragraphs 15.1(b)(ii) and 15.1(e); and;
  - 6) assessing:
    - a) the average level of each element of Recorded Delay suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project in the 26 Periods prior to the EG3 Phase 1 Service Implementation Date and in any completed Periods following the end of the EG3 Phase 1 Proving Period whilst the assessment contemplated by this paragraph 15.1(g) is undertaken by the parties;
    - b) the extent to which the Recorded Delay suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project should be adjusted to reflect the expected impact (if any) of an increase in the quantum of trains operating along the Routes which had the same operating characteristics as the Services (**EG3 Phase 1 Revised Recorded Delay**); and
- B) the Train Operator may request, to the extent possible under the Network Code, Network Rail to exercise any Flexing Rights and Network Rail shall act in accordance with the Network Code and its Network Licence in relation to the exercise of such rights in order to mitigate any deterioration of the MAA PPM for the Chiltern Services and/or each of the Other Services to the extent possible within these constraints; and
- C) the Train Operator shall have the opportunity to seek to remedy any deterioration of either or both of:
- 1) the MAA PPM for the Chiltern Services below the Baseline PPM 1; and
  - 2) the MAA PPM for the Other Services below the OS Baseline PPM 1,

and where the Train Operator seeks to remedy such deterioration Network Rail shall cooperate with the Train Operator and provide reasonable assistance to the Train Operator, at the reasonable expense of the Train

Operator, in identifying the most cost effective manner of rectifying the deterioration referred to in this paragraph.

(ii) Where there is a deterioration in either or both of:

- 1) the Chiltern Services; and
- 2) the Other Services,

for which the Train Operator is responsible (as set out in paragraph 15(f)), if the Train Operator does not seek to remedy such deterioration, or the parties agree that it is not possible to remedy such deterioration, then the parties shall meet within 20 Working Days to seek to agree:

- A) a reduced scope of the EG3 Rights Phase 1 which they consider to be appropriate in the circumstances; and
- B) any other matter which may appear to them to be necessary or expedient in the circumstances,

and if the parties make such an agreement, then, subject to the consent of the ORR, the provisions of this Schedule 5 shall be modified accordingly.

(iii) If the parties fail to agree the matters referred to in paragraph 15.1(g)(ii) within a reasonable period of time agreed between themselves, the matter shall be referred to arbitration in accordance with Clause 13 of this Contract and Network Rail shall, within 5 Working Days, notify the ORR in writing of such submission to arbitration. Following the making of an award by the arbitrator in relation to matters referred to it under this paragraph 15.1(g)(iii), then, subject to the consent of the ORR, the provisions of this Schedule 5 shall be modified accordingly.

(iv) If the parties cannot agree:

- (A) whether, or to what extent, any deterioration of either or both of:
  - 1) the MAA PPM for the Chiltern Services below the Baseline PPM 1; and
  - 2) the MAA PPM for the Other Services below the OS Baseline PPM 1, was caused by any of the matters for which the Train Operator is responsible (as described in paragraph 15.1(f));
- (B) the scope of any modifications to the Network and/or the Specified Equipment necessary to remedy the EG3 Phase 1 Related Deterioration;
- (C) the method of implementing any modifications to the Network and/or the Specified Equipment which have been agreed or determined pursuant to this paragraph 15.1(g);
- (D) any modifications to the quantum of the Chiltern Services; or

- (E) the extent of any revisions to the Recorded Delay data as contemplated by paragraph 15.1(g)(i)(A)6b),

then the matter shall be submitted to arbitration in accordance with Clause 13 of this Contract and Network Rail shall, within 5 Working Days, notify the ORR in writing of such submission to arbitration.

- (v) Where on the expiry of the EG3 Phase 1 Proving Period the MAA PPM for the Chiltern Services is greater than or equal to the Baseline PPM 1 and the MAA PPM for each of the other Other Services is greater than or equal to the OS Baseline PPM 1 then there shall be no amendment to the terms of the Chiltern Services and each of the Other Services as specified in this Schedule 5, as a result of the EG3 Phase 1 Proving Period.

(h) Rectification

- (i) Where the Train Operator has not commenced the planning of any infrastructure works and/or modifications to any of the Specified Equipment, and/or commenced the planning of any other activities intended to rectify the deterioration in the MAA PPM for the Chiltern Services and/or each of the Other Services within 6 months of the parties agreeing or it being determined in accordance with paragraph 15.1(g)(iv) that all or part of the deterioration of the MAA PPM for the Chiltern Services to below the Baseline PPM 1 and/or of the MAA PPM for each of the Other Services to below the OS Baseline PPM 1 was caused by matters for which the Train Operator is responsible (as set out in paragraph 15.1(f)) then the Train Operator shall be treated as having elected not to have sought to rectify the deterioration and paragraph 15.1(g)(ii) shall apply.

- (ii) Where the Train Operator has commenced the planning of:

- (A) any infrastructure works and/or modifications to any of the Specified Equipment and/or commenced planning; and/or
- (B) any other activities intended to rectify the deterioration in the MAA PPM for the Chiltern Services and/or each of the Other Services,

the Train Operator shall procure that such infrastructure works, modifications to the Specified Equipment and/or other activities are completed within a reasonable period of time agreed between Network Rail and the Train Operator.

- (iii) If the relevant infrastructure works, modifications to the Specified Equipment and/or other activities are not completed within the reasonable period of time agreed between the parties:

- (A) for reasons within the control of the Train Operator and/or its contractors, sub-contractors, suppliers and sub-suppliers; or

- (B) for reasons outside the control of the Train Operator and/or its contractors, sub-contractors, suppliers and sub-suppliers (save to the extent caused, or contributed to, by Network Rail) and the delay in completion of those infrastructure works and/or modifications is unreasonable having regard to the impact on the MAA PPM for the Chiltern Services and/or each of the Other Services (it being understood that a negative impact shall not of itself necessarily render the delay unreasonable),

then the provisions of Clauses 3.9(a) and 3.9(b) of this Contract shall apply, and for the purposes of this Schedule 5 only, references to the EG3 Phase 1 Condition Subsequent Longstop Date in Clauses 3.9(a) and 3.9(b) of this Contract shall be construed as references to the expiry date of the period of time agreed between the parties in accordance with paragraph 15.1(h)(ii) above.

- (iv) Network Rail shall cooperate with the Train Operator and use its reasonable endeavours to assist the Train Operator in procuring the undertaking of the infrastructure works and/or relevant modifications to the Specified Equipment and/or other activities within the reasonable period of time agreed between the parties.
- (v) Prior to commencing any infrastructure works, modifications to the Specified Equipment and/or other activities intended to rectify any deterioration of the MAA PPM for the Chiltern Services and/or each of the Other Services, the Train Operator and Network Rail shall meet and seek to agree whether there should be any reduction in the Chiltern Services during the undertaking of such infrastructure works, modifications to the Specified Equipment and/or other activities.

(i) Re-Benchmarking

- (i) Following the expiry of the EG3 Phase 1 Proving Period, Network Rail and the Train Operator shall meet and seek to agree the scope and nature of any amendments to any performance regime provisions contained in Schedule 8 (Performance Regime) that may be necessary to reflect the level of performance risk related to the continued operation of the Chiltern Services and/or each of the Other Services (as may be modified pursuant to paragraph 15.1(g) above).
- (ii) If the parties agree the scope and nature of the amendments (if any) to the performance regime provisions contained in Schedule 8 (Performance Regime) as contemplated by paragraph 15.1(i)(i), such amendments shall be submitted to the ORR for its approval.
- (iii) If the parties are unable to agree the scope and nature of any amendments to the performance regime provisions contained in Schedule 8 (Performance Regime) as contemplated by paragraph 15.1(h)(i) within 60 Working Days of first meeting either

party may refer the matter to arbitration in accordance with Clause 13 of this Contract.

- (iv) The performance regime provisions contained in Schedule 8 (Performance Regime) shall continue to apply unmodified until the scope and nature of the proposed amendments (if any) have been approved or otherwise determined by the ORR.

## **15.2 Operating Principles**

- (a) If, within a period of 20 Working Days from the start of the first Period of the EG3 Phase 1 Proving Period, either party considers (acting reasonably) it to be clear beyond doubt that the capacity to allow the EG3 Rights Phase 1 to be operated in accordance with the Working Timetable has not been created having regard to all relevant facts and matters including:

- (i) the effect of the seasons on the EG3 Phase 1 Capacity Matters;
- (ii) any failure in the operation of the Working Timetable, the Network, or any equipment or other structures, which would have occurred in any event (regardless of the attempted operation of the EG3 Rights Phase 1);
- (iii) any failure in the operation of the Working Timetable, the Network, or any equipment or other structures, which has occurred as a result of the attempted operation of the EG3 Rights Phase 1, but which the parties consider is unlikely to continue or re-occur in the future; and
- (iv) any failure in the operation of the Working Timetable due to the unfamiliarity of drivers, signallers, controllers and other persons involved in the operation of the Network with the correct operation of the Working Timetable and/or the location and correct operation of any equipment or other structures that have been enhanced or created as part of the EG3 Project,

then that party may give notice to the other party that it considers that the EG3 Rights Phase 1 Adjustment Process should apply.

- (b) If a notice is given pursuant to paragraph 15.2(a) then the parties shall meet as soon as reasonably practicable to seek to agree:
  - (i) any of the EG3 Phase 1 Capacity Matters which they may consider to be appropriate applying the EG3 Phase 1 Capacity Criteria; and
  - (ii) any other matter which may appear to them to be necessary or expedient in the circumstances,

and if the parties make such an agreement, then, subject to the consent of the ORR, the provisions of this Schedule 5 shall be modified accordingly.

- (c) If the parties fail to agree the matters referred to in the EG3 Rights Phase 1 Adjustment Process on or before the expiry of 20 Working Days following the giving of notice under paragraph 15.2(a):
  - (i) the matter shall be submitted to arbitration in accordance with Clause 13 of this Contract; and
  - (ii) Network Rail shall within 5 Working Days notify the ORR in writing of such submission to arbitration.
- (d) If a matter is referred to arbitration under paragraph 15.2(c), the arbitrator shall be required by the parties to:
  - (i) determine the matters referred to in the EG3 Rights Phase 1 Adjustment Process and make such orders in his award as he considers necessary to assess the EG3 Phase 1 Capacity Matters given that the capacity to allow the EG3 Rights Phase 1 to be operated in accordance with the Working Timetable has not been created; and
  - (ii) provide reasons for his award,and if the arbitrator makes such an award, then, subject to the consent of the ORR under paragraphs 15.2(e) or 15.2(f) the provisions of this Schedule 5 shall be modified accordingly.
- (e) If, having regard to all relevant facts and matters to be taken into account pursuant to paragraphs 15.2(b) - (d) the ORR is satisfied with the outcome of the arbitration pursuant to paragraphs 15.2(c) – (d), and it gives a notice to that effect, then the provisions of paragraphs 15.2(b) – (d) shall have effect.
- (f) If the ORR gives notice to the parties it is not satisfied with any or all of the outcome of the arbitration pursuant to paragraph 15.2(d) it may:
  - (i) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 15.2(b) - (d) for agreeing any adjustment to the EG3 Rights Phase 1 (with such modifications as to time limits as it specifies), in which case they shall do so; or
  - (ii) (following such consultation with the parties as it considers necessary, determine any adjustment to the EG3 Rights Phase 1, and give a notice specifying such adjustment to the EG3 Rights Phase 1.

**With effect from the Water Eaton Effective Date, the contract shall be amended as shown in the following new paragraph<sup>101st</sup>**

**16 Evergreen 3 Phase 2<sup>73rd</sup>**

**16.1 EG3 Phase 2 Proving Period Principles**

(a) Proving Period Duration

The provisions in this paragraph 16.1 that relate to the EG3 Phase 2 Services shall only apply from the EG3 Phase 2 Proving period and the provisions in paragraph 16.2 that relate to the EG3 Phase 2 Services shall apply both from the Water Eaton Effective Date and the Oxford Effective Date;<sup>101st</sup>

(b) Baseline Performance Measure

(i) The baseline PPM for the EG3 Phase 2 Proving Period for the Chiltern Services (**Baseline PPM 2**) shall be either:

(A) 93.75%; or

(B) if the PPM in the Long Term Performance Plan (**LTPP**) falls to a level that triggers the formal review process as documented in the LTPP, the percentage determined in accordance with that process.

(ii) The baseline PPM for the EG3 Phase 2 Proving Period for the Other Services (**OS Baseline PPM 2**) shall be the average of the PPM for each of the Other Services in the 26 Periods immediately prior to the first day of the EG3 Phase 2 Service Implementation Date (the **OS Initial PPM 2**).

(iii) Network Rail shall, within 90 days of the end of the relevant Periods, provide the Train Operator with its recorded data (which shall be collected in accordance with the Network Rail performance systems) in respect of:

(A)

1) Primary Delay;

2) Reactionary Delay; and

3) Sub-threshold Delay,

(the **Recorded Delay**) suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project in each of the 26 Periods prior to the EG3 Phase 2 Service Implementation Date; and

(B) the aggregate figures for Recorded Delay in respect of the Chiltern Services and each of the Other Services in the 26 Periods prior to the EG3 Phase 2 Service Implementation Date.



(c) Performance Measurement Procedure

- (i) During the EG3 Phase 2 Proving Period, Network Rail shall collect performance data relating to the Recorded Delay suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project in accordance with normal industry processes.
- (ii) The Train Operator shall, acting reasonably, be entitled to audit the processes described in paragraph 16.1(c)(i).

(d) Reporting

- (i) No later than 30 days after the end of each Period in the EG3 Phase 2 Proving Period, Network Rail shall calculate using the performance data referred to in paragraph 16.1(c)(i) both the PPM in that Period (**Period PPM**) and the MAA PPM for the Chiltern Services and the Other Services and provide to the Train Operator the results of those calculations together with an explanation in reasonable detail of the methodology used by Network Rail in carrying out such calculations.
- (ii) the Train Operator disagrees with Network Rail's calculations, produced pursuant to paragraph 16.1(d)(i), of any of the following:
  - (A) the Period PPM for the Chiltern Services;
  - (B) the Period PPM for the Other Services;
  - (C) the MAA PPM for the Chiltern Services; and
  - (D) the MAA PPM for the Other Services,

it shall notify Network Rail in writing describing, in reasonable detail, the grounds on which it disagrees with Network Rail's calculations. Within 10 Working Days of Network Rail receiving a notice given by the Train Operator pursuant to this paragraph 16.1(d)(ii), the Train Operator and Network Rail shall meet and seek to agree the calculation that is in dispute. If the Train Operator and Network Rail cannot agree within 40 Working Days of first meeting, either party may refer the matter to arbitration in accordance with Clause 13 of this Contract.

(e) EG3 Phase 2 Proving Period and the Reporting of Recorded Delay

Network Rail shall within 90 days of the end of the EG3 Phase 2 Proving Period provide the Train Operator with:

- (i) the data showing the Recorded Delay suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project during each of the Periods during the EG3 Phase 2 Proving Period; and

- (ii) the aggregate figures for Recorded Delay in respect of the Chiltern Services and each of the Other Services during the EG3 Phase 2 Proving Period.

(f) Allocation of Performance Risk

For the purposes of this paragraph 16.1, to the extent that during the EG3 Phase 2 Proving Period there is a decrease in either or both of:

- (i) the MAA PPM for the Chiltern Services; and
- (ii) the MAA PPM for the Other Services,

the Train Operator shall only be deemed to be responsible for that decrease where such decrease is caused by:

- (A) delay resulting from any action or inaction of the Train Operator or its contractors;
- (B) delay resulting from EG3 Phase 2 failing to facilitate the delivery by the Specified Equipment of the Services set out in this Schedule 5; or
- (C) delay resulting from the Specified Equipment failing to meet the requirements of the applicable Timetable Planning Rules<sup>85th</sup>.

(g) Post Proving Period Assessment

- (i) Subject to the provisions of paragraph 16.1(f), where following the expiry of the EG3 Phase 2 Proving Period, the MAA PPM for the Chiltern Services is below the Baseline PPM 2 and/or the MAA PPM of each of the Other Services is below the OS Baseline PPM 2:

- (A) the Train Operator and Network Rail shall cooperate and undertake an assessment of the performance attributable to EG3 Phase 2 during the EG3 Phase 2 Proving Period in order to determine, with a reasonable level of certainty, the extent to which the reduction in the MAA PPM of the Chiltern Services and/or each of the Other Services was caused by any of the matters described in paragraph 16.1(f) (A) to (C). In undertaking such assessment the parties will consider the causes of any changes to:

- 1) Primary Delay;
- 2) Reactionary Delay;
- 3) the ratio of Primary Delay to Reactionary Delay; and
- 4) Sub-threshold Delay,

relating to the Chiltern Services and/or each of the Other Services by:

- 5) using the Recorded Delay provided to the Train Operator in accordance with paragraphs 16.1(b)(ii) and 16.1(e); and;
- 6) assessing:
  - a) the average level of each element of Recorded Delay suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project in the 26 Periods prior to the EG3 Phase 2 Service Implementation Date and in any completed Periods following the end of the EG3 Phase 2 Proving Period whilst the assessment contemplated by this paragraph 16.1(g) is undertaken by the parties;
  - b) the extent to which the Recorded Delay suffered by the Chiltern Services and each of the Other Services as a result of the EG3 Project should be adjusted to reflect the expected impact (if any) of an increase in the quantum of trains operating along the Routes which had the same operating characteristics as the Services (**EG3 Phase 2 Revised Recorded Delay**); and
- (B) the Train Operator may request, to the extent possible under the Network Code, Network Rail to exercise any Flexing Rights and Network Rail shall act in accordance with the Network Code and its Network Licence in relation to the exercise of such rights in order to mitigate any deterioration of the MAA PPM for the Chiltern Services and/or each of the Other Services to the extent possible within these constraints; and
- (C) the Train Operator shall have the opportunity to seek to remedy any deterioration of either or both of
  - 1) the MAA PPM for the Chiltern Services below the Baseline PPM 2; and
  - 2) the MAA PPM for the Other Services below the OS Baseline PPM 2,

and where the Train Operator seeks to remedy such deterioration Network Rail shall cooperate with the Train Operator and provide reasonable assistance to the Train Operator, at the reasonable expense of the Train Operator, in

identifying the most cost effective manner of rectifying the deterioration referred to in this paragraph.

(ii) Where there is a deterioration in either or both of:

- (1) the Chiltern Services; and
- (2) the Other Services,

for which the Train Operator is responsible (as set out in paragraph 16(f)), if the Train Operator does not seek to remedy such deterioration, or the parties agree that it is not possible to remedy such deterioration, then the parties shall meet within 20 Working Days to seek to agree:

- (A) a reduced scope of the EG3 Rights Phase 2 which they consider to be appropriate in the circumstances; and
- (B) any other matter which may appear to them to be necessary or expedient in the circumstances,

and if the parties make such an agreement, then, subject to the consent of the ORR, the provisions of this Schedule 5 shall be modified accordingly.

(iii) If the parties fail to agree the matters referred to in paragraph 16.1(g) (ii) within a reasonable period of time agreed between themselves, the matter shall be referred to arbitration in accordance with Clause 13 of this Contract and Network Rail shall, within 5 Working Days, notify the ORR in writing of such submission to arbitration. Following the making of an award by the arbitrator in relation to matters referred to it under this paragraph 16.1(g) (iii), then, subject to the consent of the ORR, the provisions of this Schedule 5 shall be modified accordingly.

(iv) If the parties cannot agree:

- (A) whether, or to what extent, any deterioration of either or both of:
  - 1) the MAA PPM for the Chiltern Services below the Baseline PPM 2; and
  - 2) the MAA PPM for the Other Services below the OS Baseline PPM 2,

was caused by any of the matters for which the Train Operator is responsible (as described in paragraph 16.1(f));

- (B) the scope of any modifications to the Network and/or the Specified Equipment necessary to remedy the EG3 Phase 2 Related Deterioration;

- (C) the method of implementing any modifications to the Network and/or the Specified Equipment which have been agreed or determined pursuant to this paragraph 16.1(g);
- (D) any modifications to the quantum of the Chiltern Services; or
- (E) the extent of any revisions to the Recorded Delay data as contemplated by paragraph 16.1(g)(i)(A)6b),

then the matter shall be submitted to arbitration in accordance with Clause 13 of this Contract and Network Rail shall, within 5 Working Days, notify the ORR in writing of such submission to arbitration.

- (v) Where on the expiry of the EG3 Phase 2 Proving Period the MAA PPM for the Chiltern Services is greater than or equal to the Baseline PPM 2 and the MAA PPM for each of the Other Services below the OS Baseline PPM 2 then there shall be no amendment to the terms of the Chiltern Services as specified in this Schedule 5, as a result of the EG3 Phase 2 Proving Period.

(h) Rectification

- (i) Where the Train Operator has not commenced the planning of any infrastructure works and/or modifications to any of the Specified Equipment, and/or commenced the planning of any other activities intended to rectify the deterioration in the MAA PPM for the Chiltern Services and/or each of the Other Services within 6 months of the parties agreeing or it being determined in accordance with paragraph 16.1(g)(iv) that all or part of the deterioration of the MAA PPM for the Chiltern Services to below the Baseline PPM 2 and/or each of the Other Services to below the OS Baseline PPM 2 was caused by matters for which the Train Operator is responsible (as set out in paragraph 16.1(f)) then the Train Operator shall be treated as having elected not to have sought to rectify the deterioration and paragraph 16.1(g)(ii) shall apply.
- (ii) Where the Train Operator has commenced the planning of:
  - (A) any infrastructure works and/or modifications to any of the Specified Equipment and/or commenced planning; and/or
  - (B) any other activities intended to rectify the deterioration in the MAA PPM for the Chiltern Services and/or each of the Other Services,

the Train Operator shall procure that such infrastructure works, modifications to the Specified Equipment and/or other activities are completed within a reasonable period of time agreed between Network Rail and the Train Operator.

- (iii) If the relevant infrastructure works, modifications to the Specified Equipment and/or other activities are not completed within the reasonable period of time agreed between the parties:
  - (A) for reasons within the control of the Train Operator and/or its contractors, sub-contractors, suppliers and sub-suppliers; or
  - (B) for reasons outside the control of the Train Operator and/or its contractors, sub-contractors, suppliers and sub-suppliers (save to the extent caused, or contributed to, by Network Rail) and the delay in completion of those infrastructure works and/or modifications is unreasonable having regard to the impact on the MAA PPM for the Chiltern Services and/or each of the Other Services (it being understood that a negative impact shall not of itself necessarily render the delay unreasonable),

then the provisions of Clauses 3.10(a) to (f) of this Contract shall apply, and for the purposes of this Schedule 5 only, references to the EG3 Phase 2 Condition Subsequent Longstop Date in Clauses 3.10(a) to (f) of this Contract shall be construed as references to the expiry date of the period of time agreed between the parties in accordance with paragraph 16.1(h) (ii) above.

- (iv) Network Rail shall cooperate with the Train Operator and use its reasonable endeavours to assist the Train Operator in procuring the undertaking of the infrastructure works and/or relevant modifications to the Specified Equipment and/or other activities within the reasonable period of time agreed between the parties.
- (v) Prior to commencing any infrastructure works, modifications to the Specified Equipment and/or other activities intended to rectify any deterioration of the MAA PPM for the Chiltern Services and/or each of the Other Services, the Train Operator and Network Rail shall meet and seek to agree whether there should be any reduction in the Chiltern Services during the undertaking of such infrastructure works, modifications to the Specified Equipment and/or other activities.
- (i) Re-Benchmarking
  - (i) Following the expiry of the EG3 Phase 2 Proving Period, Network Rail and the Train Operator shall meet and seek to agree the scope and nature of any amendments to any performance regime provisions contained in Schedule 8 (Performance Regime) that may be necessary to reflect the level of performance risk related to the continued operation of the Chiltern Services and/or each of the Other Services (as may be modified pursuant to paragraph 16.1(g) above).

- (ii) If the parties agree the scope and nature of the amendments (if any) to the performance regime provisions contained in Schedule 8 (Performance Regime) as contemplated by paragraph 16.1(i)(i), such amendments shall be submitted to the ORR for its approval.
- (iii) If the parties are unable to agree the scope and nature of any amendments to the performance regime provisions contained in Schedule 8 (Performance Regime) as contemplated by paragraph 16.1(h)(i) within 60 Working Days of first meeting either party may refer the matter to arbitration in accordance with Clause 13 of this Contract.
- (iv) The performance regime provisions contained in Schedule 8 (Performance Regime) shall continue to apply unmodified until the scope and nature of the proposed amendments (if any) have been approved or otherwise determined by the ORR.

## **16.2 Operating Principles**

- (a) If, within a period of 20 Working Days from the start of the first Period following the Water Eaton Effective Date and Oxford Effective Date<sup>101st</sup>, either party considers (acting reasonably) it to be clear beyond doubt that the capacity to allow the EG3 Rights Phase 2 to be operated in accordance with the Working Timetable has not been created having regard to all relevant facts and matters including:
  - (i) the effect of the seasons on the EG3 Phase 2 Capacity Matters;
  - (ii) any failure in the operation of the Working Timetable, the Network, or any equipment or other structures, which would have occurred in any event (regardless of the attempted operation of the EG3 Rights Phase 2);
  - (iii) any failure in the operation of the Working Timetable, the Network, or any equipment or other structures, which has occurred as a result of the attempted operation of the EG3 Rights Phase 2, but which the parties consider is unlikely to continue or re-occur in the future; and
  - (iv) any failure in the operation of the Working Timetable due to the unfamiliarity of drivers, signallers, controllers and other persons involved in the operation of the Network with the correct operation of the Working Timetable and/or the location and correct operation of any equipment or other structures that have been enhanced or created as part of the EG3 Project,

then that party may give notice to the other party that it considers that the EG3 Rights Phase 2 Adjustment Process should apply.

- (b) If a notice is given pursuant to paragraph 16.2(a) then the parties shall meet as soon as reasonably practicable to seek to agree:

- (i) any of the EG3 Phase 2 Capacity Matters which they may consider to be appropriate applying the EG3 Phase 2 Capacity Criteria; and
- (ii) any other matter which may appear to them to be necessary or expedient in the circumstances,

and if the parties make such an agreement, then, subject to the consent of the ORR, the provisions of this Schedule 5 shall be modified accordingly.

(c) If the parties fail to agree the matters referred to in the EG3 Rights Phase 2 Adjustment Process on or before the expiry of 20 Working Days following the giving of notice under paragraph 16.2(a):

- (i) the matter shall be submitted to arbitration in accordance with Clause 13 of this Contract; and
- (ii) Network Rail shall within 5 Working Days notify the ORR in writing of such submission to arbitration.

(d) If a matter is referred to arbitration under paragraph 16.2(c), the arbitrator shall be required by the parties to:

- (i) determine the matters referred to in the EG3 Rights Phase 2 Adjustment Process and make such orders in his award as he considers necessary to assess the EG3 Phase 2 Capacity Matters given that the capacity to allow the EG3 Rights Phase 2 to be operated in accordance with the Working Timetable has not been created; and
- (ii) provide reasons for his award,

and if the arbitrator makes such an award, then, subject to the consent of the ORR under paragraphs 16.2(e) or 16.2(f) the provisions of this Schedule 5 shall be modified accordingly.

(e) If, having regard to all relevant facts and matters to be taken into account pursuant to paragraphs 16.2(b) - (d) the ORR is satisfied with the outcome of the arbitration pursuant to paragraphs 16.2(c) – (d), and it gives a notice to that effect, then the provisions of paragraphs 16.2(b) – (d) shall have effect.

(f) If the ORR gives notice to the parties it is not satisfied with any or all of the outcome of the arbitration pursuant to paragraph 16.2(d) it may:

- (i) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 16.2(b) - (d) for agreeing any adjustment to the EG3 Rights Phase 2 (with such modifications as to time limits as it specifies), in which case they shall do so; or



- (ii) following such consultation with the parties as it considers necessary, determine any adjustment to the EG3 Rights Phase 2, and give a notice specifying such adjustment to the EG3 Rights Phase 2.