

Responses to Implementing PR18: consultation on changes to access contracts

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30 August 2018

IMPLEMENTING PR18: CONSULTATION ON CHANGES TO ACCESS CONTRACTS

This letter contains the comments of DB Cargo (UK) Limited ("**DB Cargo**") concerning the matters included in the "*Consultation on Changes to Access Contracts*" issued by the Office of Rail and Road ("**ORR**") in July 2018 ("**the consultation**").

Chapter 2 (and Appendix B)

Contingency arrangements for a delay to the implementation of PR18

DB Cargo is content with ORR's proposal to introduce provisions into track access contracts to deal with the potential consequences of a delay to PR18 implementation (and indeed any delays to future periodic reviews). Having considered the drafting of the proposed provision set out in Appendix B of the consultation, it does not appear to include explicit wording that allows a Train Operator to formally contest the amount of the reconciliation payment and supporting information provided by Network Rail if it considers that there have been errors made. As currently drafted, Network Rail issues the information and 28 days later issues the invoice or credit note as the case maybe. Consequently, DB Cargo considers that the addition of a simple dispute provision would be of benefit.

Chapter 3

Indexation

DB Cargo considers that there should be a consistent approach used in formulas of indexation provisions across all track access contracts. In this respect, DB Cargo believes that the most appropriate mechanism to adopt would be one based on a comparison of yearly averages. An example of such a mechanism based on a comparison of calendar yearly averages is currently included in Schedule 7 of freight track access contracts. IN DB Cargo's view, this approach would reduce the possibility of significant volatility that could arise when using, for example, comparisons of changes between particular months in specific years (as currently employed in some passenger track access contracts).



Chapter 5

Schedule 4 – Round Trips

DB Cargo notes the proposal to amend paragraphs 3.5 and 7.3 of Schedule 4 in order to clarify that the 'Round Trip' provision does not apply when a service is loaded in both directions. The definition of "Round Trip" means "*a Service and any associated Empty Services and Ancillary Movements*".

Whilst DB Cargo supports the intention behind ORR's proposal, it believes that the proposed amendment could have unintended consequences as follows: ORR proposes to add the wording "*, unless the train is loaded in both directions*" to the end of the two paragraphs mentioned above. Consequently, this has the effect of ensuring that "*Network Rail shall not be liable to the Train Operator for more than one Planned Disruption Sum [or Service Variation Sum] in respect of any Round Trip, unless the train is loaded in both directions.*" It could be argued that a train cannot in fact be loaded in both directions because each direction would be a separate train or "Service".

The proposed amendment not only introduces the concept of "train" when the definition of "Round Trip" uses the defined term "Service" but more importantly appears to imply that in cases where a train is loaded in both directions that Network Rail could be liable for Planned Disruption Sums or Service Variation Sums for any Empty Services and Ancillary Movements associated with those trains loaded in both directions. This is because the "Round Trip" provision would not apply to such trains as it would have been dis-applied by the proposed amendment.

DB Cargo considers that another way of achieving ORR's objective and so avoid the unintended consequences outlined above would be to amend the definition of "Round Trip", instead, for example, as follows:

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

Schedule 7 - Baseline date for Operating Constraints

DB Cargo is concerned to ensure that the proposed changes to the incremental costs provisions ('Operating Constraints') do not result in the unintended consequence of formalising changes to the network that have occurred during CP5 that have not been processed and implemented correctly by Network Rail (i.e. although relevant changes may be published in the Operating Constraints, Network Rail has not yet followed where necessary the Network Change provisions set out in Part G of the Network Code). If this concern is not taken into account, it could result in a freight operator being liable to pay incremental costs for network capability that should still be provided by Network Rail because it has not been removed by the formal implementation of a Network Change.



Schedule 7 – Freight Specific Charge

DB Cargo considers that the proposed definitions of “ESI Coal Vehicle”, “ESI Biomass Vehicle”, “SNF Vehicle” and “IO Vehicle” should be amended to make it explicit as to whether it is the intention in CP6 to levy the Freight Specific Charge on vehicles of these types when included in the consists of both the loaded and return empty movements of services involved in conveying these commodities or, alternatively, just the loaded movement. DB Cargo considers that the current proposed definitions do not clearly indicate which of these two circumstances is intended to apply.

Schedule 8 – Performance Regime

DB Cargo, along with other freight operators has agreed with Network Rail a number of changes to Schedule 8 of the track access contract to encompass provisions relating to the fitment of ETCS Equipment on its locomotives and, in particular, how this will impact on the attribution of delay under the Performance Regime. DB Cargo understands that these changes are currently with ORR being considered. If ORR approval is granted, then these amendments will need to be encompassed in ORR’s PR18 Review Notice to prevent them from being inadvertently removed from the start of CP6. Given that the ETCS amendments will apply to all freight operators, DB Cargo considers that they should be encompassed in the Review Notice rather than being dealt with by way of ‘bespoke provisions’.

Chapter 6

Schedule 7 - Indexation

As explained earlier in this response, DB Cargo considers that there should be a consistent approach used in formulas of indexation provisions across all track access contracts and that approach should be based on calendar year averages. Consequently, DB Cargo considers that the approach proposed in Schedule 7 of the charter track access contract (i.e. a continuation of the comparison of November to November changes) should be amended to mirror the provisions used in the freight Schedule 7. Given that the majority of charter passenger operators are also freight operators, this would increase consistency between the two types of track access contract.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Oatway', with a horizontal line underneath.

Nigel Oatway
Access Manager

Great Western Railway response to Implementing PR18: consultation on changes to access contracts

1. We are happy with the draft contingency arrangements and wording so long as the Department for Transport confirms to the Office for Rail and Road that any such contingency arrangement if implemented has the same status so far as the Franchise Agreement is concerned as do the non-contingent PR18 outcomes;
2. The anchoring of CPI to base year rather than to previous year is preferred as this removes the error caused by compound rounding;
3. Very much support the inclusion of rounding parameter as currently whilst this is accepted it is not explicit and hard to justify to new personnel;
4. Support is provided for the proposal to retain existing uplift arrangements for extant facility charges;
5. It might be noted that the move to CPI from RPI is not welcome as it is inconsistent with franchise arrangements so causes uncertainty in planning;
6. It may also be noted that removal of the capacity charge removes real practical incentive for economic use of resource and infrastructure through operation of long trains rather than frequent services to meet and generate demand. The annual adjustment to fixed charge based on timetabled mileage will incentivise [as per item 6] if the adjustment is based on train miles rather than vehicle miles;
7. Tolerance factors should if possible be removed from the standard contract. They are not widely understood and cause material delay to implementation of worthwhile metering charging arrangements. Provision as standard seems redundant now that new meters tend to meet the Network Rail standard; and
8. The capping arrangements for fixed charge v timetabled mileage seem all right but this becomes academic with timetables being rolled over. It may be time for thought to be given to amending the Track Access Contract Network Code to update for emerging agreed practice, and which may well involve too a fundamental review of the long term planning process to avoid repercussion;

I should be very grateful if you would arrange for this to be considered please.

Robert Holder | Network Access Manager | Great Western Railway

Response from Freightliner Group
Implementing PR18: consultation on changes to access contracts

August 2018

This is the response of Freightliner Group, which is part of Genesee and Wyoming's UK/Europe Region companies, the matters included in the "*Consultation on Changes to Access Contracts*" issued by the Office of Rail and Road ("ORR") in July 2018 ("the consultation").

Chapter 2 (and Appendix B)

Contingency arrangements for a delay to the implementation of PR18

In Appendix B there is not any explicit wording that allows a Train Operator to challenge the amount of the reconciliation payment provided by Network Rail if it considers it is incorrect. We suggest that a dispute provision is added.

Chapter 3

Indexation

There should be a consistent approach used in formulas of indexation provisions across all track access contracts. The mechanism in the freight operator contracts is based on yearly averages, which avoids the use of outlying single months and therefore reduces the risk of blips or volatile figures.

Chapter 5

Schedule 4

Freightliner is disappointed that the proposals it made to improve Schedule 4 wording have largely not been processed at this time. The current wording remains confusing in parts, which is unhelpful for all parties and is more likely to lead to disputes. We suggest that a review of Schedule 4 wording is undertaken at a separate time to the Periodic Review so that changes can be properly considered in a timely manner. It was challenging for us to find time to respond to the consultation alongside other consultations and it is also a busy time for ORR. We suggest that such reviews are undertaken at a different time to the Periodic Review in future.

Round Trips

Freightliner notes the proposal to amend paragraphs 3.5 and 7.3 of Schedule 4 in order to clarify that the 'Round Trip' provision does not apply when a service is loaded in both directions. The definition of "Round Trip" means "*a Service and any associated Empty Services and Ancillary Movements*".

Whilst Freightliner supports the intention behind ORR's proposal the proposed amendment could lead to confusion:

ORR proposed wording "*, unless the train is loaded in both directions*" at the end of the current text in paras 3.5 and 7.3.

This could then be read as "*Network Rail shall not be liable to the Train Operator for more than one Planned Disruption Sum [or Service Variation Sum] in respect of any Round Trip, unless the train is loaded in both directions.*" We do not believe this is the intention.

The proposed amendment should use the term "Service" rather than "Train".

To avoid this unintended consequence Freightliner suggests that the definition of "Round Trip", is amended instead - suggested text below:

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

Schedule 7 - Baseline date for Operating Constraints

This paragraph should have text added that makes it clear that only changes that been formalised and published through the Network Change process can be included in the new baseline. Otherwise there is a risk that a change to the Operating Constraints has been published but the correct change processes have not been undertaken.

Network Rail should be obliged to publish the data at the baseline point, so that operators can access this data so that the baseline is clear and transparent.

Schedule 7 - Freight Specific Charge

The definitions of "ESI Coal Vehicle", "ESI Biomass Vehicle", "SNF Vehicle" and "IO Vehicle" are not clear with regard to whether it is the intention in CP6 to levy the Freight Specific Charge on vehicles both the loaded and empty movements or just the loaded movement.

Schedule 8 - Performance Regime

Freightliner Ltd and Freightliner Heavy Haul, along with other freight operators has agreed with Network Rail a number of changes to Schedule 8 of the track access contract to encompass provisions relating to the fitment of ETCS Equipment on its locomotives and, in particular, how this will impact on the attribution of delay under the Performance Regime during the implementation phase of ERTMSD signalling.

We understand the Freightliner Limited and Freightliner Heavy Haul 3rd supplemental agreements were formally submitted to the ORR earlier in August following invitation to do so by the ORR.

These amendments will apply to all freight operators and should be encompassed in ORR's PR18 Review Notice to prevent them from being inadvertently removed from the start of CP6.

Consultation on implementing PR18 - Network Rail's response

7 September 2018

1. Introduction

- 1.1. We welcome the opportunity to respond to ORR's PR18 implementation consultation, published on 12 July. We consider that it is important that ORR's Final Determination is accurately transposed into track and station access contracts. We do not consider any part of this response to be confidential and we are content for it to be published in full.
- 1.2. We have prepared this submission concurrently with preparing our response to ORR's PR18 Draft Determination. In the main part, we do not seek to repeat our response to ORR's PR18 Draft Determination. Instead, we have made key policy observations / comments for any aspects that were not addressed in the Draft Determination or where further detail has been provided by ORR as part of this consultation.
- 1.3. In relation to the proposed changes to track access contracts, the majority of our comments are minor relating to detailed drafting points. We request further clarity in a few instances, particularly with regards to ORR's proposals on the indexation of charges.

Structure of this response

- 1.4. There is a considerable amount of documentation included in our response, including mark-ups of the model track access contracts for Schedule 7 for each type of operator, Schedule 8 for freight and charter operators, Schedule 4 for freight operators and the Traction Electricity Rules.
- 1.5. In responding to this consultation, we have focused on key policy areas / concerns in the main body of the response (which are not already addressed in our response to ORR's PR18 Draft Determination). We have set out proposed mark-ups of contracts in Annex 2 to this document.
- 1.6. We note that ORR has only published the specific proposed drafting changes for Schedule 7 of the open access track access contract, as part of its July 2018 consultation on changes to access contracts. ORR refers to the franchised passenger contract for Schedules 4 and 8 changes for open access operators. This implies that the franchised passenger contract for Schedules 4 and 8 and the proposed changes to the contractual wording also applies to open access track access contract. This is because there are currently several differences between the passenger and open access track access contracts, specifically for Schedules 4 and 8, which would be removed for CP6. For example, the CP5 open access track access contract does not include a provision for operators to claim for additional Schedule 8 compensation whilst in Sustained Poor Performance (SPP) whereas the passenger track access contract does have a SPP provision. Therefore, if the open access track access contract was consistent with the passenger track access contract in CP6, open access operators would be able to trigger SPP in CP6. Additionally, there may be other differences between the franchised passenger and open access track access contracts outside of Schedules 4 and 8 which ORR may wish to retain for CP6. We are therefore concerned that ORR's decision to only publish a marked up version of

Schedule 7 of the open access track access contract may inadvertently result in a policy decision for CP6.

- 1.7. We do not consider that this was the intention of ORR's consultation and, therefore, strongly recommend that ORR publishes a marked-up version of the full open access track access contract for CP6. This should remove any ambiguity and ensure no inadvertent policy decisions are made for CP6 which have not previously been consulted with the industry.
- 1.8. The remainder of this document is structured to correspond to the relevant sections of the ORR consultation document as follows:
 - Contingency arrangements for a delay to the implementation of PR18
 - Changes affecting franchised, freight and open access track access contracts
 - Changes to passenger operator access contracts
 - Changes to freight track access contracts
 - Changes to charter track access contracts
 - Changes to station access contracts.

Other implementation activities

- 1.9. On 31 July 2018 we published updated draft variable and station charges price lists for CP6, consistent with ORR's Draft Determination¹. We also published a draft Fixed Track Access Charge (FTAC) CP6 price list on 24 August 2018. When we published these draft price lists we noted that we did not necessarily agree with all of ORR's policy proposals set out in its Draft Determination.
- 1.10. We are grateful to operators that have provided comments on the draft price lists for CP6. This feedback is important and Network Rail will consider it carefully, especially since once the price lists have been finalised as part of the PR18 implementation process, there will not be an opportunity to re-open the price lists until the next access charges review.
- 1.11. We note that ORR has written to each freight and passenger operator and Network Rail, setting out its views on whether bespoke provisions (if any) in each track access contract should be retained in CP6. We have been working closely with our customers to confirm that ORR's position is that which we expect and will advise ORR if this is not the case.

Track Access Billing System

- 1.12. While not directly related to ORR's consultation, it is important to note that we have started the necessary development work to facilitate the required changes to our track access billing system (TABS), such that we should be able to bill in accordance with

¹ Available at: [Periodic Review 2018 \(PR18\) – Network Rail](#)

the updated provisions set out in freight and passenger operators' track access contracts, with effect from 1 April 2019 (assuming the acceptance of ORR's Final Determination).

- 1.13. However, as noted in our response to ORR's Draft Determination, we need to do further work to confirm that our systems are sufficiently robust to implement ORR's proposal to adjust franchised passenger operators' FTACs based on timetabled traffic levels. If it emerges that it is not sufficiently robust we are likely to propose to ORR that the methodology for varying FTACs with traffic levels in CP6 will need to be amended.
- 1.14. We will continue to work closely with ORR with the aim of overcoming any systems issues and developing appropriate CP6 operator traffic baselines on which to base adjustments to operators' FTACs. We suggest that final operator traffic baselines are published ahead of the start of CP6 (i.e. on or before 31 March 2019) but after the final CP6 FTAC price list in December 2018.

2. Contingency arrangements for a delay to the implementation of PR18

Summary of ORR proposals

- 2.1. In this chapter, ORR sets out the contingency arrangements that it proposes Network Rail and train operators include in their track access contracts, by way of a supplemental agreement, to deal with the potential consequences of a delay to PR18 implementation.
- 2.2. The contingency arrangements provide that in the case of a delay arising, ORR would apply the proposed charges on an interim basis and that once the periodic process review has been duly concluded the final set of charges would take effect and confirm or supersede the interim arrangements.
- 2.3. There would then be an adjustment so that the final set of charges would be applied from the beginning of the control period.
- 2.4. ORR does not consider that there are any good alternatives to the arrangement applied in PR08 and PR13.

Network Rail response

- 2.5. We agree to the proposal that, in the event of delay to the formal implementation of the 2018 periodic review, the most practical course of action is to implement the PR18 review notices whilst any issues are resolved. Then, depending on the resolution of any issues, there may be a need to issue new review notices.

3. Changes affecting franchised, freight and open access track access contracts

Contingency arrangements for subsequent periodic reviews

Summary of ORR proposals

- 3.1. ORR proposes to include the contingency arrangements that would apply in PR18 as a standard clause in the new CP6 model versions of Schedule 7. As such, it would be included in track access contracts from 1 April 2019 when review notices would take effect and in all relevant future track access contracts.

Network Rail response

- 3.2. We support the inclusion of the contingency arrangement as a standard clause in the new CP6 model versions of Schedule 7.

Indexation

Adjustments in respect of the switch to CPI indexation

Summary of ORR proposals

- 3.3. Track access contracts include provisions to uplift (or 'index') access charges and other contractual payments by inflation each year. From CP6, ORR has proposed to move from using the Retail Price Index (RPI) to the Consumer Price Index (CPI) to index charges because it is considered to be a more robust measure of inflation. ORR has stated that this is a technical change and will not materially affect Network Rail's overall level of funding in CP6.

Network Rail response

- 3.4. ORR's proposed changes to track access contracts seek to implement the move to CPI by replacing references to RPI in track access contracts with references to CPI. ORR has been clear that this means that train operators access charges will be lower in CP6 than they would be using RPI. Our estimate is that variable charges will be around £80m lower over CP6 as a result of this change. This is because CPI is around one percentage point lower than RPI.
- 3.5. Track access contracts also use an 'initial indexation factor' (IIF) to uplift charges at the start of the control period from the PR18 final determination price base (2017/18 prices) to the price base for the first year of CP6 (2019/20 prices). In ORR's draft track access contracts, it uses CPI as the inflation measure in the initial indexation factor. We understand from ORR that this is a policy choice. However, this is not consistent with the use of RPI in CP5. Our view is that to appropriately reflect the use of RPI to index charges in CP5, the initial indexation factor should use RPI, rather than CPI. The use of CPI in the IIF means that variable charges would be around a further £70m lower over CP6, than they would be using RPI in the IIF. Because we recognise that this is a policy choice we have not suggested a change in the mark-up.

Values used in indexation provisions

Summary of ORR proposals

- 3.6. ORR's consultation asked for views on whether it should use a consistent formula approach for CPI indexation formulae in CP6 track access contracts with regard to the time periods referred to and the methods used to calculate values.

Network Rail response

- 3.7. We think that the use of a consistent formula across all track access contracts would be a useful simplification of the contractual arrangements, and should be investigated further. However, we recognise that train operators are likely to prefer to retain the existing inflation formula as they may have other contractual arrangements (e.g. with customers or franchising authorities) that are linked to the specific inflation formula used in their track access contracts.

Removal of capacity charge and the route-level efficiency benefit sharing mechanism

Summary of ORR proposals

- 3.8. ORR has proposed changes to the CP6 versions of Schedule 7 to reflect its decision to remove the capacity charge and the route-level efficiency benefit sharing mechanism.

Network Rail response

- 3.9. As set out in Network Rail's response to ORR's December 2016 consultation on changes to charges and contractual incentives, Network Rail does not support the removal of the Capacity Charge for CP6. However, we recognise that ORR has decided to remove the charge for CP6. Therefore, we have reviewed ORR's proposed drafting for the Capacity Charge in CP6 and are content with the proposed changes. We welcome the inclusion of a provision to recover income through the Capacity Charge in CP6 for income related to the final year of CP5 (2018/19). It is important that there is a provision in the contract to receive this income, given that this relates to income in the final year of CP5, when the Capacity Charge was still part of the regulatory framework. In the attached marked-up freight contract, we have added a provision stating that if the Freight Capacity Charge Wash-up for the Relevant Year ending 31 March 2019 is a positive amount then, as soon as practicable, Network Rail shall issue to the Train Operator an invoice for that amount and the Train Operator shall pay or procure payment of it. This was previously set out in paragraph 2.1.5 of Schedule 7 but has been deleted in the updated drafts; we have re-instated it at paragraph 2.3.2. For the same reason, we have re-instated paragraph 6.2 of Part 2 of Schedule 7 of the open access contract.
- 3.10. We have no substantive changes to make to the franchised passenger operator contracts.

- 3.11. We agree with ORR's decision to remove the transitional provision for the efficiency benefit sharing (EBS) mechanism that was in place during Control Period 4 (2009-2014) on the basis that it is no longer required.
- 3.12. We are broadly content that ORR's proposed contractual drafting gives effect to ORR's policy decision to remove REBS for CP6. We agree with the inclusion of a provision in CP6 track access contracts for REBS to manage any payments between Network Rail and participating operators for the final year of CP5 (2018/19). The 2018/19 payments will be confirmed at some stage during the first year of CP6 requiring, therefore, a transitional provision.
- 3.13. However, we have reviewed the ORR's wording and have proposed some changes to the drafting of Part 3 of Schedule 7 of the passenger contract to clarify that the provisions of Part 3 of Schedule 7 of the version of the passenger contract that was in force up until 31 March 2019 relating to both calculation and payment of any Route-Level Efficiency Benefit Share will continue to apply in respect of the Relevant Year ending 31 March 2019. This means the party who owes the payment will need to make such payment within 56 days of the date of publication of ORR's annual efficiency and finance assessment of Network Rail for the Relevant Year. We also propose a reference to Appendix 7A and 7B continuing to apply for consistency with the ORR's changes to the freight contract.
- 3.14. We have made equivalent changes to paragraph 4.1 of Schedule 7 of the freight contract and paragraph 1 of Part 3 of Schedule 7 of the open access track access contract.

Changes to the Traction Electricity Rules and related changes to Schedule 7

Deletion of defunct transitional risk sharing mechanism text

Summary of ORR proposals

- 3.15. ORR has deleted defunct text in the Traction Electricity Rules (TERs) relating to the application of the transitional risk sharing mechanism.

Network Rail response

- 3.16. We welcome the proposal to remove text regarding the transition arrangement for the risk sharing mechanism.

Network Rail's conclusions on power factor corrections and default modelled consumption rates for passenger operators

Summary of ORR proposals

- 3.17. ORR has removed the power factor correction provisions from the TERs.

Network Rail response

- 3.18. We welcome the removal of power correction factor provisions in the TERs.

Meter tolerance factors

Summary of ORR proposals

3.19. ORR has removed tolerance factor provisions in the TERs.

Network Rail response

3.20. We welcome the removal of tolerance factor provisions in the TERs.

Hybrid trains

Summary of ORR proposals

3.21. ORR has proposed to introduce text to clarify when a hybrid train should be charged for using traction electricity.

Network Rail response

3.22. Having worked to develop the proposed contractual wording regarding charging bimodal units for traction electricity, we welcome ORR's proposal to include this text as part of the model contracts for passenger and freight operators.

3.23. We suggest that ORR might wish to develop drafting to be included as part of the model contract for open access and charter operators too. Whilst it may be unlikely that open access operators or charter operators will run bimodal units in CP6, including this text now would eliminate the need for a supplementary agreement within the control period should they do so.

3.24. We have suggested some amendments are made to ORR's proposed wording regarding the provision of "Traction Electricity Usage Occurrence Data". Our proposed amendments are shown in our mark-ups of paragraph 4.1.5 of Part 2 of Schedule 7 of the passenger contract and paragraph 2.4.1.5 of Schedule 7 of the freight contract.

3.25. The purpose of "Traction Electricity Usage Occurrence Data" is to provide a way of distinguishing when a bimodal unit is using traction electricity and when it is running on diesel. This is important as it can be used to determine when to charge metered trains for the electrification asset usage charge and traction electricity. Readings taken from on-train meters cannot be reliably used for this purpose; we are aware of an issue with meters on all-electric trains where the meter defaults to submitting zero kWh even though the train has travelled a significant distance and, therefore, must have consumed electricity.

3.26. We intend to use Quality Flags as "Traction Electricity Usage Occurrence Data". More specifically, a zero kWh reading with a quality flag of certain would be billed as zero kWh i.e. assuming that the bimodal unit was running on diesel; and a zero kWh reading with a quality flag of uncertain/non-existent would be infilled (i.e. assuming that the bimodal unit was using traction electricity).

3.27. We will present these ideas to the Traction Electricity Steering Group on 17 September and update the Metering Data Interface Specification document accordingly.

- 3.28. Each meter reading that we receive is accompanied by a Quality Flag. Since Quality Flags are submitted as part of 'business as usual' we consider that there is scope for simplifying the approach to providing Traction Electricity Usage Occurrence data, so that it is consistent with the process for submitting metered data.

Other changes

Paperless billing

Summary of ORR proposals

- 3.29. ORR has included a provision in the front end of the model provisions to enable train operators to opt for paperless billing.

Network Rail response

- 3.30. We are content with these provisions and are keen to encourage their use amongst train operators.

Rounding

Summary of ORR proposals

- 3.31. ORR has included a rounding rule (to three decimal places) in specific places to address suggestions previously made by Network Rail (and raised in the January 2018 consultation on improved drafting).

Network Rail response

- 3.32. We welcome the proposed clarification from ORR that the Initial Indexation Factor should be rounded to three decimal places. We also consider that there would be merit in clarifying in the contract to how many decimal places each rate on each price list should be rounded. This would avoid any ambiguity in relation to whether annual uplifts for inflation should be applied to rounded or unrounded charging rates. We have proposed some new drafting to reflect this.
- 3.33. Our proposals are reflected in the mark ups we have supplied and are summarised in Annex 1.
- 3.34. Our proposed text seeks to document existing practices, rather than create any new policy in this area.
- 3.35. For the avoidance of doubt, our proposals with regard to Passenger VUC rates also apply to the North Yorkshire Moors Railway contract.
- 3.36. We also propose that one rounding rule is included in the definitions in the main part of the freight contract, as follows:

"Cancellation Sum" means the Cancellation Sum specified in Appendix 1 to Schedule 8, as adjusted under paragraph 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

References to default charges/rates

Summary of ORR proposals

3.37. ORR proposes to rename various default charges for clarity.

Network Rail response

3.38. We are content with ORR's proposal to redefine "Default Rate" as "VUC Default Rate", following the creation of the "Traction Electricity Modelled Default Rate" for passenger operators. However, with regard to passenger contracts we propose the following minor drafting amendments:

- Deleting the duplicated definitions in Part 1 of Schedule 7;
- updating a reference in paragraph 3.3 of Part 2 of Schedule 7 from "Default Rate" to "VUC Default Rate"; and
- Updating a reference from "Default Charge" in paragraph 10.1 of Part 2 of Schedule 7 to "VUC Default Charge".

3.39. With regard to the freight contract and open access track access contract we propose:

- Moving the updated definitions of "VUC Default Rate" and "VUC Default Period" to the correct place alphabetically in the list of definitions set out in Part 1 of Schedule 7.

4. Changes affecting franchised, freight and open access track access contracts

Schedule 7 Infrastructure cost charges

Franchised operators

Summary of ORR proposals

- 4.1. ORR has proposed that infrastructure cost charges for franchised passenger operators would be set ahead of the control period, but would be subject to annual recalculation to reflect the difference between their baseline timetabled traffic and their actual timetabled traffic for that year.

Network Rail response

- 4.2. We welcome the fact that paragraph 2A of Part 2 of Schedule 7 confirms that our maximum downside financial exposure through the Fixed Track Charge Wash-up will be limited to 1% in each year of CP6. We estimate that this cap will expose us to a maximum financial risk of c.£50m over CP6. This value is significantly less than the £280m quoted in ORR's Draft Determination, which following further conversation with ORR, we now understand was not correct.
- 4.3. We suggest the following changes in relation to the text regarding the new Fixed Track Charge Wash-up for CP6:
- 4.4. Not including the baseline timetabled traffic figures for each operator on the Schedule of Fixed Charges. As currently set out in the version of Schedule 7 which ORR is consulting on, The Schedule of Fixed Charges is defined as being published on or around 20 December 2018. We consider it unlikely that we will be able to publish final baseline train miles for each franchised passenger train operator by 20 December 2018, particularly if ORR wishes to consult on these figures. We suggest, instead, publishing these baseline train mileages in a separate document that will be published no later than 31 March 2019.
- 4.5. Including a re-opener provision in relation to the baseline timetabled traffic figures for each franchised passenger train operator. It is likely that these baselines will need to be re-opened in CP6 when train services transfer between train operators as part of the re-franchising process. Therefore, there needs to be a mechanism in the contract to amend and supplement these traffic baselines. We also consider that, due to the unprecedented uncertainty in relation to 2018/19 timetabled traffic levels that this re-opener provision should also provide the parties with the ability to propose amendments to operators' traffic baselines for any material, clear and obvious errors that may subsequently emerge in CP6. Any such amendments would be subject to ORR's approval or, where the parties were not in agreement, determination by ORR. To facilitate this re-opener provision, we have suggested defining the terms "Baseline timetabled traffic miles" and "Timetabled train miles".

- 4.6. In paragraph 2A of Part 2 of Schedule 7 expressing the downside cap on our financial exposure as “-1%” rather than “-0.01” to be consistent with the text in the paragraph, above (we note that this change would not affect the calculation). We have also suggested some additional wording to clarify, for the avoidance of any doubt, that “less than -1%” means a value such as -1.5 or -5% rather than -0.9%, for example.
- 4.7. In Schedule 7 paragraph 2A of Part 2 of Schedule 7 including some new text to clarify that there needs to be some flexibility during CP6 in relation to which system is used to report timetabled train miles. For example, if the system initially defined in the contract were to be superseded by a new system during the control period. We accept that the data reported from any new system would need to be comparable to that from the original system, so that we can continue to report against the original baselines. However, we consider that the drafting in the contract should be sufficiently flexible such that it does not prohibit us reporting using a new more efficient system in CP6 (subject to ORR approval), if this opportunity were to emerge. We will confirm to ORR the name of the most appropriate system to extract timetabled train miles from in due course.
- 4.8. A minor change to the definition of “Fixed Track Charge Wash-Up” to amend the paragraph cross-reference to reflect that the formula for the Fixed Track Charge Wash-Up is set out in paragraph 2A, of Part 2 of Schedule 7 rather than paragraph 1.

Open access operators

Summary of ORR proposals

- 4.9. ORR has decided that it will not levy an Infrastructure Cost Charge (ICC) on existing open access operators unless they apply for (and are granted) different access rights based on an updated access policy which will be in place for the start of CP6.

Network Rail response

- 4.10. We propose the following minor amendments to ORR’s proposed contractual drafting designed to give effect to the new Infrastructure Cost Charge that will be applicable to new interurban Open Access services in CP6.
- 4.11. In paragraph 2 of Part 2 of Schedule 7, amending the Infrastructure Cost Charge formula and supporting text so that it uses the term “Rti” throughout, rather than “Rti” in some places and “Rt” or “R” in other places.
- 4.12. Updating paragraph (b) of Part 6 of Schedule 7 which currently states that each invoice or credit note should contain “the relevant number of Vehicle Miles applicable to vehicles for each service so charged”. We suggest that this is updated to include reference to Train Miles, as follows: “the relevant number of Vehicle Miles or Train Miles applicable to each service so charged”, because the Infrastructure Cost Charge will be levied as a rate per train mile in CP6.

- 4.13. Separately, we suggest that ORR clarifies ahead of the start of CP6 whether, when supplementing the Infrastructure Cost Charge price list, it expects Network Rail and the train operator to agree whether the new Open Access service is interurban. If ORR envisages Network Rail and the train operator agreeing this point, ORR will need to provide some further guidance in this area (e.g. a definition of ‘interurban’ and some criteria to help decide whether services fall within this definition). Alternatively, ORR could clarify that it is not necessary for Network Rail and train operators to agree this point prior to submitting a proposed supplement to the price list, and that ORR will decide this following receipt of the submission. We recognise that this point does not necessarily result in a change to the contractual drafting, however, we wanted to take this opportunity to flag it as an area where we would welcome further clarity.

Traction electricity

Partial fleet metering

Summary of ORR proposals

- 4.14. ORR has proposed to add provisions regarding partial fleet metering to Schedule 7 of the model track access contract for passenger services.

Network Rail response

- 4.15. We support the proposals to introduce provisions regarding Partial Fleet Metering into Schedule 7 of the model track access contract for passenger services.

Application of default modelled rate

Summary of ORR proposals

- 4.16. ORR has proposed to introduce default modelled rates for passenger services.

Network Rail response

- 4.17. Having proposed that default modelled consumption rates be introduced for passenger services, we support ORR’s proposed amendment to the model track access contract for passenger services. We would welcome this text being included in the model track access contract for open access operators. Doing so would ensure that there is not a situation where we are unable to charge open access operators for traction electricity.
- 4.18. In section 15 of the Traction Electricity Rules, ORR proposes that services that are being charged via a default modelled consumption rate that are capable of regenerative braking should be able to apply to receive a discount to their modelled consumption rate. We suggest that services being charged a default modelled consumption rate should not be able to apply to receive this discount. This would reduce the incentive to apply for a modelled rate. In addition, it would introduce additional administrative work which may not be warranted as default modelled consumption rates are only intended to be a temporary measure.
- 4.19. We have suggested some amendments to the provisions dealing with payments based on the Traction Electricity Modelled Default Rate. The purpose of these amendments

is to distinguish between the period during which a default rate is payable and the period during which a reconciliation may occur between payments based on the default rate and charges calculated using the modelled consumption rate for train category i.

- 4.20. We have suggested minor amendments to the formulae for calculating charges based on modelled consumption rates in the passenger and freight contracts and the corresponding parts of the volume reconciliation provisions in the Traction Electricity Rules. The intention of these suggested amendments is to ensure that these formulae cover both New Modelled Trains and trains with a modelled consumption rate for train category i.
- 4.21. We have also suggested minor amendments to the definition of UE_{igt} in the volume reconciliation provisions in paragraph 18.2 of the Traction Electricity Rules. The intention of these amendments is to include reference to hybrid trains (Bimodal Electric Multiple Units and Bimodal Locomotives), for consistency with the definition of UE_{igt} in the track access contracts.

Deletion of transition arrangement for the volume and cost reconciliation

Summary of ORR proposals

- 4.22. ORR proposes to delete paragraph 4A of Part 2 (volume and cost reconciliation in respect of the year ending 31 March 2014) entirely

Network Rail response

- 4.23. We welcome the proposal to remove text regarding the transition arrangement for the volume and cost reconciliation.

Network grant and related provisions

Grant dilution provision, rebates and Scotland-specific changes

Summary of ORR proposals

- 4.24. ORR notes that possible changes in funding arrangements for CP6 which are yet to be agreed might require changes to the provisions in franchised passenger operator track access contracts.

Network Rail response

- 4.25. We note that these issues remain under discussion with DfT and Transport Scotland. On this basis we are not making a response to this item in this consultation regarding any changes which might be required to contractual wording that would give effect to this.

Schedules 4 and 8

Summary of ORR proposals

4.26. We note that ORR cross-refers to its conclusions document in respect of its January 2018 consultation on improving contractual drafting.

Network Rail response

4.27. We welcome the proposed clarification from ORR that Relevant Losses for the purpose of providing compensation for sustained poor performance should be measured against the Network Rail Benchmark rather than perfect performance. We note that the proposed wording is consistent with ORR's November 2014 letter² to industry which set out the intention of the SPP regime, and how SPP compensation should be calculated. . In the attached marked-up franchised passenger contract, we have corrected what we believe to be a slight error in formula for SPP Indexation (the reference to CV_t should instead be to $SPPI_t$).

4.28. We note that in paragraph 19.2 of Schedule 8 of the franchised passenger contract, there appears to be a slight error in the last paragraph of the formula for SPP Indexation. We believe that (the reference to CV_t should instead be to $SPPI_t$).

4.29. We also note that in paragraph 15.2(c) of Schedule 8 of the passenger contract, "public holiday" has been replaced by "Public Holiday". The definition of "Public Holiday" is included in Schedules 4 and 5, but not in Schedule 8. We suggest that this defined term is either included in in Schedule 8, or removed from all the Schedules and included definitions section in the main body of the track access contract.

Appendix 1 of Schedule 8

Summary of ORR proposals

4.30. ORR proposes to delete the columns previously marked "Not Used" from the Appendix 1 table.

Network Rail response

4.31. We are content with this change.

² Available here: http://orr.gov.uk/_data/assets/pdf_file/0004/16429/sustained-poor-performance-2014-11-14.pdf

5. Changes to freight track access contracts

Baseline for Operating Constraints and other provisions

Summary of ORR proposals

- 5.1. ORR has updated the date in paragraph 2.8 of Schedule 7 to reflect the start of CP6.

Network Rail response

- 5.2. We are content with this change of date.

Infrastructure cost charge

Summary of ORR proposals

- 5.3. ORR has proposed to remove the Freight Only Line charge and to extend the Freight Specific Charge to freight trains carrying Biomass.

Network Rail response

- 5.4. We are content with ORR's drafting to extend the Freight Specific Charge to Biomass trains but have proposed minor amendments to ORR's proposed contractual drafting regarding the removal of the Freight Only Line Charge.
- 5.5. We propose reinstating the definition of the Freight Only Line Charge Rate, but amending this definition to refer to the 2018/19 financial year, CP5 Track Usage Price List, and CP5 indexation provisions.
- 5.6. We also suggest deleting the words "(as defined in paragraph 1.1 of Schedule 7 to the version of this contract that was in force up until 31 March 2019)" from part 5 of the charging formula in paragraph 2.2.1 of Schedule 7.
- 5.7. We consider that our proposed drafting achieves ORR's aim of allowing us to amend operators bills in relation to this charge in the final year of CP5. However, we also believe that it makes the new contract more self-contained. For example, it avoids the need for the reader of the new contract to go back to the previous version of the contract to confirm the definition of Freight Only Line Charge Rate.

Removal of Coal Spillage Charge and related provisions

Summary of ORR proposals

- 5.8. ORR has removed the Coal Spillage Charge and included a transitional provision for this.
- 5.9. ORR has removed references to Coal Spillage Investment and the Coal Spillage Reduction Investment Charge.

Network Rail response

- 5.10. We are content with ORR's drafting to remove the Coal Spillage Reduction Investment Charge but have proposed minor amendments to ORR's proposed contractual drafting regarding the removal of the Coal Spillage Charge.
- 5.11. We propose reinstating the definition of the Coal Spillage Charge Rate, but amending this definition to refer to the 2018/19 financial year, CP5 Track Usage Price List, and CP5 indexation provisions.
- 5.12. We also suggest deleting the words "(as defined in paragraph 1.1 of Schedule 7 of the version of this contract that was in force up until 31 March 2019)" from part 6 of the charging formula in paragraph 2.2.1 of Schedule 7.
- 5.13. We consider that our proposed drafting achieves ORR's aim of allowing us to amend operators' bills in relation to this charge in the final year of CP5. However, we also believe that it makes the new contract more self-contained. For example, it avoids the need for the reader of the new contract to go back to the previous version of the contract to confirm the definition of Coal Spillage Charge Rate.

Traction electricity charges

Summary of ORR proposals

- 5.14. ORR proposes to delete paragraph 2.4.2 of Schedule 7.

Network Rail response

- 5.15. We are content with this change.

Schedules 4 and 8

Summary of ORR proposals

- 5.16. We note that ORR cross-refers to its conclusions document in respect of its January 2018 consultation on improving contractual drafting.

Network Rail response

- 5.17. We are content that ORR's proposed contractual drafting gives effect to ORR's policy decision to remove the ATOB calculation for CP6. We have made a minor amendment in the attached marked-up freight contract, regarding the definition of Baseline Annual Contract Mileage.
- 5.18. We also support the removal of the Baseline Network Mileage in Appendix 1 for CP6. We note that ORR's decision to remove the ATOB calculation for CP6 means that the Baseline Network Mileage is no longer required in CP6.
- 5.19. We suggest a change to Schedule 8, Paragraph 1 of the freight contract, regarding the definition of Baseline Annual Contract Mileage: the clause cross-reference should be to 10.2.2(b), not 10.2.3. This is reflected in our mark up.

- 5.20. As part of the recalibration of the freight and charter Schedule 8 regimes for CP6³, Network Rail proposed raising the level of freight and charter operator exposure to delays above the incident cap for CP6.
- 5.21. Whilst ORR concluded to retain the status quo and not expose freight and charter operators to the delay minutes they are responsible for, above the incident caps, it stated that “*if Network Rail wishes to offer, in addition to the standard regime, an incident cap regime which offers some exposure in exchange for a lower ACS, it may do so*”.
- 5.22. Network Rail and at least one operator have expressed an interest in providing this alternative incident cap regime, alongside the full incident cap regime, as an option in CP6. Therefore, Network Rail proposes that ORR includes a provision in the freight and charter track access contracts which would allow freight and charter operators to choose between the current incident cap regime (no exposure above the incident cap) and the alternative incident cap regime (30% above the incident cap). In our mark-up of the freight and charter contracts we have set out proposed contractual wording to support the introduction of this option in CP6. Please see paragraphs 4.1.1 and 11 of the freight contract and paragraphs 4.3.1 and 9 of Schedule 8 of the charter contract.
- 5.23. As a higher level of exposure to delay minutes above the incident caps would result in a lower ICACS compared to the ICACS with no exposure above the incident cap (status quo), we propose that an additional column (Column C) is provided in the table set out under paragraph 11.2 within Schedule 8 of the freight track access contract and paragraph 9.2 within Schedule 8 of the charter track access contract. We have provided mark-ups of the contract to this effect, with the CP6 ICACS left blank as these have yet to be finalised.

Changes to the freight customer contract and freight customer train operator contracts

Freight customer operator track access contract

Summary of ORR proposals

- 5.24. ORR proposes that the freight customer operator track access contract will adopt all the amendments which are proposed in relation to the freight track access contract.

Network Rail response

- 5.25. We are content with this change

Freight customer track access contracts

Summary of ORR proposals

³ This is being led by the Freight and Charter Schedule 8 recalibration Working Group which consists of freight and charter operators and Network Rail FNPO route.

5.26. ORR summarises proposed changes to the freight customer track access contract.

Network Rail response

5.27. We are content with these changes

6. Changes to charter track access contracts

Proposed changes

Summary of ORR proposals

- 6.1. ORR summarises proposed changes to the model charter track access contract.

Network Rail response

- 6.2. We are content with these changes with the exception of the point below.
- 6.3. We suggest a change to Schedule 8, paragraph 1, regarding the definition of Baseline Annual Train Mileage: A definition should be inserted cross-referencing paragraph 8.2.2(b). This is reflected in our mark up.
- 6.4. Our comments relating to incident caps in freight contracts apply equally to charter contracts which we have reflected in our marked up version of the charter track access contract.

ORR January 2018 consultation on improving contract drafting

- 6.5. We note that in its conclusions to its January 2018 consultation on improving contract drafting, ORR states that it has amended the invoicing timescales in paragraph 11.3(e) of Schedule 7 of the charter track access contract from 7 days to 14 days. However, we could not see that this amendment had been made in the mark-up of the charter track access contract. We have therefore amended paragraph 11.3 (e) of the attached marked-up version of the charter track access contract to reflect ORR's consultation response.

7. Changes to station access contracts

Proposed changes

Summary of ORR proposals

7.1. ORR summarises proposed changes to station access contracts.

Network Rail response

7.2. We are content with these changes.

Annex 1

Proposed rounding rules in track access contracts

Schedule	Paragraph	Charge	Passenger	Freight	Charter	Open Access	Rounding Required	To be expressed as
7	1	Fixed Track Charge (F_t)	X				2 decimal places	Pounds sterling
7	2.2	Fixed Track Charge Washup (FW_t)	X				2 decimal places	Pounds sterling
7	3.1	Variable Usage Charge (V_{it})	X				2 decimal places	Pence per vehicle mile
7	3.3	VUC Default Rate (D_{nt})	X				2 decimal places	Pence per vehicle mile
7	8	Electrification Asset Usage Charge (EV_{tk})	x				2 decimal places	Pence per electrified vehicle mile
7	3.1	Variable Usage Charge (V_{it})			X		4 decimal places	Pounds sterling per train mile
7	4.1	Slot Charge (S_{it})			X		4 decimal places	Pounds sterling
7	7.1	Electrification Asset Usage Charge per electrified Vehicle Mile (EV_{tk})			X		2 decimal places	Pence
8	1.1	Charter Service Variation Sum			X		0 decimal places	Pounds sterling
8	1.1	Joint Cancellation Sum			X		2 decimal places	Pounds sterling
8	1.1	Network Rail Annual Cap			X		0 decimal places	Pounds sterling
8	1.1	Network Rail Cancellation Sum			X		0 decimal places	Pounds sterling
8	1.1	Network Rail Payment Rate			X		2 decimal places	Pounds sterling
8	1.1	Train Operator Annual Cap			X		0 decimal places	Pounds sterling
8	1.1	Train Operator Payment Rate			X		2 decimal places	Pounds sterling
8	9.2 (twice)	Planned Service Incident Cap Access Charge Supplement Rate			X		2 decimal places	Pounds sterling
4	Appendix 1	Normal Planned Disruption Sum		X			0 decimal places	Pounds sterling
4	Appendix 1	Enhanced Planned Disruption Sum		X			0 decimal places	Pounds sterling
7	2.2.1	Variable Usage Charge		X			4 decimal places	Pounds sterling per 1000 Gross Tonne Mile
7	2.2.1	Freight only line charge		X			4 decimal places	Pounds sterling per 1000 Gross Tonne Mile
7	2.2.1	Freight Specific Charge		X			4 decimal places	Pounds sterling per 1000 Gross Tonne Mile
7	2.2.1	VUC Default Rate		X			4 decimal places	Pounds sterling per 1000 Gross Tonne Mile
7	2.4.12	Electrification Asset Usage Charge		x			4 decimal places	Pounds sterling per electrified 1000 Gross Tonne Mile
8	1	Disruption Sum		X			0 decimal places	Pounds sterling
8	1	Late Notice Cancellation Sum		X			0 decimal places	Pounds sterling
8	1	Network Rail Cap		X			0 decimal places	Pounds sterling
8	1	Prolonged		X			0 decimal	Pounds sterling

Schedule	Paragraph	Disruption Amount Charge	Passenger	Freight	Charter	Open Access	places Rounding Required	To be expressed as
8	1	Train Operator Cap		X			0 decimal places	Pounds sterling
8	11.1 (twice)	Incident Cap Access Charge Supplement Rate		X			4 decimal places	Pounds sterling
7	2	Infrastructure Cost Charge (R_{it})				X	4 decimal places	Pounds sterling per train mile
7	3.1	Variable Usage Charge (V_{it})				X	2 decimal places	Pence per vehicle mile
7	3.3	VUC Default Rate (D_{nt})				X	2 decimal places	Pence per vehicle mile
Note: Mark-ups do not exist regarding schedule 4 and 8 of the Passenger track access contract as shown below								
4	Part 5	Access Charge Supplement Restriction of Use ($ACSRU_{pt}$)	X				0 decimal places	Pounds sterling
4	4.2	TMC	X				2 decimal places	Pounds sterling
8	13.1	Payment Rate (R_i) for column C and Column E of appendix 1	X				2 decimal places	Pounds sterling
8	19.1	SPP indexation calculation guidance for Appendix 3	X				2 decimal places	add in "and rounded to 2 decimal places"

Annex 2

Mark-ups of schedules to track access contracts and the Traction Electricity Rules

Schedule 7

(Track Charges and Other Payments)

Part 1

(Interpretation)

1. Definitions

In Part 1 – Part 7 inclusive, unless the context otherwise requires:

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

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

"Aggregate Fixed Charges" means, in any Relevant Year t , the sum of the values of F_t under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;

"Baseline timetabled traffic miles," has the meaning ascribed to it in paragraph 2A of Part 2;

"Basic Value" has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;

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

"Bimodal Locomotive" means a train hauled by a locomotive that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel; [Network Rail comment: We propose that this definition is amended to clarify that the term "Bimodal Locomotive" refers to the train hauled by the locomotive, not just the locomotive itself.]

"Capacity Charge" means a variable charge, calculated in accordance with paragraph 6 of Part 2;

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

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

"Current Control Period" means the period of five years commencing at 0000 hours on 1 April 2019 and due to end at 2359 hours on 31 March 2024;

"DC System" means the direct current system of electricity traction supply on the Network;

"Deed of Grant" means the Deed of Grant made on or about 20 December 2018 between the Secretary of State and Network Rail;

~~**"VUC Default Charge"** means a variable charge calculated in accordance with paragraph 3.3 of Part 2;~~

~~**"VUC Default Period"** means the period from the later of:~~

~~(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or~~

~~(b) 1 April 2019;~~

~~until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;~~

~~**"VUC Default Rate"** means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates";~~

~~**[Network Rail comment: Definitions of "VUC Default Charge", "VUC Default Period" and "VUC Default Rate" have been removed from here as they are included below in the correct alphabetical sequence.]**~~

"Default Train Consist Data" means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;

"Electrification Asset Usage Charge" means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;

"English & Welsh Grant Compensation Amount" has the meaning ascribed to it in paragraph 3.2 of Part 3A;

"English & Welsh Grant Dilution" has the meaning ascribed to it in paragraph 2.1 of Part 3A;

"English & Welsh Grant Dilution Date" has the meaning ascribed to it in paragraph 2.2 of Part 3A;

"excluded change" means, in relation to paragraph 2(a) of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under sections 6 or 8 of the Railways Act 2005;

"Fixed Track Charge" means a fixed annual charge, calculated in accordance with paragraph 1 of Part 2;

"Fixed Track Charge Indexation" has the meaning ascribed to it in paragraph 2 of Part 2;

~~**"Fixed Track Charge Wash-Up"** means the amount calculated in accordance with paragraph 4 of Part 2; 2A of Part 2; **[Network Rail comment: Amended to reflect that the formula for the Fixed Track Charge Wash-Up is set out in paragraph 2A.]**~~

"Geographic Area g" means, for the purposes of performing the calculations set out in paragraph 4 of Part 2 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network, as set out in Appendix 5 of the Traction Electricity Rules;

"Grant Amount" has the meaning ascribed to it in paragraph 1.2 of Part 3A;

"Gross Tonne Mile" in relation to a train, means a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question;

"Initial Indexation Factor" is derived from the following formula:

$$IIF = \left(1 + \frac{(CPI_{2018} - CPI_{2017})}{CPI_{2017}}\right)^2$$

where:

IIF means the Initial Indexation Factor;

CPI_{2017} means the CPI published or determined with respect to the month of November 2017; and

CPI_{2018} means the CPI published or determined with respect to the month of November 2018

The value derived from this formula shall be rounded to three decimal places;

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

"Metered Train m" means, as the context requires, either:

- (a) a train of a particular type; or
- (b) a specific train having a train ID,

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

"Network Rail Distribution System Loss Factor" means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail's meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in Appendix 3 of the Traction Electricity Rules;

"Network Rail Rebate" has the meaning ascribed to it in paragraph 7.1 of Part 2;

"New Modelled Train" means a type of train for which E_{tmo} is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category i, and no modelled consumption rate, is shown in either the Passenger [Traction Electricity Modelled Consumption Rates for CP6](#) or Generic [Traction Electricity Modelled Consumption Rates for CP6](#) tables in the Traction Electricity Modelled Consumption Rates List, or the PFM Rates List; [\[Network Rail comment: Amendments proposed to align the wording with the descriptions of the relevant tables in the rates lists.\]](#)

"New Specified Equipment" means a type of railway vehicle not included in the section of the Track Usage Price List entitled **"Passenger Variable Usage Charge rates"**;

"On-Train Meter" and **"On Train Metering"** have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;

"Payment Date" has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;

"Period" has the meaning ascribed to it in Schedule 8;

[\[Network Rail comment: Definition added as this term is referred to in the new drafting relating to PFM Rates eg, in paragraph 4.1.2 of Part 2.\]](#)

Network Rail mark-up: Passenger contract, Schedule 7

“PFM Rates List” has the meaning ascribed to it in paragraph 1 of the Traction Electricity Rules;

“Proposed Review Notice” means the most recently proposed Review Notice given by ORR during the course of the Current Control Period, in accordance with Schedule 4A of the Act;

“Rebatable Amount” has the meaning ascribed to it in paragraph 7.2 of Part 2;

“relevant access agreement” means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:

- (a) a franchise operator; or
- (b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or
- (c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or
- (d) any other person who benefits from a franchise exemption (within the meaning of section 24(13) of the Act) in relation to services for the carriage of passengers by railway; or
- (e) a relevant franchising authority (as defined in section 30(3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act;

“Relevant Year” means a year commencing at 00:00 hours on 1 April and ending at 23:59 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

“Review Implementation Notice” has the meaning given to “review implementation notice” in paragraph 7 of Schedule 4A of the Act;

“Review Notice” has the meaning given to “review notice” in paragraph 4 of Schedule 4A of the Act;

“Route-Level Efficiency Benefit Share” has the meaning ascribed to it in paragraph 1 of Part 3;

“route type k” means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;

“Schedule of Baseline Timetabled Traffic” means the document entitled “Schedule of Baseline Timetabled Traffic published by Network Rail not later than 31 March 2019 as amended from time to time in accordance with the provisions of paragraph 2B and 2C; [Network Rail comment: New definition inserted to reflect that NR wishes to publish the traffic baseline separately to the Schedule of Fixed Charges.]

“Schedule of Fixed Charges” means the document entitled “Schedule of Fixed Charges” published by Network Rail on or about [20 December 2018];

“tariff band j” means the tariff zone and time band in which the train in question is operated;

“Timetabled train miles;” has the meaning ascribed to it in paragraph 2A of Part 2; [Network Rail comment: New definition proposed as it is used in the drafting of proposed new paragraphs 2B and 2C of Part 2 of Schedule 7.]

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about [20 December 2018] which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train operator;

"Traction Electricity Charge" means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about [20 December 2018] and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

"Traction Electricity Modelled Default ~~ReconciliationRate~~ Period" means the period from the ~~later of:~~

~~the date on which the New Modelled Train is first used on the Network by the Train Operator; until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train or the train in question has been added to Appendix 7D of this schedule;~~

[Network Rail comment: We have added a new definition - "Traction Electricity Modelled Default Rate Period" - to refer to the period during which charges are levied based on the Traction Electricity Modelled Default Rate (see paragraph 9.2A of Part 2). The period in respect of which a reconciliation may apply once a supplement to the Traction Electricity modelled Consumption Rates List has been consented to or determined is defined below.]

"Traction Electricity Modelled Default Rate Reconciliation Period" means the period from the later of:

(a) the date on which the New Modelled Train is first used on the Network by the Train Operator; or

(a)(b) 1 April of the Relevant Year in which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train,

until the date on which ORR ~~makes such a consent or determination;~~ consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train;

"Traction Electricity Modelled Default Rate" means, in respect of any New Modelled Train used on the Network by the Train Operator, the corresponding default consumption rate for that type of vehicle set out in the section of the Traction Electricity Modelled Consumption Rates List entitled ["Traction Electricity ~~Model Default Rate~~; Modelled Default Rate"]; [Network Rail comment: This definition should be moved up to appear before "Traction Electricity Modelled Default Rate Period", to retain the correct alphabetical sequencing. We have suggested minor amendments to the drafting, for clarification.]

"Traction Electricity Usage Occurrence Data" means information as to when a Bimodal Electric Multiple Unit or Bimodal Locomotive is either drawing current from the AC System and/or the DC System, or is powered by an alternative source of energy;

"Traction-Train Compatible" means a situation in which a Bimodal Electric Multiple Unit or Bimodal Locomotive is located on the Network with a system of electricity traction supply that the Bimodal Electric Multiple Unit or Bimodal Locomotive is capable of drawing current from; [Network Rail comment: We suggest that this definition, which ORR proposes to use in the freight contracts, is also used in the passenger contracts, for consistency.]

"train category i" means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List or PFM Rates List, being either:

- (a) where there is no PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code:
 - (i) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP6"; or
 - (ii) where there is a generic consumption rate for a passenger vehicle type not referred to in paragraph (a)(i), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP6"; or
- (b) where there is a PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the PFM Rates List;

~~For the avoidance of doubt, in respect of any New Modelled Train, the Traction Electricity Modelled Default Rate shall apply;~~

[Network Rail comment: We propose that this definition ends at paragraph (b) and does not include ORR's proposed wording beginning "For the avoidance of doubt,....". This definition explains where each particular train category (i) is listed, whereas the "For the avoidance of doubt" wording relates to the electricity consumption rate that applies to New Modelled Trains. Furthermore, as the definition of a New Modelled Train is one for which "no train category i" exists, it is unnecessary to refer to a New Modelled Train in this definition.]

"Train Consist Data" means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;

"Train Mile" in relation to a train, means a mile travelled by that train on the Network;

"Train Service Code" has the meaning ascribed to it in paragraph 1.1 of Schedule 5;

"Variable Charges" means the Capacity Charge, the VUC Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity Charge;

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

"Vehicle Mile" in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;

"Volume Reconciliation" has the meaning ascribed to it in the Traction Electricity Rules;

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

"VUC Default Period" means the period from the later of:

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- (a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or
- (b) 1 April 2019,

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

"VUC Default Rate" means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates"; and

"Weekday" has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

2. Interpretation

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

Part 2

(Track Charges)

1. Principal formula

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

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

where:

T_t means Track Charges in Relevant Year t;

F_t means an amount in respect of the Fixed Track Charge in Relevant Year t, expressed in pounds sterling and rounded to two decimal places, which shall be:

- (a) in respect of the Relevant Year commencing on 1 April 2019, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation calculated in accordance with paragraph 2.1; and
- (b) in respect of any Relevant Year t commencing on or after 1 April 2020, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation for that year calculated in accordance with paragraph 2.2;

FW_t means an amount in respect of the Fixed Track Charge Wash-up in Relevant Year t which is derived in accordance with paragraph 2A;

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

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

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

K_t means an amount in respect of the Capacity Charge in Relevant Year t which is calculated in accordance with paragraph 6;

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

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

2. Fixed Track Charge Indexation

2.1 The Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2019 shall be derived from the following formula:

$$FTCI_{2019} = \text{Initial Indexation Factor}$$

where:

$FTCI_{2019}$ means the Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2019.

2.2 The Fixed Track Charge Indexation in respect of any Relevant Year t commencing on or after 1 April 2020 shall be derived from the following formula:

$$FTCI_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2018})}{CPI_{2018}}\right) \bullet \text{Initial Indexation Factor}$$

where:

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

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

CPI_{2018} means the CPI published or determined with respect to the month of November 2018.

2A Fixed Track Charge Wash-Up

For the purposes of paragraph 1, the term FW_t means an amount in respect of the Fixed Track Charge Wash-Up, expressed in pounds sterling and rounded to two decimal places, in Relevant Year t which is derived from the following formula:

$$FW_t = P_t \times F_t$$

where:

F_t means an amount in respect of the Fixed Track Charge in Relevant Year t ; and

P_t means the percentage difference between timetabled traffic and baseline traffic in Relevant Year t , derived from the formula:

$$P_t = \left(\frac{\text{Timetabled train miles}_t - \text{Baseline timetabled traffic miles}_t}{\text{Baseline timetabled traffic miles}_t}\right) \bullet 100$$

where:

Timetabled train miles_t means [to be taken from the most appropriate system, and agreed with Network Rail in advance of 31/3/19]; ~~and] or the timetabled train miles extracted from any other system agreed in writing between Network Rail and ORR; and [Network Rail comment: In order to retain sufficient flexibility for the duration of CP6, we would suggest that whatever system is agreed for Timetabled train miles at the start of CP6, the drafting of the contract makes it clear that this can be amended if the ORR and NR agree.]~~

Baseline timetabled ~~traffic~~ traffic miles_t means that figure set out in relation to the Train Operator for the Relevant Year t in the Schedule of Baseline Timetabled Traffic. [Network Rail comment: Amended to reflect that NR wishes to publish the traffic baseline separately to the Schedule of Fixed Charges. Timetabled train miles, and Baseline timetabled traffic miles have also been added as defined terms for the purposes of the provisions set out in 2B and 2C below.]

subject to the following:

if the term P_t ~~is~~ has a value less than ~~-1%,%~~ (for example, -1.5% or -5%), the term FW_t means an amount in respect of the Fixed Track Charge Wash-Up in Relevant Year t which is derived from the following formula:

$$FW_t = -0.041\% \times F_t$$

and

if the term P_t ~~is~~ has a value equal to or greater than ~~-1%,%~~ (for example -0.9% or 2%), the term FW_t means an amount in respect of the Fixed Track Charge Wash-Up in Relevant Year t which is derived from the following formula:

$$FW_t = P_t \times F_t$$

[Network Rail comment: FW_t has been amended for consistency with the wording above. Some further minor drafting amendments have been proposed to the drafting dealing with the cap on NR's downside risk to reflect that P_t represents a percentage difference.]

2B Either the Train Operator or Network Rail shall be entitled to propose that the Schedule of Baseline Timetabled Traffic is amended as a result of:

(a) the transfer of Services from one Train Operator to another Train Operator; or

(b) a material manifest error in the Baseline timetabled traffic miles for the Train Operator for any year set out in the Schedule of Baseline Timetabled Traffic.

2C No amendment to the Schedule of Baseline Timetabled Traffic shall have effect unless it has been:

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

(b) determined by ORR.

[Network Rail comment: New paragraphs 2B and 2C inserted to reflect NR's view that there needs to be a mechanism in the contract to amend the traffic baselines.]

3. Variable Usage Charge

3.1 Variable Usage Charge

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

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

where:

V_{it} means an amount for vehicle type i for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, V_{it} shall have, in respect of vehicle type i , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

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

3.2 **Not used**

3.3 **VUC Default Charge**

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

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

where:

D_{nt} means the VUC Default Rate, expressed in pence per Vehicle Mile and rounded to two decimal places, for that New Specified Equipment for Relevant Year t which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt-1} shall have the same value;

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

∑ means the summation across all relevant New Specified Equipment.

4. Traction Electricity Charge

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

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

where:

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

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

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

E_{tmuDC} means an amount calculated in accordance with paragraph 4.1.4(b) below.

Circumstances in which calculation to be based on modelled data and circumstances in which calculation to be based on metered data

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

Calculation of modelled consumption (including using PFM Rates)

4.1.2 E_{tmo} is derived from the following formula:

$$E_{tmo} = \sum E_{tmog}$$

where:

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

E_{tmog} is derived from the following formula:

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

where:

∑ means the summation across all relevant train categories i (determined in accordance with paragraph 4.1.1 above), New Modelled Trains and tariff bands j, as appropriate; **[Network Rail comment: Reference to New Modelled Trains has been added here, and in the definition of UE_{igt}, as New Modelled Trains are not covered by the references to train category i.]**

C_i means, as appropriate::

(a) the consumption rate:

(i) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); ~~and or~~

- (ii) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules or, if a PFM Rate applies in accordance with the Traction Electricity Rules, the PFM Rates List; or

- (b) for New Modelled Trains, ~~the rate shall be the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;~~ **[Network Rail comment: As referred to in the main body of our response, we consider that services being charged a default modelled consumption rate should not be able to receive the Regenerative Braking Discount.]**

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i and New Modelled Trains operated by or on behalf of the Train Operator, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract, provided that where train category i or a New Modelled Train is a Bimodal Electric Multiple Unit or Bimodal Locomotive ~~that has a corresponding modelled consumption rate listed~~ operating in the Traction Electricity Modelled Consumption Rates List-Train Compatible situation, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive-hauled units and all freight traffic), if any, of ~~trains operated by or on behalf of the Train Operator in train category i, in geographic area g, in tariff band j and in Relevant Year t is electrified~~ such trains is electrified;

[Network Rail comment: Amendments proposed to the definition of UE_{igt} for clarification.]

Calculation of consumption using metered consumption data

4.1.3 E_{tme} is derived from the following formula:

$$E_{tme} = \sum E_{tmeg}$$

where:

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

E_{tmeg} is derived from the following formula:

$$E_{tmeg} = \sum \left((CME_{mgt} \bullet EF_{gjt}) - (RGB_{mgt} \bullet EF_{gjt}) \right)$$

where:

\sum means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjt} means the consumption of electricity (in kWh) by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t ;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

RGB_{mgjt} means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t .

4.1.4

(a) E_{tmuAC} is derived from the following formula:

$$E_{tmuAC} = \sum E_{tmugAC}$$

where:

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

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \sum (CME_{mgjtAC} \bullet EF_{gjt}) \bullet \lambda_{ACg}$$

where:

\sum means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j , as appropriate;

CME_{mgjtAC} means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t ;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

λ_{ACg} means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g .

(b) E_{tmuDC} is derived from the following formula:

$$E_{tmuDC} = \sum E_{tmugDC}$$

where:

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

E_{tmugDC} is derived from the following formula:

$$E_{tmugDC} = \sum (CME_{mgjtDC} \bullet EF_{gjt}) \bullet \lambda_{DCg}$$

where:

Σ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j , as appropriate;

CME_{mjtDC} means the consumption of electricity (in kWh) from the DC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t ;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g .

Metered Bimodal Electric Multiple Units and Bimodal Locomotives – deemed electrified mileage

[Network Rail comment: We suggest that the provisions below are included as a new paragraph 4.1.5, rather than as a new sub-paragraph (c) of 4.1.4. Paragraph 4.1.4 relates to the calculation of the transmission losses mark-ups (E_{tmuAC} and E_{tmuDC}); however the provisions below are relevant to the calculation of E_{tme} , as well as (E_{tmuAC} and E_{tmuDC}). We therefore think it is more logical to include these as a stand-alone paragraphs, with an appropriate sub-heading, and not as additional sub-paragraphs of 4.1.4.]

4.1.5

(a) ~~Where train category i Metered Train m is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, as a minimum, within 14 days of the end of each of the third, sixth, tenth and thirteenth Periods, provide to Network Rail the Traction Electricity Usage Occurrence Data for train category i. ~~The Traction Electricity Usage Occurrence Data provided: within 14 days of the end of the third Period shall cover Periods one, two and three; within 14 days of the end of the sixth Period shall cover Periods four, five and six; within 14 days of the end of the tenth Period shall cover Periods seven, eight, nine and ten; and within 14 days of the end of the thirteenth Period shall cover Periods eleven, twelve and thirteen~~ such Metered Train m .~~

(b) ~~Where, after 147 (seven) days, any Traction Electricity Usage Occurrence Data is missing in respect of any such Bimodal Electric Multiple Unit or Bimodal Locomotive, all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive hauled units and all freight traffic), if any, of such Bimodal Electric Multiple Units Unit or Bimodal Locomotives Locomotive operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified when the train is on electrified Network that it is capable of drawing power from in Traction-Train Compatible situations and paragraphs 4.1.3 and 4.1.4 shall apply in respect of all such mileage.~~

[Network Rail comment: We have suggested some amendments to (a) and (b) for clarification and simplification.]

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

4.2

- (a) If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 4.2(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 4.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a), that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.
- (f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 4.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- (g) Where ORR determines the matter pursuant to sub-paragraph 4.2(f), it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

5. Not used.

6. Capacity Charge

In respect of the Relevant Year ending 31 March 2019, the term K_t means an amount in respect of the Capacity Charge which shall be derived from the formula that was contained in paragraph 6 of Schedule 7 of the version of this contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t shall have a value of zero.

7. Network Rail Rebate

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

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

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where:

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

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

AF_t means the Aggregate Fixed Charge in Relevant Year t .

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

- (a) which represents such proportion of Network Rail's total income for Relevant Year t as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;
- (b) which Network Rail, acting reasonably, considers it appropriate to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and
- (c) which Network Rail notifies as such to ORR within nine months after the end of each Relevant Year t .

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

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

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

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

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

7.7 If Network Rail has, prior to 31 March 2019 and pursuant to the provisions of this contract in force as at that date, notified ORR of a Rebatable Amount for the Relevant Year ending on that date, then such provisions shall continue to apply to the extent (and only to the extent) necessary to enable determination and payment (where applicable) of a Network Rail Rebate based on that Rebatable Amount.

8. **Electrification Asset Usage Charge**

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

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

where:

\sum means the summation across all route types;

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t, expressed in pence per electrified Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year EV_{t-1k} shall have the same value; and

UV_{tk} means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator. Where the Train Operator operates a Bimodal Electric Multiple Unit or Bimodal Locomotive, the actual number of electrified Vehicle Miles on route type k in Relevant Year t shall be calculated as follows:

(i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is not a Metered Train m, ~~in accordance with the second paragraph it shall be deemed that all mileage, if any, of the definition UE_{igjt} in paragraph 4.1.2 above; or such train is electrified; or [Network Rail comment: The definition of UE_{igjt} in paragraph 4.1.2 states that for "locomotive-hauled units" the measure is kgm not Vehicle Miles. As UV_{tk} is calculated using Vehicle Miles (for both EMUs and locomotive hauled trains) we suggest that this paragraph does not cross-refer to paragraph 4.1.2.]~~

(ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 4.1.4(e)5 above. [Network Rail comment: consequential amendment.]

9. **Bilateral supplements to the Traction Electricity Modelled Consumption Rates List and Track Usage Price List**

9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.

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

9.2A Where the Train Operator uses a New Modelled Train on the Network, Network Rail shall apply the Traction Electricity Modelled Default Rate in order to calculate the Traction

Electricity Charge for the purposes of paragraph 4.1.2 above, during the Traction Electricity Modelled Default ~~Period-Rate Period.~~ **[Network Rail comment: See comment above re. definition of Traction Electricity Modelled Default Rate Period.]**

- 9.3 No supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List shall have effect unless it has been:
- (a) agreed between the parties and ORR has consented to it; or
 - (b) determined by ORR.
- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category; or
 - (b) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.
- 9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.
- 9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the Traction Electricity Modelled Consumption Rates List, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined the supplement.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.

- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 1.1 or 9.12 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator -
 - (A) in the case of a supplement to the Track Usage Price List, this will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network;
 - (B) in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, this will reflect the difference between (i) the amount paid by the Train Operator in respect of any New Modelled Train to which the Traction Electricity Modelled Default Rate has been applied during the Traction Electricity Modelled Default Rate Reconciliation Period and (ii) the amount that it would have paid during the Traction Electricity Modelled Default Rate Reconciliation Period in respect of the Traction Electricity Charge had the supplement been in place at the start of that period; [Network Rail comment: Consequential amendment to reflect proposed amendment to definition.]
 - and
 - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.
- 9.14 Any supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.
10. **Payment of Track Charges and other sums due under the contract**
- 10.1 ***Payment of Track Charges and other sums due under the contract***
- (a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to Network Rail of:
 - (i) the Variable Usage Charge;
 - (ii) the Traction Electricity Charge;
 - (iii) the Capacity Charge;
 - (iv) the Electrification Asset Usage Charge;
 - (v) the VUC Default Charge;
 - (vi) the Fixed Track Charge Wash-Up; and

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

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

- (b) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within seven days of the invoice date or seven days after the end of the Period, whichever is later.
- (c) Any invoice issued by Network Rail under paragraph 18.5 of the Traction Electricity Rules (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 ***Train Consist Data***

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

10.3 ***Invoices and right to object to invoices***

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

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

- (c) Either party shall be entitled, at any time prior to the later of 23:59 hours on the 14th day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are

based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. The Train Operator shall supply the data to Network Rail in the format:

Train ID	Start date & time	Train Slot origin	Train slot destination	Train Consist (actual): Specified Equipment used

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph ~~4A of this Part 2 or under paragraph~~ 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t. **[Network Rail comment: Paragraph 4A of Part 2 has been removed.]**
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 Unrepresentative Train Consist Data

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.
- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred

to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, either party may refer the matter for resolution in accordance with the ADRR.

- (c) Upon the earlier of agreement between the parties or determination by a relevant ADRR Forum, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the "**14 day period**") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

10.5 Disputed amounts repayment and interest rate

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

Part 3

(Route-Level Efficiency Benefit Share Mechanism)

- 1. For the purposes of ~~calculating the~~ the calculation and payment of any Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, Part 3 and Appendix 7A and Appendix 7B of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply. [Network Rail comment: We have amended this to clarify that the provisions of Part 3 of Schedule 7 relating to both calculation and payment of any Route-Level Efficiency Benefit Share will continue to apply in respect of the Relevant Year ending 31 March 2019.]

Part 3A

(English & Welsh Grant Dilution)

- 1. **Grant Amounts**
 - 1.1 **Basic Values and Payment Dates**

For the purposes of this Part 3A:

- (a) the Basic Values are the amounts by way of grant under section 6 of the Railways Act 2005 specified in the Deed of Grant as payable by the Secretary of State to Network Rail; and
- (b) the Payment Dates are the dates set out in the Deed of Grant for the payment of grant by the Secretary of State in each of the years 2019, 2020, 2021, 2022, 2023 and 2024, or such other dates for the payment of such grants as may be stipulated in the Deed of Grant.

1.2 **Not used.**

2. **English & Welsh Grant Dilution**

2.1 **Meaning of English & Welsh Grant Dilution**

For the purposes of this Part 3A, there shall be an "English & Welsh Grant Dilution" in respect of a Payment Date if:

- (a) the Secretary of State does not, for any reason, pay the whole or any part of the Grant Amount on or before that Payment Date; or
- (b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:
 - (i) subject to the performance by Network Rail or any other person of any obligation;
 - (ii) subject to the exercise by the Secretary of State or any other person of any discretion; or
 - (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

2.2 **Meaning of English & Welsh Grant Dilution Date**

In respect of any English & Welsh Grant Dilution:

- (a) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(a), the English & Welsh Grant Dilution Date shall be the Payment Date in respect of which the Secretary of State does not pay the whole or any part of the Grant Amount due on that date; and
- (b) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
 - (i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or
 - (ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii),shall be an English & Welsh Grant Dilution Date.

3. **English & Welsh Grant Compensation Amount**

3.1 **Payment obligation**

If an English & Welsh Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that an English & Welsh Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (b) the Train Operator shall:
 - (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;
 - (ii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the English & Welsh Grant Dilution Date; and
 - (iii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each English & Welsh Grant Dilution Date.

3.2 **Calculation**

Any English & Welsh Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:

$$GC = (GA_p - P) \bullet \frac{F_t}{AF_t} \bullet (1.0431^{0.25})$$

where:

GC means the English & Welsh Grant Compensation Amount;

GA_p means the Grant Amount for the Payment Date which is the same date as the English & Welsh Grant Dilution Date;

P means:

- (a) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within seven days after the English & Welsh Grant Dilution Date, that it has received from the Secretary of State; and
- (b) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F_t has the meaning ascribed to it in paragraph 1 of Part 2; and

AF_t means the Aggregate Fixed Charge in Relevant Year t.

Part 4

(Not used)

Part 5

(Not used)

Part 6

(Supplemental Provisions)

Each invoice or credit note issued by Network Rail to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information (as relevant) in respect of the period covered by the invoice or credit note:

- (a) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;
- (b) the rate of Variable Usage Charge and any Default Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged, for the purposes of calculating E_{tmo} in accordance with paragraph 4.1.2 of Part 2;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) the amount of any sum W_t payable as provided in paragraph 7 of Part 2;
- (i) the amount of any sum $S1_{tw}$ and/or $S2_{tw}$ and/or any Charge Correction Amount payable as provided in paragraph 18 of the Traction Electricity Rules;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2;
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract other than Part 3A, separately the amount payable in respect of each head of charge; and
- (l) the amount of any sum FW_t payable as provided in paragraph 2A of Part 2.

Part 7

(Future Access Charges Reviews)

1. **General**

ORR may carry out one or more access charges reviews of all or part of this contract as follows:

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review; and
- (b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation before 1 April 2024.

2. **Access charges reviews capable of coming into operation before 1 April 2024**

ORR may carry out an access charges review in relation to any relevant part or parts of this contract at any time where it considers:

- (a) that there has been, or is likely to be, a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; and
- (b) that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.

3. **Interpretation**

In this Part 7 references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

4. **Interim treatment of future access charges reviews**

4.1 ***Interim treatment prior to implementation***

If the terms of a Proposed Review Notice proposing amendments to the contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the contract set out in the Proposed Review Notice shall have effect for the period (the "Interim Period") commencing on that date (or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

- (a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or
- (b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

4.2 ***Reconciliation Payment***

- (a) Within [28] days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the Interim Period with (ii) the sums which would have been payable if the amendments required by either paragraphs 4.1(a) or (b) above

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had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:

- (i) a statement of the amount due to or from the Train Operator; and
 - (ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.
- (b) Within [28] days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this contract.

Appendix 7A

(Not used)

Appendix 7B

(Not used)

Appendix 7C

Default Train Consist Data

Train Service Code	Type of Train Movement	Default Train Consist Data

Appendix 7D

"Metered Trains M" for the purposes of paragraph 4.1.1 of Part 2

Train Type	Train ID	Traction Type
	<i>[This column should include the full train ID. If all trains of the relevant train type used by the Train Operator are metered, this column should say "All".]</i>	

Schedule 7

(Track Charges and Other Payments)

Part 1

(Interpretation)

1. Definitions

In Part 1 – Part 7 inclusive, unless the context otherwise requires:

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

"Capacity Charge" means a variable charge, calculated in accordance with paragraph 6 of Part 2;

"Capacity Charge Wash-up" means the charge calculated in accordance with paragraph 6.2;

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

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

"Current Control Period" means the period of five years commencing at 0000 hours on 1 April 2019 and due to end at 2359 hours on 31 March 2024;

~~**"VUC Default Charge"** means a variable charge calculated in accordance with paragraph 3.3 of Part 2;~~

~~**"VUC Default Period"** means the period from the later of:~~

~~(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or~~

~~(b) 1 April 2019,~~

~~until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;~~

~~**"VUC Default Rate"** means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates";~~

[Network Rail comment: Definitions of "VUC Default Charge", "VUC Default Period" and "VUC Default Rate" have been moved to the end of the definitions section, to retain the alphabetical sequence.]

Network Rail mark-up: Open Access contract, Schedule 7

"Default Train Consist Data" means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;

"Infrastructure Cost Charge" or "ICC" means, in respect of those services identified as [interurban] as set out in the Open Access ICC Rates List, the charge calculated in accordance with paragraph 2 of Part 2;

"Initial Indexation Factor" is derived from the following formula:

$$IIF = \left(1 + \frac{(CPI_{2018} - CPI_{2017})}{CPI_{2017}}\right)^2$$

where:

IIF means Initial Indexation Factor;

CPI_{2017} means the CPI published or determined with respect to the month of November 2017; and

CPI_{2018} means the CPI published or determined with respect to the month of November 2018.

The value derived from this formula shall be rounded to three decimal places;

"New Specified Equipment" means a type of railway vehicle not included in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge rates";

"Open Access ICC Rates List" means the document entitled "Open Access ICC Rates List" published by Network Rail on or about [20 December 2018] which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;

"Period" has the meaning ascribed to it in Schedule 8;

"Proposed Review Notice" means the most recently proposed Review Notice given by ORR during the course of the Current Control Period, in accordance with Schedule 4A of the Act;

"Review Implementation Notice" has the meaning given to "review implementation notice" in paragraph 7 of Schedule 4A of the Act;

"Review Notice" has the meaning given to "review notice" in paragraph 4 of Schedule 4A of the Act;

"Relevant Year" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March;

"Relevant Year t" means the Relevant Year for the purposes of which any calculation falls to be made;

"Relevant Year t-1" means the Relevant Year preceding Relevant Year t and similar expressions shall be construed accordingly;

"Route-Level Efficiency Benefit Share" has the meaning ascribed to it in paragraph 1 of Part 3;

"Service Coded Group" means any Service or collection of Services or Ancillary Movements operating under a service code specified in the Open Access ICC Rates List, and any Ancillary Movements relating to such Services;

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about [20 December 2018] which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;

"Train Consist Data" means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;

"Train Mile" in relation to a train, means a mile travelled by that train on the Network;

"Variable Charges" means the Capacity Charge, the VUC Default Charge and the Variable Usage Charge;

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

"Vehicle Mile" in relation to a railway vehicle, means a mile travelled by that vehicle on the Network; ~~and~~

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

"VUC Default Period" means the period from the later of:

(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or

(b) 1 April 2019,

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

"VUC Default Rate" means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates"; and

"Weekday" has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

Part 2

(Track Charges)

1. Principal formula

During each Relevant Year, Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = F_t + V_t + K_t + KW_t + D_t$$

where:

T_t means Track Charges in Relevant Year t;

F_t means, for those services which are identified as [interurban] as set out in the Open Access ICC Rates List, an amount in respect of the ICC in Relevant Year t which is calculated in accordance with paragraph 2; [Network Rail comment: We suggest replicating the

wording from the definition of Infrastructure Cost Charge here to make it clearer to the reader that F_t only applies to interurban services.]

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

K_t means an amount in respect of the Capacity Charge in Relevant Year t which is calculated in accordance with paragraph 6;

KW_t means an amount, if any, in respect of the Capacity Charge Wash-up in Relevant Year t which shall be calculated in accordance with paragraph 6; and

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

2. Infrastructure Cost Charge

For the purposes of paragraph 1, the term F_t means an amount in respect of the ICC in Relevant Year t which shall be calculated in accordance with the following formula:

$$F_t = \sum R_{ti} \times TM_{ti}$$

where:

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

R_{ti} means the rate per Service Coded Group i in respect of Relevant Year t as shown in the Open Access ICC Rates List expressed in pounds sterling per Train Mile and rounded to four decimal places, and indexed in accordance with the following formula:

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

where:

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

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

but so that in relation to the Relevant Year t commencing on 1 April 2019, R_{ti} shall have the value for the rate per Service Coded Group i shown for the Train Operator in the Open Access ICC Rates List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year, R_{ti-1} shall have the same value; [Network Rail comment: Minor amendments made to the formula so that R_{ti} is referred to consistently throughout the paragraph.]

TM_{ti} means Train Miles run by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t .

3. Variable Usage Charge

3.1 Variable Usage Charge

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

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

where:

V_{it} means an amount for a type of vehicle i for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

CPI_{t-1} means the CPI published or determined with respect to the month of November in Relevant Year $t-1$;

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

but so that in relation to the Relevant Year commencing on 1 April 2019, V_{it} shall have, in respect of vehicle type i , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List; multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

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

3.2 **Not used**

3.3 **VUC Default Charge**

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

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

where:

D_{nt} means the VUC Default Rate, expressed in pence per Vehicle Mile and rounded to two decimal places, for that New Specified Equipment for Relevant Year t which is derived from the following formula:

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

where:

CPI_{t-1} has the meaning set out in paragraph 3.1 above;

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

but so that in relation to the Relevant Year commencing on 1 April 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt-1} shall have the same value;

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

Σ means the summation across all relevant New Specified Equipment.

4. **Not used.**

5. **Not used.**

6. **Capacity Charge and Capacity Charge Wash-up**

6.1 In respect of the Relevant Year ending 31 March 2019, the terms K_t and KW_t respectively mean an amount in respect of the Capacity Charge and the Capacity Charge Wash-Up in Relevant Year t which shall be derived from the ~~formula~~~~formulae~~ that ~~was~~~~were~~ contained in paragraph 6 of Schedule 7 of the version of this contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t and KW_t shall each have a value of zero.

6.2 In respect of the Relevant Year ending 31 March 2019, if KW_t is a positive sum then it shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail. [Network Rail comment: As explained in the main body of our response, we propose that this provision is re-instated.]

7. **Not used.**

8. **Not used.**

9. **Bilateral supplements to the Open Access ICC Rates List and Track Usage Price List**

9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.

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

9.3 No supplement to the Track Usage Price List or Open Access ICC Rates List shall have effect unless it has been:

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

(b) determined by ORR.

9.4 Either the Train Operator or Network Rail shall be entitled to propose that:

(a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or

(b) the Open Access ICC Rates List be supplemented as necessary to take account of changes in the pattern and number of Services or to include rates in respect of new Services.

9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.

- 9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the Open Access ICC Rates List, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to 1 April ~~2014.~~ 2019. **[Network Rail comment: Updated to refer to the start of CP6.]**
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator. In the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; and
 - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract.
- 9.14 Any supplement to the Traction Electricity Modelled Consumption Rates List, Track Usage Price List or Open Access ICC Rates List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.

10. **Payment of Track Charges and Other Sums Due under the Contract**

10.1 ***Payment of Track Charges and Other Sums Due under the Contract***

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

- (i) the Variable Usage Charge;
- (ii) the Infrastructure Cost Charge;
- (iii) the Capacity Charge;
- (iv) the VUC Default Charge; and
- (v) any other sums which have fallen due in accordance with any provision of this contract,

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

(b) Not used.

(c) Not used.

10.2 ***Train Consist Data***

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

10.3 ***Invoices and right to object to invoices***

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

(b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:

- (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
- (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
- (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

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

- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and 7 days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. The Train Operator shall supply data to Network Rail in the format:

Train ID	Start date & time	Train Slot origin	Train slot destination	Train Consist (actual): Specified Equipment used

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within 7 days after the date of its issue.
- (f) Not used.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 Unrepresentative Train Consist Data

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

Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the "**14 day period**") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

10.5 Disputed amounts repayment and interest rate

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
- (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

Part 3

(Route level Efficiency Benefit Share Mechanism)

1. For the purposes of ~~calculating~~the calculation and payment of the Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, Part 3 and Appendix 7A and Appendix 7B of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

[Network Rail comment: We have amended this to clarify that the provisions of Part 3 and Appendix 7A and 7B of Schedule 7 relating to both calculation and payment of any Route-Level Efficiency Benefit Share will continue to apply in respect of the Relevant Year ending 31 March 2019.]

Part 3A

(Not used)

Part 4

(Not used)

Part 5

(Additional Charges)

(Not used)

Part 6

(Supplemental Provisions)

Each invoice or credit note issued by Network Rail to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information (as relevant) in respect of the period covered by the invoice or credit note:

- (a) not used;
- (b) the rate of Variable Usage Charge, Infrastructure Cost Charge and any VUC Default Charge and the relevant number of Vehicle Miles or Train Miles applicable to vehicles for each service so charged; **[Network Rail comment: Inserted to reflect that the Infrastructure Cost Charge will be levied per Train Mile.]**
- (c) not used;
- (d) not used;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) not used;
- (i) not used;
- (j) the amount of any sum K_i payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

Part 7

(Future Access Charges Reviews)

1. **General**

ORR may carry out one or more access charges reviews of all or part of this contract as follows:

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review; and
- (b) not used.

2. **Not used.**

3. **Interpretation**

In this Part 7, references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

4. **Interim treatment of future access charges reviews**

4.1 ***Interim treatment prior to implementation***

If the terms of a Proposed Review Notice proposing amendments to the Contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the Contract set out in the Proposed Review Notice shall have effect for the period (the "Interim Period") commencing on that date (or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

- (a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or
- (b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the Contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

4.2 ***Reconciliation Payment***

- (a) Within [28] days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such a reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the Interim Period, with (ii) the sums which would have been payable if the amendments required by either paragraphs 4.1(a) or (b) above had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:
 - (i) a statement of the amount due to or from the Train Operator; and
 - (ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.
- (b) Within [28] days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this Contract.

Appendix 7A

(Not used)

Appendix 7B

(Not used)

Appendix 7C

Default Train Consist Data

Train Service Code	Description of Journey	Default Train Consist Data

Schedule 4

(Variations to Services)

Part 1

(General Provisions)

1. Definitions

1.1 Definitions

In this Schedule 4 unless the context otherwise requires:

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

- (a) any benefit arising from a Category 3 Disruption including any decrease in Variable Costs as a consequence of a Category 3 Disruption; and
- (b) any Enhanced Planned Disruption Sum due to the Train Operator in connection with the relevant Service affected by a Category 3 Disruption;

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

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

"Base Service" means:

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

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

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

- (a) the Planned departure time from Origin of the Revised Base Service differs from that of the Base Service by more than 60 minutes;
- (b) the Planned arrival time at Destination of the Revised Base Service differs from that of the Base Service by more than 60 minutes;
- (c) the end to end journey of the Revised Base Service exceeds that of the Base Service by more than 10 miles; or
- (d) the imposition of more demanding length or weight restrictions for the Revised Base Service compared to the Base Service,

provided that:

- (i) the relevant variation arises as a direct result of a Network Rail Early Notice Possession; and
- (ii) a Category 2 Disruption or a Category 3 Disruption has not been claimed and paid in relation to the relevant Base Service;

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

- (a) there is no Revised Base Service;
- (b) the imposition of more demanding gauge restrictions for the Revised Base Service compared to the Base Service;
- (c) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service; or
- (d) a diesel locomotive is required to be used for the Revised Base Service in circumstances where Network Rail has agreed to provide electricity for traction purposes for the Base Service as apparent from the column headed "Timing Load" in the Rights Table annexed to Schedule 5;

provided that:

- (i) the relevant variation arises as a direct result of a Network Rail Early Notice Possession; and
- (ii) a Category 3 Disruption has not been claimed and paid in relation to the relevant Base Service;

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

- (a) there is no Revised Base Service and the access from the Origin or to the Destination of the Base Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route);
- (b)
 - (i) there is no Revised Base Service due to the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or
 - (ii) the Revised Base Service does not have an applicable gauge cleared route between the Origin and the Destination where:
 - (A) the lack of such applicable gauge cleared route has lasted or lasts in total for more than 60 hours; and
 - (B) the Revised Base Service operates in whole, or in part, at the relevant location within this 60 hour period;
- (c) all or part of the goods planned to be carried by the Base Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination;
- (d) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service;

- (e) a diesel locomotive is required to be used for the Revised Base Service in circumstances where Network Rail has agreed to provide electricity for traction purposes for the Base Service as apparent from the column headed "Timing Load" in the Rights Table annexed to Schedule 5; or
- (f) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the Revised Base Service and such requirement has come about as a direct result of the exceptional nature of the variation to the Base Service,

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

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

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

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

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

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

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

- (a) any benefit arising from a Relevant Cancellation or Relevant Service Variation (as the case may be) including any decrease in Variable Costs as a consequence of such Relevant Cancellation or Relevant Service Variation (as the case may be); and
- (b) any Late Notice Cancellation Sum or Service Variation Sum (as the case may be) due to the Train Operator in connection with the relevant Service affected by such Relevant Cancellation or Relevant Service Variation (as the case may be);

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

"Late Notice Actual Costs Claim Trigger" means:

- (a) in respect of a Relevant Cancellation, the condition specified in paragraph 9.1(b); or
- (b) in respect of a Relevant Service Variation, the condition specified in paragraph 9.2(b);

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

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

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

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

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

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

"Original Service" means a Planned Service which:

- (a) is affected by a Disruptive Event as described in paragraph 4.1; or
- (b) is not able to operate because of the non-availability of any part of the Network as described in paragraph 5.1;

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

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

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

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

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

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

"Round Trip" means a Service and any associated Empty Services and Ancillary Movements;

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

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

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

1.2 **Interpretation**

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

2. **Payment**

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

- (a) a Service Variation Sum in respect of each Service Variation and, where applicable subject to paragraph 9.2, any Late Notice Actual Costs arising from the process set out in paragraph 9.4 and in accordance with paragraph 9.4;
- (b) a Late Notice Cancellation Sum in respect of each Late Notice Cancellation and, where applicable subject to paragraph 9.1, any Late Notice Actual Costs arising from the process set out in paragraph 9.4 and in accordance with paragraph 9.4;
- (c) a Normal Planned Disruption Sum in respect of each Category 1 Disruption;
- (d) an Enhanced Planned Disruption Sum in respect of each Category 2 Disruption;
- (e) an Enhanced Planned Disruption Sum in respect of each Category 3 Disruption and, where applicable subject to paragraph 3.3.2, the Actual Costs arising from the process set out in paragraph 3.3.3 and in accordance with paragraph 3.3.3,

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

Part 2

(Compensation for notification before the Possession Notice Date)

3. Disruption compensation

3.1 Category 1 Disruption

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

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

3.2 Category 2 Disruption

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

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

3.3 Category 3 Disruption

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

Network Rail mark-up: Freight contract, Schedules 4, 7 & 8

- (a) Planned to depart its Origin in that Charging Period; or
 - (b) is a Freight Access Right as described in sub-paragraph "(a)" of that definition contained in Schedule 5 which but for a Network Rail Early Notice Possession a Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.
- 3.3.2 If the Train Operator reasonably believes or expects that the Category 3 Disruption Trigger will be satisfied then the Train Operator will be entitled to serve an Actual Costs Claim Notice.
- 3.3.3 Within 56 days (or such other period as the parties may agree) of receipt by Network Rail of an Actual Costs Claim Notice, Network Rail shall notify the Train Operator that either:
- (a) it agrees that the Category 3 Disruption Trigger is satisfied and agrees to the amount of Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case Network Rail shall also pay such Actual Costs to the Train Operator within 56 days of receipt by Network Rail of the relevant Actual Costs Claim Notice; or
 - (b) it agrees that the Category 3 Disruption Trigger is satisfied but does not agree to the amount of the Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Base Service(s) affected by a Network Rail Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator its Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be); or
 - (c) it does not agree that the Category 3 Disruption Trigger is satisfied, in which case the matter shall be immediately referred for determination in accordance with Clause 13, and if it is determined in accordance with Clause 13 that the Category 3 Disruption Trigger is satisfied then Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Base Service(s) affected by a Network Rail Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator such Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be).

3.4 **Notification, Disruption Claim Notices and Actual Costs Claim Notices**

- 3.4.1 The Train Operator shall notify Network Rail of any Network Rail Early Notice Possession that it reasonably considers is likely to give rise to any Category 3 Disruption as soon as reasonably practicable after it has been notified of such Network Rail Early Notice Possession.
- 3.4.2 The Train Operator must notify Network Rail of any Category 1 Disruption, Category 2 Disruption or Category 3 Disruption, unless otherwise agreed in writing, within 56 days of its occurrence and include within such notice details of the affected Base Services and the Planned Disruption Sums claimed (a "**Disruption Claim Notice**").

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

- (a) no later than the day falling 56 days after the end of the occurrence of the Network Rail Early Notice Possession giving rise to a Category 3 Disruption; or
- (b) where an Early Notice Possession is reasonably believed to have exceeded 13 consecutive Charging Periods in length or upon the termination or expiry of this contract, whichever comes first, no later than the day falling 112 days after the end of the 13th consecutive Charging Period or the termination or expiry of this contract (as applicable),

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

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

- (a) each such Actual Costs Claim Notice relates to a different period covered by the relevant Network Rail Early Notice Possession; and
- (b) no Actual Costs Claim Notice can be issued after the last day for serving notice specified under paragraph 3.4.3.

3.5 ***Planned Disruption Sum on Round Trip***

Network Rail shall not be liable to the Train Operator for more than one Planned Disruption Sum in respect of any Round Trip, unless the train is loaded in both directions.

3.6 ***Early notice of potential Actual Cost claims***

The parties may at any time engage in discussions on any matter likely to result in payments of any Actual Costs and shall use reasonable endeavours to agree whether such Actual Costs arising from the process set out in paragraph 3.3 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such Actual Costs. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it considers such Actual Costs will arise and what mitigating actions should be contemplated. Following any agreement or determination that such Actual Costs are likely to arise in connection with one or more future Network Rail Early Notice Possessions or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption including any advance compensation for such Network Rail Early Notice Possession(s) to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption. Nothing in this Agreement shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Network Rail Early Notice Possession(s). Unless otherwise agreed, the timescales for claiming Actual Costs in paragraph 3.4 shall still apply.

Part 3

(Processes and compensation for notification after the Possession Notice Date)

4. **Services rescheduled following a Disruptive Event**

4.1 ***Establishing an Alternative Train Slot***

Where there is a Disruptive Event:

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- (a) to the extent that there is appropriate capacity available on the relevant part of the Network; and
- (b) subject to Part H of the Network Code and the Railway Operational Code,

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

4.2 ***Train Operator's response***

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

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

4.3 ***Rejection of Alternative Train Slot***

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

4.4 ***Measure of performance***

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

- (a) Network Rail shall permit the Train Operator to make the relevant movement in accordance with that Alternative Train Slot;
- (b) the Service Characteristics of the Planned Service shall be those of the original Train Slot; and
- (c) the performance of the movement shall be measured accordingly.

4.5 ***Cancellation***

4.5.1 Where:

- (a) Network Rail is not able to nominate an Alternative Train Slot under paragraph 4.1;
- (b) the Train Operator rejects the Alternative Train Slot nominated by Network Rail under paragraph 4.2(b) and does not propose a different Alternative Train Slot under paragraph 4.3; or
- (c) the Train Operator proposes a different Alternative Train Slot under paragraph 4.3 and this is not accepted by Network Rail,

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

4.5.2 Where an Alternative Train Slot is:

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- (a) accepted under paragraph 4.2(a); or
- (b) accepted as a Train Operator Variation under paragraph 4.3,

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

4.6 ***Part H of the Network Code***

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

5. **Other variations to Planned Services**

5.1 ***Non-availability of a Service***

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

- (a) a Restriction of Use to be taken pursuant to the Engineering Access Statement which has been notified in all material respects prior to the Possession Notice Date; and
- (b) the circumstances envisaged by paragraph 4,

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

- (i) Attributable to Network Rail (as defined in Schedule 8); and
- (ii) known about in sufficient time for an alternative Service to be the subject of a Train Operator Variation Request and entered into the Working Timetable as a new Planned Service.

5.2 ***Establishing an Alternative Train Slot***

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

5.3 ***Train Operator's response***

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

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

5.4 ***Rejection of Alternative Train Slot***

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

5.5 ***Measure of performance***

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

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- (a) Network Rail shall permit the Train Operator to make the relevant movement in accordance with the Alternative Train Slot;
- (b) the Service Characteristics of the Planned Service shall be those of the Alternative Train Slot; and
- (c) the performance of the movement shall be measured accordingly.

5.6 **Cancellation**

5.6.1 Where:

- (a) Network Rail is not able to nominate an Alternative Train Slot under paragraph 5.2;
- (b) the Train Operator rejects the Alternative Train Slot nominated by Network Rail under paragraph 5.3(b) and does not propose a different Alternative Train Slot under paragraph 5.4; or
- (c) the Train Operator proposes a different Alternative Train Slot under paragraph 5.4 and this is not accepted by Network Rail,

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

5.6.2 Where an Alternative Train Slot is:

- (a) accepted under paragraph 5.3(a); or
- (b) accepted as a Train Operator Variation under paragraph 5.4,

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

Part 4

(Restrictions of Use before Possession Notice Date)

6. **Restrictions of Use before Possession Notice Date**

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

Part 5

(Service Variation)

7. **Service Variation**

7.1 **Service Variation**

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

- (a) the Train Operator has accepted under paragraphs 4 or 5, and which is Attributable to Network Rail (as defined in Schedule 8); and
- (b) has one or more of the following effects:
 - (i) the end to end journey of the Diverted Service exceeds that of the Original Service by more than five miles;
 - (ii) the addition of at least one Planned reversing movement for the Diverted Service over the number of Planned reversing movements for the Original Service;
 - (iii) the imposition of any more demanding length, weight or gauge restrictions for the Diverted Service compared with the Original Service;
 - (iv) the use of at least one additional locomotive for the Diverted Service over the number for the Original Service or use of a diesel locomotive for the Diverted Service in circumstances where Network Rail has agreed to provide Electricity for Traction for that Original Service as shown in Schedule 5;
 - (v) the Planned departure time from Origin of the Diverted Service differs from that of the Original Service by more than 30 minutes but less than 12 hours;
 - (vi) the Planned arrival time at Destination of the Diverted Service differs from that of the Original Service by more than 30 minutes but less than 12 hours; and
 - (vii) while the Train Operator Originally Requested the Train Slot in accordance with Part D of the Network Code, the nomination and acceptance of the Alternative Train Slot which is established for the Diverted Service is treated as a Short Notice Service because an act or omission of Network Rail resulted in the Originally Requested Train Slot not being Planned in accordance with Part D.

7.2 **Network Rail liability**

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

7.3 **Service Variation Sum on Round Trip**

Network Rail shall not be liable to the Train Operator for more than one Service Variation Sum in respect of any Round Trip, unless the train is loaded in both directions.

7.4 **Service Variation / Cancellation**

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

Part 6

(Not Used)

8. **Not Used**

Part 7

(Late Notice Actual Costs Claims)

9. Late Notice Actual Costs Claims

9.1 *Late Notice Actual Costs Claim arising from Relevant Cancellation*

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

- (a) either:
 - (i) the Relevant Cancellation occurs because the access from the Origin or to the Destination of the Original Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route); or
 - (ii) the Relevant Cancellation occurs because of the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or
 - (iii) as a result of the Relevant Cancellation, all or part of the goods planned to be carried by the Original Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination; and
- (b) the Train Operator incurs Late Notice Actual Costs as a consequence of the Relevant Cancellation, then the Train Operator will be entitled to serve a Late Notice Actual Costs Claim Notice in accordance with paragraph 9.3 below.

9.2 *Late Notice Actual Costs Claim arising from Relevant Service Variation*

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

- (a) either:
 - (i) the Diverted Service does not have an applicable gauge cleared route between the Origin and the Destination where:
 - (A) the lack of such applicable gauge cleared route has lasted or lasts in total for more than 60 hours; and
 - (B) the Diverted Service operates in whole, or in part, at the relevant location within this 60 hour period; or
 - (ii) at least one additional locomotive is used for the Diverted Service over the number used for the Original Service; or
 - (iii) a diesel locomotive is required to be used for the Diverted Service in circumstances where Network Rail has agreed to provide Electricity for Traction for the Original as shown in Schedule 5; or
 - (iv) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the Diverted Service and such requirement has come

about as a direct result of the exceptional nature of the variation to the Original Service; and

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

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

9.3 **Late Notice Actual Costs Claim Notice**

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

9.4 **Late Notice Actual Costs Claim Process**

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

- (a) it agrees that the Late Notice Actual Costs Claim Trigger is satisfied and agrees to the amount of the Late Notice Actual Costs claimed by the Train Operator in the Late Notice Actual Costs Claim Notice, in which case Network Rail shall also pay such Late Notice Actual Costs to the Train Operator within 56 days of receipt by Network Rail of the relevant Late Notice Actual Costs Claim Notice; or
- (b) it agrees that the Late Notice Actual Costs Claim Trigger is satisfied but does not agree to the amount of the Late Notice Actual Costs claimed by the Train Operator in the Late Notice Actual Costs Claim Notice, in which case Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Late Notice Actual Costs and shall continue such negotiations in good faith until they are concluded or until the Late Notice Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator its Late Notice Actual Costs within 28 days of those Late Notice Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be); or
- (c) it does not agree that the Late Notice Actual Costs Claim Trigger is satisfied, in which case the matter shall be immediately referred for determination in accordance with Clause 13, and if it is determined in accordance with Clause 13 that the Late Notice Actual Costs Claim Trigger is satisfied then Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Late Notice Actual Costs and shall continue such negotiations in good faith until they are concluded or until the Late Notice Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator such Late Notice Actual Costs within 28 days of those Late Notice Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be).

Appendix 1

The Normal Planned Disruption Sum shall be [~~£300~~]. (amount to be expressed in pounds sterling and rounded to zero decimal places).

The Enhanced Planned Disruption Sum shall be [~~£800~~]. (amount to be expressed in pounds sterling and rounded to zero decimal places).

Schedule 7

(Track Charges and other payments)

1. Definitions

In this Schedule 7 unless the context otherwise requires:

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

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

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

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

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

"Bimodal Locomotive" means a train hauled by a locomotive that is capable of drawing current from the AC System and/or DC System, and, in addition, being powered by an alternative source of energy, including but not limited to diesel; **[Network Rail comment: We propose that this definition is amended to clarify that the term "Bimodal Locomotive" refers to the train hauled by the locomotive, not just the locomotive itself.]**

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

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

"Coal Spillage Charge Rate" means, in respect of each Coal Vehicle used in a Service, the coal spillage charge rate per kgkm for that Coal Vehicle, for the Relevant Year ending 31 March 2019 only, as set out in the track usage price list published by Network Rail on or around 20 December 2013 and, being an Indexed Figure, adjusted in accordance with paragraph 2.7.2 of the version of this contract that was in force up until 31 March 2019; [Network Rail comment: Definition reinstated as this rate is still referred to in item 6 of paragraph 2.2.1. It has been amended slightly to reflect that it will be calculated in accordance with the version of the track usage price list and the contract that was in force up until 31 March 2019.]

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

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

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

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

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

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(b) continues to utilise the modification;

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

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

"Current Control Period" means the period of five years commencing at 0000 hours on 1 April 2019 and due to end at 2359 hours on 31 March 2024;

"DC System" means the direct current system of electricity traction supply on the Network;

~~**"VUC Default Period"** means the period from the later of:~~

~~(a) — the date on which the New Registered Equipment is first used on the Network by the Train Operator; or~~

~~(b) — 1 April 2019,~~

~~until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 2.2.10 in respect of that New Registered Equipment;~~

~~**"VUC Default Rate"** means, in respect of any New Registered Equipment used on the Network by the Train Operator, the corresponding freight default rate for that type of vehicle (locomotive, empty wagon or loaded wagon) set out in the section of the Track Usage Price List entitled "Freight Variable Usage Charge default rates" and, being an Indexed Figure, adjusted in accordance with paragraphs 2.7.1 and 2.7.2;~~

~~**[Network Rail comment: Definitions of "VUC Default Period" and "VUC Default Rate" have been moved further down the list of definitions to retain the alphabetical sequencing.]**~~

"Electrification Asset Usage Charge" means the charge calculated in accordance with paragraph 2.4.12;

"Electrification Asset Usage Rate" means, in respect of electrification asset usage, the rate per electrified kgkm on route type k as set out in the Track Usage Price List and, being an Indexed Figure, adjusted in accordance with paragraph 2.7.1 and 2.7.2;

"Empty Wagon Miles" means, in relation to an empty wagon, the Contract Miles travelled by that empty wagon;

"Empty Wagon Weight" means, in relation to an empty wagon, the tare weight of that wagon, measured in tonnes;

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

"ESI Biomass Vehicle" means any vehicle in respect of which the Commodity is electricity supply industry biomass;

"Freight Capacity Charge" means the charge calculated in accordance with paragraph 2.3;

"Freight Capacity Charge Wash-Up" means the charge calculated in accordance with paragraph 2.3;

"Freight Only Line Charge Rate" means, in respect of each ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle used in a Service, the rate per kgm for that ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle, for the Relevant Year ending 31 March 2019 only, which shall be the total of the amount set out in the track usage price list published by Network Rail on or around 20 December 2013 relating to the freight only line charge rate for an ESI Coal Vehicle, IO Vehicle or SNF Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b) of the version of this contract that was in force up until 31 March 2019; **[Network Rail comment: Definition reinstated as this rate is still referred to in item 5 of paragraph 2.2.1. It has been amended slightly to reflect that it will be calculated in accordance with the version of the track usage price list and the contract that was in force up until 31 March 2019.]**

"Freight Specific Charge Rate" means, in respect of each ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle and/or SNF Vehicle used in a Service the rate per kgm for that ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be:

- (a) in respect of the Relevant Year commencing on 1 April 2019 the total of the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle or SNF Vehicle for that year, multiplied by the Phased in Charges Indexation Adjustment calculated in accordance with paragraph 2.7.3(a); and
- (b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle or SNF Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b);

"Geographic Area g" means, for the purposes of performing the calculations set out in paragraph 2.4 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network as set out in Appendix 5 of the Traction Electricity Rules;

"Gross Tonne Miles" or "gtm" means, in respect of each locomotive, loaded wagon, empty wagon or coaching stock, the Locomotive Miles, Loaded Wagon Miles, Empty Wagon Miles or Coaching Stock Miles multiplied by the relevant Locomotive Weight, Loaded Wagon Weight, Empty Wagon Weight or Coaching Stock Weight respectively;

"Incremental Costs" means all reasonable additional costs properly and reasonably incurred by Network Rail in respect of any modification referred to in paragraph 2.8, being the additional reasonable costs (if any) to Network Rail in respect of its obligation to maintain and operate the Network, but excluding:

- (a) any loss of income on the part of Network Rail; and
- (b) freight-specific fixed and common costs for which Network Rail has already received funding from the Secretary of State, or any other body or person;

"Indexed Figures" means the Cancellation Sum, the VUC Default Rate, the Disruption Sum, the Electrification Asset Usage Rate, the Enhanced Planned Disruption Sum, the Incident Cap Access Charge Supplement Rate, the Late Notice Cancellation Sum, the Network Rail Cap, the Network Rail Payment Rate, the Normal Planned Disruption Sum, the Prolonged Disruption Amount, the Service Variation Sum, the Train Operator Cap and the Train Operator Payment Rate;

"Initial Indexation Factor" is derived from the following formula:

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$$IIF = \left(1 + \frac{(CPI_{2018} - CPI_{2017})}{CPI_{2017}}\right)^2$$

where:

IIF means the Initial Indexation Factor;

CPI_{2017} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2017; and

CPI_{2018} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2018;

The value derived from this formula shall be rounded to three decimal places;

"IO Vehicle" means any vehicle in respect of which the applicable Commodity is iron ore;

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

"Loaded Wagon Miles" means, in relation to a loaded wagon, the Contract Miles travelled by that loaded wagon;

"Loaded Wagon Weight" means, in relation to a loaded wagon, the gross weight of that loaded wagon, measured in tonnes;

"Locomotive Miles" means, in relation to a locomotive, the Contract Miles travelled by that locomotive;

"Locomotive Weight" means, in relation to a locomotive, the gross weight of that locomotive, measured in tonnes;

"Metered Train m" means, as the context requires, either:

- (a) a train of a particular type; or
- (b) a specific train having a train ID,

in either case as specified in Appendix 3 of this Schedule 7 or Appendix 2 or Appendix 4 of the Traction Electricity Rules;

"Network Rail Distribution System Loss Factor" means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail's meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in Appendix 3 of the Traction Electricity Rules;

"New Registered Equipment" means a type of railway vehicle or vehicle commodity combination not incorporated in the section of the Track Usage Price List entitled "Freight Variable Usage Charge rates";

"On-Train Meter" and **"On-Train Metering"** have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;

"ORR's Qualifying Modification Criteria" means the criteria issued by ORR as described in paragraph 2.9.1;

"Phased in Charges Indexation Adjustment" has the meaning ascribed to it in paragraph 2.7.3;

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"Proposed Review Notice" means the most recently proposed Review Notice given by ORR during the course of the Current Control Period, in accordance with Schedule 4A of the Act;

"QM Threshold" means a level of costs in relation to a modification to the Operating Constraints determined in accordance with ORR's Qualifying Modification Criteria;

"Qualifying Modification" means a modification to the Operating Constraints in excess of their level as at 1 April 2019, which:

- (a) exceeds the QM Threshold; and
- (b) in respect of which a Contributing Train Operator has paid Network Rail Incremental Costs under paragraph 2.8 or its equivalent in the relevant access agreement;

"Qualifying Modification Benefit Charge" means, in relation to any Qualifying Modification, a charge which shall:

- (a) take account of:
 - (i) the use made or to be made of the Qualifying Modification, where such modification increased the capacity of the Network; or
 - (ii) in any other case, the benefit which is likely to be derived from the Qualifying Modification by the Train Operator compared to the benefit derived from such modification by the Contributing Train Operator; and
- (b) reflect any relevant guidance in relation to the funding of modifications to the Operating Constraints published in ORR's Qualifying Modification Criteria;

"Relevant Year" means a year commencing at 00:00 hours on 1 April and ending at 23:59 hours on the following 31 March;

"Relevant Year t" means the Financial Year for the purposes of which any calculation falls to be made;

"Relevant Year t-1" means the Financial Year preceding Relevant Year t, and similar expressions shall be construed accordingly;

"Route-Level Efficiency Benefit Share" has the meaning ascribed to it in paragraph 4.1;

"Review Implementation Notice" has the meaning given to "review implementation notice" in paragraph 7 of Schedule 4A of the Act;

"Review Notice" has the meaning given to "review notice" in paragraph 4 of Schedule 4A of the Act;

"route type k" means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;

"SNF Vehicle" means any vehicle in respect of which the applicable Commodity is spent nuclear fuel;

"tariff band j" means the tariff zone and time band in which the train in question is operated;

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about [20 December 2018] which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 2.2.10 of Schedule 7 to this contract or a freight track access contract previously held by the Train Operator;

"Traction Electricity Charge" means the charge calculated in accordance with paragraph 2.4;

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about [20 December 2018] and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 2.2.10 of Schedule 7 of this contract or a freight track access contract previously held by the Train Operator;

"Traction Electricity Usage Occurrence Data" means information as to when a Bimodal Electric Multiple Unit or Bimodal Locomotive is either drawing current from the AC System and/or DC System, or is being powered by an alternative source of energy;

"Traction-Train Compatible" means a situation in which a Bimodal Electric Multiple Unit or Bimodal Locomotive is located on the Network with a system of electricity traction supply that the Bimodal Electric Multiple Unit or Bimodal Locomotive is capable of drawing current from;

"train category" means train category i as identified in the table in the Traction Electricity Modelled Consumption Rates List entitled "Freight Traction Electricity Modelled Consumption Rates for CP6";

"Train Mile" means, in relation to a train, or a portion of a train, a mile travelled by that train, or that portion of a train, on the Network;

"Variable Charge" means the charge that varies according to kgm and is calculated in accordance with the formula set out in paragraph 2.2.1, summed across all Services;

"Vehicle Mile" in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;

"VUC Default Period" means the period from the later of:

(a) the date on which the New Registered Equipment is first used on the Network by the Train Operator; or

(b) 1 April 2019,

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 2.2.10 in respect of that New Registered Equipment;

"VUC Default Rate" means, in respect of any New Registered Equipment used on the Network by the Train Operator, the corresponding freight default rate for that type of vehicle (locomotive, empty wagon or loaded wagon) set out in the section of the Track Usage Price List entitled "Freight Variable Usage Charge default rates" and, being an Indexed Figure, adjusted in accordance with paragraphs 2.7.1 and 2.7.2;

"VUC Rate" means, in respect of each locomotive type, empty wagon type, loaded wagon type and coaching stock type used in respect of each Service, the rate per kgm which shall be:

(a) in respect of the Relevant Year commencing on 1 April 2019 the total of the amount set out in the Track Usage Price List relating to the freight variable usage charge rate for the corresponding vehicle type and commodity for that year, multiplied by the Phased in Charges Indexation Adjustment calculated in accordance with paragraph 2.7.3(a); and

(b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight variable usage charge rate for the

corresponding vehicle type and commodity for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b); and

"**Volume Reconciliation**" has the meaning ascribed to it in the Traction Electricity Rules.

2. **Track Charges and invoices**

2.1 ***Obligation on Train Operator to pay***

- 2.1.1 In respect of each Charging Period, the Train Operator shall pay or procure payment of the Variable Charge, the Freight Capacity Charge (where applicable, for the Relevant Year ending 31 March 2019), the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incremental Costs, the Incident Cap Access Charge Supplement and the Qualifying Modification Benefit Charge. In respect of each Relevant Year t , the Train Operator shall pay the amount of any sum $S_{1,t}$ and/or $S_{2,t}$ and/or any Charge Correction Amount payable, as provided in paragraph 18 of the Traction Electricity Rules. The charges will be rounded to the nearest penny. Where a calculation ends up exactly half way between whole numbers it will be adjusted upward.
- 2.1.2 No Track Charges shall be payable by the Train Operator in respect of a Train Slot when the train has not reached its Planned Destination for a reason which is Attributable to Network Rail.
- 2.1.3 Network Rail shall issue to the Train Operator an invoice as soon as practicable, or as otherwise agreed, following the expiry of each Charging Period in respect of the Variable Charge, the Freight Capacity Charge (where applicable, in respect of the Relevant Year ending 31 March 2019), the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incident Cap Access Charge Supplement and any Incremental Costs or Qualifying Modification Benefit Charge which is or are payable in respect of that Charging Period.
- 2.1.4 If, at the time that Network Rail issues any invoice pursuant to paragraph 2.1.3, any Route-Level Efficiency Benefit Share is payable by Network Rail to the Train Operator or any amount under the Traction Electricity Rules is payable by either party to the other, that invoice shall also reflect that Route-Level Efficiency Benefit Share payable by Network Rail or any amount under the Traction Electricity Rules payable by either party to the other.

2.2 ***Variable Charges***

- 2.2.1 The Variable Charge in respect of each Service in each Charging Period shall be calculated in accordance with the following formula:

$$\text{Variable Charge} = 1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9$$

where:

1 means, in respect of each locomotive, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant locomotive type multiplied by the kg_{tm} for that locomotive type relating to the relevant Service;

2 means, in respect of each empty wagon, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant empty wagon type multiplied by the kg_{tm} for that empty wagon type relating to the relevant Service;

3 means, in respect of each loaded wagon, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant loaded wagon type multiplied by the kg_{tm} for that loaded wagon type relating to the relevant Service;

4 means, in respect of each unit of coaching stock, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant coaching stock type multiplied by the kgtm for that coaching stock type relating to the relevant Service;

5 is to have a value of zero for any Relevant Year starting on or after 1 April 2019; in respect of the Relevant Year ending 31 March 2019, it means, in respect of each ESI Coal Vehicle, IO Vehicle and each SNF Vehicle, the Freight Only Line Charge Rate ~~(as defined in paragraph 4.1 of Schedule 7 to the version of this contract that was in force up until 31 March 2019)~~, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for that ESI Coal Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the kgtm for that ESI Coal Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service; [Network Rail comment: Definition of Freight Only Line Charge retained for the user's ease of reference but amended to reflect that it will be calculated in accordance with the version of this contract in force up until 31 March 2019.]

6 is to have a value of zero for any Relevant Year starting on or after 1 April 2019; in respect of the Relevant Year ending 31 March 2019, it means, in respect of each Coal Vehicle, the Coal Spillage Charge Rate ~~(as defined in paragraph 1.1 of Schedule 7 to the version of this contract that was in force up until 31 March 2019)~~ multiplied by the kgtm for that Coal Vehicle relating to the relevant Service; [Network Rail comment: Definition of Coal Spillage Charge Rate retained for the user's ease of reference but amended to reflect that it will be calculated in accordance with the version of this contract in force up until 31 March 2019.]

7 has a value of zero;

8 means, in respect of each ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle and each SNF Vehicle, the Freight Specific Charge Rate, expressed in pounds sterling per 1000 gross tonne mile and rounded to four decimal places, for that ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the kgtm for that ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service; and

9 means, in respect of New Registered Equipment during the VUC Default Period, the VUC Default Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, multiplied by the kgtm for that New Registered Equipment relating to the relevant Service.

Bilateral supplements to the Track Usage Price List and Traction Electricity Modelled Consumption Rates List

- 2.2.2 Where the Train Operator intends to use New Registered Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.
- 2.2.3 No supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List shall have effect unless it has been:
- (a) agreed between the parties and ORR has consented to it; or
 - (b) determined by ORR.
- 2.2.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a new train category and corresponding rate; or
 - (b) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.

- 2.2.5 Any proposal of a kind referred to in paragraph 2.2.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.
- 2.2.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 2.2.7 Where the parties agree to a supplement following a proposal under paragraph 2.2.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 2.2.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 2.2.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 2.2.9 Following a reference to ORR under paragraph 2.2.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 2.2.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 2.2.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 2.2.8, determine the supplement that should apply.
- 2.2.11 In the case of a supplement to the Traction Electricity Modelled Consumption Rates List, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined the supplement.
- 2.2.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 2.2.13 Following ORR's consent or determination under paragraph 2.2.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 2.2.11 or 2.2.12 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator. In the case of a supplement to the Track Usage Price List, this will reflect the difference between:
 - (A) the total amount paid by the Train Operator during the VUC Default Period under item '9' of the formula in paragraph 2.2.1; and
 - (B) the amount the Train Operator would have paid during this period under items '1' to '4' of the formula in paragraph 2.2.1 had the supplement been in place when the Train Operator first used the relevant railway vehicle on the Network; and

- (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.

2.2.14 Any supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List ORR has consented to or determined pursuant to a freight track access contract previously held by the Train Operator shall also apply to this contract.

2.3 **Freight Capacity Charge and Freight Capacity Charge Wash-Up**

2.3.1 For the purposes of calculating the Freight Capacity Charge and Freight Capacity Charge Wash-Up for the Relevant Year ending 31 March 2019, paragraph 2.3 of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

2.3.2 Where Network Rail calculates that the Freight Capacity Charge Wash-up for the Relevant Year ending 31 March 2019 is a positive amount then, as soon as practicable, it shall issue to the Train Operator an invoice for that amount and the Train Operator shall pay or procure payment of it. [Network Rail comment: This provision was previously included as paragraph 2.1.5, which has been deleted. As explained in the main body of our response, we propose that this provision is re-instated here.]

2.4 **Traction Electricity Charge**

2.4.1 If the Train Operator procures the supply of electricity from or through Network Rail (whether as its agent or otherwise) for the purpose of running trains under this contract, the Traction Electricity Charge in Relevant Year t shall be calculated in accordance with the following formula:

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

where:

E_{tmo} means an amount calculated in accordance with paragraph 2.4.1.2 below;

E_{tme} means an amount calculated in accordance with paragraph 2.4.1.3 below;

E_{tmuAC} means an amount calculated in accordance with paragraph 2.4.1.4(a) below; and

E_{tmuDC} means an amount calculated in accordance with paragraph 2.4.1.4(b) below;

Circumstances in which calculation to be based on modelled data and circumstances in which calculation to be based on metered data

2.4.1.1 E_{tmo} shall be calculated in respect of all trains other than those identified in the table at Appendix 3, and E_{tme} , E_{tmuAC} and E_{tmuDC} shall be calculated in respect of the trains identified in the table at Appendix 3.

Calculation of modelled consumption

2.4.1.2 E_{tmo} is derived from the following formula:

$$E_{tmo} = \sum E_{tmog}$$

where:

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

E_{tmog} is derived from the following formula:

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

where:

\sum means the summation across all relevant train categories i (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

C_i means the modelled consumption rate:

- (a) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and
- (b) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract; provided that where train category i is a Bimodal Electric Multiple Unit or Bimodal Locomotive operating in a Traction-Train Compatible situation, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive-hauled units and all freight traffic), if any, of such trains ~~operated by the Train Operator in train category i, in tariff band j and in Relevant Year t is electrified, shall be deemed for billing purposes to be electrified.~~

[Network Rail comment: Definition of UE_{igt} amended for consistency with the equivalent wording in the passenger contract.]

Calculation of consumption using metered consumption data

2.4.1.3 E_{tme} is derived from the following formula:

$$E_{tme} = \sum E_{tmeg}$$

where:

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

E_{tmeg} is derived from the following formula:

$$E_{tmeg} = \sum \left((CME_{mgjt} \cdot EF_{gjt}) - (RGB_{mgjt} \cdot EF_{gjt}) \right)$$

where:

\sum means the summation across all relevant Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjt} means the consumption of electricity (in kWh) by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

RGB_{mgjt} means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t.

2.4.1.4

(a) E_{tmuAC} is derived from the following formula:

$$E_{tmuAC} = \sum E_{tmugAC}$$

where:

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

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \sum (CME_{mgjtAC} \cdot EF_{gjt}) \cdot \lambda_{ACg}$$

where:

\sum means the summation across all Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjtAC} means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

λ_{ACg} means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g.

(b) E_{tmuDC} is derived from the following formula:

$$E_{tmuDC} = \sum E_{tmugDC}$$

where:

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

E_{tmugDC} is derived from the following formula:

$$E_{tmugDC} = \sum (CME_{mgjtDC} \cdot EF_{gjt}) \cdot \lambda_{DCg}$$

where:

\sum means the summation across all relevant Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgtDC} means the consumption of electricity (in kWh) from the DC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t ;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g .

Metered Bimodal Electric Multiple Units and Bimodal Locomotives – deemed electrified mileage

[Network Rail comment: We suggest that the provisions below are included as a new paragraph 2.4.1.5, rather than as a new sub-paragraph (c) of 2.4.1.4. Paragraph 2.4.1.4 relates to the calculation of the transmission losses mark-ups (E_{tmuAC} and E_{tmuDC}); however the provisions below are relevant to the calculation of E_{time} , as well as E_{tmuAC} and E_{tmuDC} . We therefore think it is more logical to include these as a stand-alone paragraphs, with an appropriate sub-heading, and not as additional sub-paragraphs of 2.4.1.4.]

2.4.1.5

(a) Where ~~train category i~~ Metered Train m is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, ~~as a minimum, within 14 days of the end of each of the third, sixth, tenth and thirteenth Periods,~~ provide to Network Rail the Traction Electricity Usage Occurrence Data for ~~train category i. The Traction Electricity Usage Occurrence Data provided: within 14 days of the end of the third Period shall cover Periods one, two and three; within 14 days of the sixth Period shall cover Periods four, five and six; within 14 days of the tenth Period shall cover Periods seven, eight, nine and ten; and within 14 days of the thirteenth Period shall cover Periods eleven, twelve and thirteen~~ such Metered Train m .

(b) Where, after ~~147~~ (seven) days, any Traction Electricity Usage Occurrence Data is missing ~~in respect of any such Bimodal Electric Multiple Unit or Bimodal Locomotive,~~ all mileage ~~(in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive hauled units and all freight traffic),~~ if any, of ~~such~~ Bimodal Electric Multiple ~~Units~~ Unit or Bimodal ~~Locomotives~~ Locomotive operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified in Traction-Train Compatible situations, ~~and paragraphs 2.4.1.3 and 2.4.1.4 shall apply in respect of all such mileage.~~

[Network Rail comment: We have suggested some amendments to (a) and (b) for clarification and simplification.]

- 2.4.2 Not used.
- 2.4.3 Not used.
- 2.4.4 Not used.

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

- 2.4.5 If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- 2.4.6 Any notice under paragraph 2.4.5 shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- 2.4.7 Promptly following any response served by Network Rail under paragraph 2.4.6, the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- 2.4.8 If the parties agree an amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- 2.4.9 Any agreed amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, which is approved by ORR under section 22 of the Act, shall apply with effect from the date agreed by the parties.
- 2.4.10 If the parties fail to reach agreement within 90 days after service of a notice under paragraph 2.4.5, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 2.4.11 Where ORR determines the matter pursuant to paragraph 2.4.10, it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.
- 2.4.12 *Electrification Asset Usage Charge*

The Electrification Asset Usage Charge is an amount for electrification asset usage which is derived from the following formula:

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

where:

\sum means the summation across all Services using electric traction;

EV_{tk} means an amount in respect of the Electrification Asset Usage Rate, expressed in pounds per electrified kgtm and rounded to four decimal places;

UV_{tk} means the actual number of electrified kgtm on route type k in the relevant Charging Period in Relevant Year t operated by or on behalf of the Train Operator. Where the Train Operator operates a Bimodal Electric Multiple Unit or Bimodal Locomotive, the actual number of electrified kgtm on route type k in Relevant Year t shall be calculated:

- (i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is not a Metered Train m, in accordance with the ~~second paragraph of proviso to~~ the definition of UE_{igjt} in paragraph 2.4.1.2 above; or
- (ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with ~~paragraph 2~~~~paragraph 2~~.4.1.4(e)5 above.

2.5 **Not used.**

2.6 **Incident Cap Access Charge Supplement**

The Incident Cap Access Charge Supplement shall be calculated in accordance with the following formula:

$$\text{Incident Cap Access Charge Supplement} = \text{CMCP} \times \text{ICACSR}$$

where:

CMCP means the sum of the Contract Miles operated in a Charging Period; and

ICACSR means the Incident Cap Access Charge Supplement Rate.

2.7 **Price variation**

2.7.1 For each Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted in accordance with paragraph 2.7.2.

2.7.2

- (a) For the Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted as at 1 April 2019 by multiplying them by the Initial Indexation Factor.
- (b) For the Relevant Year commencing on and from 1 April 2020, and for each subsequent Relevant Year, the adjusted Indexed Figures from the preceding Relevant Year shall be further adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 2.7.2(b), the Adjustment Factor in respect of a Relevant Year shall be calculated in accordance with the following formula:

$$\text{Adjustment Factor} = 1 + \frac{(\text{CPI}_{t-1} - \text{CPI}_{t-2})}{\text{CPI}_{t-2}}$$

where:

CPI_{t-1} means the average value of the monthly CPI figures for the 12 months up to and including the month of December immediately preceding 1 April in the Relevant Year in question; and

CPI_{t-2} means the average value of the monthly CPI figures for the 12 months up to and including the month of December which falls 16 months before 1 April in the Relevant Year in question.

- (c) If this contract takes effect after 1 April 2019, the Indexed Figures shall be adjusted in accordance with paragraphs 2.7.2(a) and (b) as if this contract had been in effect on and from 1 April 2019.

2.7.3 The Phased in Charges Indexation Adjustment shall be derived:

- (a) in respect of the Relevant Year commencing on 1 April 2019, from the following formula:

$$PCIA_{2014} = \text{Initial Indexation Factor}$$

where:

$PCIA_{2014}$ means the Phased in Charges Indexation Adjustment in respect of the Relevant Year commencing on 1 April 2014; and

- (b) in respect of any Relevant Year t commencing on or after 1 April 2020, from the following formula:

$$PCIA_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2018})}{CPI_{2018}}\right) \cdot \text{Initial Indexation Factor}$$

where:

$PCIA_t$ means the Phased in Charges Indexation Adjustment in respect of the Relevant Year t ;

CPI_{t-1} has the same meaning as set out in paragraph 2.7.2 above;

CPI_{2018} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2018.

The value derived from this formula shall be rounded to three decimal places.

2.8 **Incremental Costs**

2.8.1 Where:

- (a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request;
- (b) the operation of the Service requested would exceed the Operating Constraints applying as at 1 April 2019;
- (c) the Train Operator notifies Network Rail at the time of requesting the Service that it wishes Network Rail to modify the Operating Constraints applying as at 1 April 2019 in a manner so as to permit the operation of the Service requested under this contract;
- (d) Network Rail is reasonably able to effect such modifications in a timescale that meets the Train Operator's requirements; and
- (e) the Incremental Costs of any such modifications are not estimated by Network Rail to exceed £300,000 in any Financial Year,

then paragraph 2.8.2 shall apply.

2.8.2 Network Rail shall, as soon as reasonably practicable following receipt of the Train Operator's notification under paragraph 2.8.1, notify the Train Operator that:

- (a) it shall effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c); or

- (b) it shall not effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c) for one of the following reasons:
 - (i) it is not reasonably able to effect such modification in a timescale that meets the Train Operator's requirements; or
 - (ii) the Incremental Costs of such modification are estimated by Network Rail to exceed £300,000 in any Financial Year.
- 2.8.3 If Network Rail fails to notify the Train Operator under paragraph 2.8.2, it shall be deemed to have accepted the Train Operator's request under paragraph 2.8.1(c).
- 2.8.4 Where Network Rail notifies the Train Operator under paragraph 2.8.2(a), paragraph 2.8.6 shall apply.
- 2.8.5 Where Network Rail notifies the Train Operator under paragraph 2.8.2(b), if the Train Operator disputes Network Rail's reasons under paragraphs 2.8.2(b)(i) or (ii), it shall be entitled to refer the matter for resolution in accordance with the ADRR.
- 2.8.6 Where Network Rail incurs Incremental Costs pursuant to paragraph 2.8.1, then such Incremental Costs shall be payable to Network Rail by the Train Operator in such amounts as are either:
- (a) agreed between the parties prior to operation of the relevant Service; or
 - (b) if not so agreed between the parties, reasonable in the circumstances.
- 2.8.7 Where:
- (a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request; and
 - (b) the operation of the Service requested:
 - (i) would exceed the Operating Constraints applying as at 1 April 2019; and
 - (ii) is permitted under the Operating Constraints applying as at the date of the request by reason of a Qualifying Modification,
- then paragraph 2.8.8 shall apply.
- 2.8.8 The Train Operator shall, if it wishes to operate the Service requested under paragraph 2.8.7, pay to Network Rail a Qualifying Modification Benefit Charge of such amount as shall be determined to be reasonable by Network Rail using the criteria and guidance that are applicable to the Qualifying Modification Benefit Charge.
- 2.8.9 Where:
- (a) the Train Operator pays for Incremental Costs under paragraph 2.8.6 in respect of any modification (in its capacity as a Contributing Train Operator); and
 - (b) another freight train operator pays a Qualifying Modification Benefit Charge to Network Rail in respect of such modification,
- then Network Rail shall notify the Train Operator of the sum which it proposes to rebate to it and subject to paragraph 2.8.11, make a rebate to the Train Operator in respect of such Incremental Costs equal to the Qualifying Modification Benefit Charge so paid.

2.8.10 If the parties have failed to agree the Incremental Costs in accordance with paragraph 2.8.6 within 20 Working Days of the date of the relevant request under paragraph 2.8.1(a) either party shall be entitled to refer the determination of the Incremental Costs for resolution in accordance with the ADRR.

2.8.11 If the Train Operator disputes:

- (a) the amount of any Qualifying Modification Benefit Charge payable by it under paragraph 2.8.8; or
- (b) the amount of any rebate payable to it under paragraph 2.8.9,

within 20 Working Days of the date of its receipt from Network Rail of details of the amount of the charge or rebate respectively, it shall be entitled to refer the matter for resolution in accordance with the ADRR.

2.8.12 If a reference for resolution is made under paragraph 2.8.11, the parties shall serve a written notice on the freight train operator benefiting from the Qualifying Modification:

- (a) notifying such freight train operator of the referral for resolution; and
- (b) giving to such freight train operator the opportunity to become a party to the proceedings in respect of such resolution.

2.8.13 If a reference for resolution is made under paragraphs 2.8.5, 2.8.10 or 2.8.11, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall:

- (a) reach a decision which is fair and reasonable;
- (b) have regard to:
 - (i) the matters in respect of which duties are imposed on ORR by virtue of section 4 of the Act; and
 - (ii) the policy which ORR has most recently published in relation to track access charges for freight train operators and the funding of enhancements to the Network;
- (c) not make a determination which is inconsistent with any provisions of the Network Code; and
- (d) give its reasons.

2.8.14 Network Rail undertakes to the Train Operator that, subject to the approval of ORR, in any regulated access agreement granting access rights which are subject to the Operating Constraints and entered into by Network Rail with a freight train operator after the date of signature of this contract, it will insert provisions that are, with only the necessary changes, the same as the terms set out in this paragraph 2.8.

2.8.15 Where, in relation to any Qualifying Modification, the determination of any Qualifying Modification Benefit Charge, or corresponding rebate of Incremental Costs, is referred to expert determination by any person under the provisions of any regulated access agreement (other than this contract):

- (a) such determination shall be binding on Network Rail and the Train Operator; and
- (b) Network Rail and the Train Operator shall make any necessary adjustments of payments between them under this contract to give effect to such determination.

2.8.16 Network Rail shall be the legal and beneficial owner of all modifications to Operating Constraints effected by or on behalf of Network Rail under this paragraph 2.8.

2.9 ***Office of Rail and Road's Qualifying Modification Criteria***

2.9.1 ORR may at any time issue criteria:

- (a) specifying how the QM Threshold for any Qualifying Modification shall be determined, which may vary for different types of Qualifying Modification; and
- (b) setting out any guidance in relation to the funding of modifications to the Operating Constraints.

2.9.2 ORR's criteria under paragraph 2.9.1(a) above shall not have effect unless ORR has:

- (a) consulted the parties in relation to the issues to be dealt with in such criteria;
- (b) taken into account any representations made by the parties in response to the consultation under paragraph 2.9.2(a); and
- (c) notified the parties as to its conclusions in relation to the issues to be dealt with in such criteria and the reasons for those conclusions.

2.10 **Not used**

2.11 ***Not used.***

2.12 **Not used.**

3. **Freight charging review**

3.1 ORR may carry out one or more access charges reviews of all or part of this contract such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review.

3.2 In this paragraph 3, references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

3.3 *Interim treatment prior to implementation*

If the terms of a Proposed Review Notice proposing amendments to the contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the contract set out in the Proposed Review Notice shall have effect for the period (the "Interim Period") commencing on that date (or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

- (a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or
- (b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the contract, made in

accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

3.4 *Reconciliation payment*

- (a) Within [28] days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the interim period, with (ii) the sums which would have been payable if the amendments required by either paragraphs 3.3(a) or (b) above had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:
- (i) a statement of the amount due to or from the Train Operator; and
 - (ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.
- (b) Within [28] days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 3.4(a) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this contract.

4. **Route-Level Efficiency Benefit Share Mechanism**

Calculation of the Route-Level Efficiency Benefit Share

- 4.1 For the purposes of ~~calculating~~ the calculation and payment of any Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, paragraph 4 and Appendices 1 and 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply. [Network Rail comment: We have amended this to clarify that the provisions of paragraph 4 and Appendices 1 and 2 of Schedule 7 relating to both calculation and payment of any Route-Level Efficiency Benefit Share will continue to apply in respect of the Relevant Year ending 31 March 2019.]

Appendix 1

(Not used)

Appendix 2

(Not used)

Appendix 3

"Metered Trains M" for the purposes of paragraph 2.4.1.1 of Part 2

Train Type	Train ID	Traction Type
	<i>[This column should include the full train ID. If all trains of the relevant train type used by the Train Operator are metered, this column should say "All".]</i>	

Schedule 8

(Performance regime)

1. Definitions

In this Schedule 8 unless the context otherwise requires:

"100 Train Operator Miles" means the distance travelled by the Services operated by the Train Operator on the Network in any Charging Period as recorded in Network Rail's billing systems (unless there is a manifest error in such figure), divided by 100;

"30% Exposure" has the meaning ascribed to it in paragraph 11.1.1; [Network Rail comment: Definition used in the new drafting included in paragraph 11 relating to the Incident Cap.]

"Actual Mileage t" has the meaning ascribed to it in paragraph 10.1.4(a);

"Adjusted MDNR" has the meaning ascribed to it in paragraph 6.2.1;

"Adjusted MDTO" has the meaning ascribed to it in paragraph 4.2.1;

"Adjustment Fraction" means the number of Charging Periods or parts of a Charging Period in the first or final Financial Year, divided by 13;

"Aggregate Net Liability" has the meaning ascribed to it in paragraph 9.1.7;

"Annual Contract Mileage" has the meaning ascribed to it in paragraph 10.2.2(a);

"Annual Contract Mileage Variation" has the meaning ascribed to it in paragraph 10.2.2(b);

"Attributable to both the Train Operator and Network Rail" means, in respect of any delay to or cancellation of a Service or a Third Party Train, a delay or cancellation in relation to which the parties have agreed or it is otherwise determined, having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide, that both the Train Operator and Network Rail are to be jointly responsible (in which case the delay or cancellation shall not fall within the definitions of "Attributable to the Train Operator" or "Attributable to Network Rail");

"Attributable to Network Rail" means, in respect of any delay to or cancellation of a Service or any other matter:

- (a) any delay or cancellation or other matter, occurring on or off the Network, which is not Attributable to the Train Operator;
- (b) any delay to, or cancellation of, a Restriction of Use, which is not Attributable to the Train Operator;
- (c) that portion of any such delay to or cancellation of a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree, or it is otherwise determined, is Attributable to Network Rail; or
- (d) any delay or cancellation occurring on or off the Network, caused by an Other Train Operator Train on the Network,

and which excludes any such delay to or cancellation of a Service or any other matter arising as a result of a Planned Incident, in all cases having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide;

"Attributable to the Train Operator" means:

- (a) in respect of any delay to or cancellation of a Service, any such delay or cancellation arising as a result of:
 - (i) any acts or omissions of the Train Operator's staff or its agents, contractors or sub-contractors;
 - (ii) any Train Operator Omission;
 - (iii) any failure or defect in the Specified Equipment relating to a Service (including where Network Rail shall have refused to permit the Service to move over the Network because the contents of the railway wagons have escaped, or there is pollution arising from the operation of such railway wagons);
 - (iv) any improperly loaded railway wagons which form the whole or part of any Service;
 - (v) any Service not being promptly accepted off the Network at a Destination or Intermediate Point for reasons not caused by Network Rail (in its capacity as operator of the Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for Network Rail in its capacity as operator of the Network) (other than the Train Operator);
 - (vi) any failures or delays arising off the Network, other than those which are caused by Network Rail (in its capacity as operator of the Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for Network Rail in its capacity as operator of the Network) (other than the Train Operator); or
 - (vii) that portion of any such delay to or cancellation of a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree or it is otherwise determined is Attributable to the Train Operator;
- (b) in respect of any delay to or cancellation of a Third Party Train, or of a Restriction of Use, any such delay or cancellation arising as a result of:
 - (i) any delay to or cancellation of a Service Attributable to the Train Operator;
 - (ii) any Train Operator Omission; or
 - (iii) that portion of any such delay to, or cancellation of, a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree or it is otherwise determined is Attributable to the Train Operator,

in all cases:

- (aa) having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide; and
- (bb) ignoring any delay or cancellation under paragraph (d) of the definition of "Attributable to Network Rail";

"Baseline Annual Contract Mileage" has the meaning ascribed to it in paragraph 10.2.3.2(b);

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"Benchmarks" means the Train Operator Benchmark and the Network Rail Benchmark;

"Cancellation" has the meaning ascribed to it in paragraph 8.1;

"Cancellation Threshold" has the meaning ascribed to it in Appendix 1;

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

"Disruption Sum" means the Disruption Sum specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

"Enhanced Planned Disruption Sum" has the meaning ascribed to it in Schedule 4;

"Empty Third Party Train" means any empty passenger train or any Ancillary Movement;

"ETCS" means the European Train Control System;

"Exposure Level" has the meaning ascribed to it in paragraph 11.1.1; [Network Rail comment: Definition used in the new drafting included in paragraph 11 relating to the Incident Cap.]

"Financial Year t" has the meaning ascribed to it in paragraph 10.1.4;

"Financial Year t-1" means the Financial Year preceding Financial Year t;

"Financial Year t+1" has the meaning ascribed to it in paragraph 10.2.2;

"Full Cancellation" means, in relation to a Third Party Train, a cancellation of a train resulting in the train not operating at all;

"Incident Cap" in respect of each Financial Year, means the Incident Cap selected by the Train Operator in accordance with paragraph 11.1;

"Incident Cap Notice" has the meaning ascribed to it in paragraph 11.1.2;

"Initial Incident Cap Notice" has the meaning ascribed to it in paragraph 11.1.1;

"Late Notice Cancellation" means any Service which, pursuant to paragraph 5.6.1 of Schedule 4, is treated as a Cancellation for the purposes of paragraph 8.1(d);

"Late Notice Cancellation Sum" means the Late Notice Cancellation Sum specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

"MDNR" has the meaning ascribed to it in paragraph 6.2.1(b);

"MDTO" has the meaning ascribed to it in paragraph 4.2.1(b);

"Minutes Delay" means, in respect of a Trigger of a Recording Point, the number of minutes delay in respect of that Trigger calculated in accordance with Appendix 2;

"Network Rail Benchmark" or "NRB" means, in relation to each Charging Period within the relevant Financial Year, the Network Rail Benchmark in Minutes Delay per 100 Train Operator Miles specified in Appendix 1;

"Network Rail Cap" means the Network Rail Cap specified in Appendix 1 and in respect of the first and last Financial Year means the Network Rail Cap specified in Appendix 1 multiplied by the Adjustment Fraction, as adjusted under paragraphs 2.7.1 and 2.7.2 of

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Schedule 7 and paragraph 10.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"Network Rail Charging Period Limit" means 1/13th of the Network Rail Cap;

"Network Rail Payment Rate" means the Network Rail Payment Rate specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7;

"Normal Planned Disruption Sum" has the meaning ascribed to it in Schedule 4;

"Other Train Operator Train" means any train operated pursuant to a permission to use granted to the Train Operator by an agreement other than this contract;

"Part Cancellation" means, in relation to a Third Party Train, a cancellation of a train resulting in the train either not commencing at its Origin or not arriving at its Destination;

"Performance Data Accuracy Code" has the meaning ascribed to it in Part B of the Network Code;

"Performance Sum" means an amount for which the Train Operator or Network Rail is liable under one of paragraphs 4 and 6 following a Charging Period in relation to Minutes Delay in that Charging Period and the preceding Charging Periods, as adjusted in accordance with paragraph 10;

"Planned Incident" means an incident in connection with a Restriction of Use to the extent that there is Recovery Time in respect of that Restriction of Use incorporated in the Working Timetable;

"Prolonged Disruption" means the operation of Services in accordance with the Working Timetable on any part of the Network (for which there is no reasonably practicable diversionary route) being prevented for more than one Week as a result of any event or circumstance Attributable to Network Rail, but excluding from such events and circumstances Restrictions of Use, strikes, any kind of industrial action (on the part of any person) and the direct effects of the weather;

"Prolonged Disruption Amount" means the Prolonged Disruption Amount specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

"Prolonged Disruption Sum" means the Prolonged Disruption Sum calculated in accordance with paragraph 7;

"Railway Operational Code" has the meaning ascribed to it in Part H of the Network Code;

"Recording Point" means a location at which Network Rail records the times at which trains arrive at, pass or depart from that location;

"Recovery Time" means additional time incorporated in the Working Timetable to allow a train to regain time lost in delay during an earlier part of its journey;

"Service Variation" has the meaning ascribed to it in Schedule 4;

"Third Party Train" means a train other than a train operated by the Train Operator under this contract;

"Train Operator Benchmark" or "TOB" means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Charging Period, as specified in Appendix 1;

"Train Operator Cap" means the Train Operator Cap specified in Appendix 1 and in respect of the first and last Financial Year means the Train Operator Cap specified in Appendix 1 multiplied by the Adjustment Fraction, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7 and paragraph 10.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"Train Operator Charging Period Limit" means 1/13th of the Train Operator Cap;

"Train Operator Payment Rate" means the Train Operator Payment Rate specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7; and

"Train Operator Omission" means any failure of or defect in or damage to the Network (excluding fair wear and tear) arising from:

- (a) the improper operation of trains under this contract;
- (b) a breach of the Train Operator's Safety Obligations or of the terms of this contract; or
- (c) any act or omission of the Train Operator's staff or agents, contractors or sub-contractors in breach of this contract;

"Trigger" means the act of a train arriving at, passing or departing from a Recording Point-;

"Zero Exposure" has the meaning ascribed to it in paragraph 11.1.1. [Network Rail comment: Definition used in the new drafting included in paragraph 11 relating to the Incident Cap.]

2. General

2.1 *Performance monitoring system recordings*

For the purposes of this Schedule 8, Network Rail shall use recordings made using the Performance Monitoring System, including the times at which Services and Third Party Trains Trigger a Recording Point. In respect of Services only, and where appropriate, Network Rail may require the Train Operator to make the relevant entry to record such times on the Performance Monitoring System. Network Rail and the Train Operator shall each comply with and be bound by the Performance Data Accuracy Code, and the provisions of the Performance Data Accuracy Code shall apply to this Schedule 8.

2.2 *Liability for Short Notice Service*

Network Rail shall, notwithstanding that it shall have accepted a Train Operator Variation Request for a Train Slot which is a Short Notice Service, have no liability under any provision of this Schedule 8 to the Train Operator in respect of delays to any Short Notice Service where such delay arises as a result of Network Rail meeting its commitments in terms of train regulation as set out in any relevant Train Regulation Policies established pursuant to the Railway Operational Code.

2.3 *Mitigation of delays*

The parties shall take reasonable steps to avoid and mitigate the effects of any incidents which cause delay to or cancellation of any trains, and any failure to take such steps shall be regarded as a separate incident.

2.4 *Calculation of Minutes Delay*

Appendix 2 (Calculation of Minutes Delay) shall have effect.

3. **Diagnosis of delays**

3.1 ***Attributing delays***

Network Rail shall, using the information recorded under paragraph 2.1, identify whether each minute of delay included in Minutes Delay in respect of a Service or Third Party Train is:

- (a) Attributable to the Train Operator;
- (b) Attributable to Network Rail; or
- (c) Attributable to both the Train Operator and Network Rail.

3.2 ***Delays Attributable to both the Train Operator and Network Rail***

If a delay is Attributable to both the Train Operator and Network Rail, the associated Minutes Delay shall be allocated equally to the Train Operator and to Network Rail.

3.3 ***Unexplained delays Attributable to Network Rail***

If the cause of the delay to or cancellation of a Service which occurs on the Network cannot be explained, the responsibility for such delay or cancellation shall be deemed to be Attributable to Network Rail.

3.4 ***Unexplained delays Attributable to the Train Operator***

If the cause of the delay to or cancellation of a Service which occurs off the Network cannot be explained, the responsibility for such delay or cancellation shall be deemed to be Attributable to the Train Operator.

3.5 ***Identifying delaying incidents***

The parties shall co-operate with each other by providing all such information to one another as is reasonably practicable regarding the identification of the incidents which cause delay to or cancellation of any Service or Third Party Train.

3.6 ***Performance statements***

Appendix 3 (Performance statements) shall have effect.

4. **Minutes Delay in respect of Train Operator performance**

4.1 ***Prescribed delay period***

4.1.1 For the purposes of this paragraph 4, the aggregate Minutes Delay to Third Party Trains Attributable to the Train Operator arising as a result of any one incident or event shall be capped ~~as follows:~~

- (a) where the ~~Incident Cap, so that~~ Train Operator has elected to have no exposure above the Incident Cap in accordance with paragraph 11, any such minutes in excess of the Incident Cap shall be disregarded; or
- (b) where the Train Operator has elected to have 30% exposure above the Incident Cap in accordance with paragraph 11, 70% of such minutes in excess of the Incident Cap shall be disregarded.

[Network Rail comment: These amendments reflect the inclusion of the option for the Train Operator to select an alternative incident cap regime (30% exposure above the incident cap) under paragraph 11.]

4.1.14.1.2 Any Full Cancellation of a Third Party Train (other than an Empty Third Party Train) which is Attributable to the Train Operator shall equate to 30 Minutes Delay and any Part Cancellation of a Third Party Train (other than an Empty Third Party Train) which is Attributable to the Train Operator shall equate to 15 Minutes Delay.

4.2 **Train Operator performance against TOB**

4.2.1 In respect of each Charging Period:

- (a) the Minutes Delay to Third Party Trains which are Attributable to the Train Operator; and
- (b) that portion of Minutes Delay to Third Party Trains which are Attributable to both the Train Operator and Network Rail which is allocated to the Train Operator (the aggregate Minutes Delay under (a) and (b) being referred to as "**MDTO**"),

in each case as adjusted in accordance with paragraph 4.1, shall be converted into a per 100 Train Operator Miles figure (the "**Adjusted MDTO**") using the formula below:

$$\text{Adjusted MTO} = \frac{\text{MDTO}}{100 \text{ Train Operator Miles}}$$

4.2.2 The Adjusted MDTO calculated in accordance with paragraph 4.2.1 shall then be compared with the TOB and:

- (a) if the Adjusted MDTO is less than TOB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$\left((TOB - \text{the Adjusted MDTO}) \times \text{Train Operator Payment Rate} \right) \times \left(\frac{CPCM}{100} \right)$$

where:

CPCM means the total number of Contract Miles operated by the Train Operator in the relevant Charging Period;

- (b) if the Adjusted MDTO exceeds TOB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$\left((\text{the Adjusted MDTO} - TOB) \times \text{Train Operator Payment Rate} \times \left(\frac{CPCM}{100} \right) \right)$$

where CPCM has the meaning ascribed to it in paragraph 4.2.2(a); and

- (c) if the Adjusted MDTO is equal to TOB, neither party shall be liable to the other for a Performance Sum under this paragraph 4.2.

5. **Cancellations of or delays to Restrictions of Use Attributable to the Train Operator**

If a Restriction of Use is cancelled or the commencement of a Restriction of Use is delayed, in either case for a reason Attributable to the Train Operator, then, in respect of the cancellation of or delay to such Restriction of Use, the Train Operator shall be liable to pay Network Rail a sum equal to:

- (a) in the case of a cancellation of a Restriction of Use, the Disruption Sum; or
- (b) in the case of a delay to the commencement of a Restriction of Use, one quarter of the Disruption Sum multiplied by the number of hours by which the commencement is

delayed, up to a maximum of 4 hours. For the purposes of this paragraph 5(b) part of an hour shall be treated as an entire hour.

6. Minutes Delay in respect of Network Rail performance

6.1 Cancellations

For the purposes of this paragraph 6, in respect of any Service which is a Cancellation:

- (a) if the Service is a Cancellation as defined in paragraph 8.1(a), there shall not be any Minutes Delay in respect of the Service Attributable to Network Rail;
- (b) if the Service is a Cancellation as defined in paragraph 8.1(b), there shall be disregarded any Minutes Delay in respect of the Service after the first 12 hours aggregate of Minutes Delay; and
- (c) if the Service is a Cancellation as defined in paragraph 8.1(c), there shall be disregarded any Minutes Delay in respect of the Service after the time at which the Service arrives at the point on or off the Network where it subsequently becomes a Cancellation.

6.2 Network Rail performance against NRB

In respect of each Charging Period:

6.2.1

- (a) the Minutes Delay to Services which are Attributable to Network Rail; and
- (b) that portion of Minutes Delay to Services which are Attributable to both the Train Operator and Network Rail which is allocated to Network Rail (the aggregate Minutes Delay under (a) and (b) being referred to as "**MDNR**"),

in each case as adjusted in accordance with paragraph 6.1, shall be converted into a per 100 Train Operator Miles figure (the "**Adjusted MDNR**") using the following formula:

$$\text{Adjusted MDNR} = \frac{\text{MDNR}}{100 \text{ Train Operator Miles}}$$

6.2.2 the Adjusted MDNR calculated in accordance with paragraph 6.2.1 shall then be compared with the NRB and:

- (a) if the Adjusted MDNR is less than NRB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$\left((NRB - \text{the Adjusted MDNR}) \times \text{Network Rail Payment Rate} \right) \times \left(\frac{CPCM}{100} \right)$$

where:

CPCM means the total number of Contract Miles operated by the Train Operator in the relevant Charging Period;

- (b) if the Adjusted MDNR exceeds NRB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$\left((\text{the Adjusted MDNR} - NRB) \times \text{Network Rail Payment Rate} \right) \times \left(\frac{CPCM}{100} \right)$$

where CPCM has the meaning ascribed to it in paragraph 6.2.2(a); and

- (c) if the Adjusted MDNR is equal to NRB, neither party shall be liable to the other for a Performance Sum under this paragraph 6.2.

7. Prolonged Disruption

7.1 Prolonged Disruption Sum calculation

In respect of each Week during which any Prolonged Disruption continues, the Prolonged Disruption Sum shall be calculated in accordance with the following formula:

$$\text{Prolonged Disruption Sum} = PDA \times S \times M$$

where:

PDA is the Prolonged Disruption Amount;

S is one quarter of the number of Services operated during the 4 Weeks immediately before the first Week of the Prolonged Disruption over that part of the Network subject to the Prolonged Disruption; and

M is the multiplier set out in the table below in respect of that Week of the Prolonged Disruption:

Week	Multiplier
Week 1	1
Week 2	1
Week 3	2
Week 4	3
Week 5 to 13	2
Week 14 to 26	1.5

7.2 Subsequent Prolonged Disruption

No Prolonged Disruption Sum shall be payable in respect of Week 27 or any subsequent Week of a Prolonged Disruption.

7.3 Network Rail liability

7.3.1 Subject to paragraph 7.3.2 below, Network Rail shall be liable in any Charging Period for the Prolonged Disruption Sum in respect of each Prolonged Disruption of a Service Planned to depart its Origin in that Charging Period.

7.3.2 Network Rail shall not be liable under this paragraph 7 for any Prolonged Disruption Sum in respect of any Service which is an Empty Service (save that, for the purpose of this paragraph 7, a service, pursuant to a contract with a third party, conveying empty wagons and/or coaching stock will not be an Empty Service), a Short Notice Service or an Ancillary Movement.

8. Cancellation

8.1 Cancellation

"Cancellation" means any Service:

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- (a) which does not depart from its Origin within 12 hours after the time at which it is Planned to depart;
- (b) which departs from its Origin within 12 hours after the time at which it is Planned to depart and arrives at its Destination more than 12 hours after the time at which it is Planned to arrive, and in respect of which no Diverted Service has been agreed; or
- (c) which departs from its Origin within 12 hours after the time at which it is Planned to depart but does not arrive at its Destination, and in respect of which no Diverted Service has been agreed,

in each case where at least 6 hours of the delay to the Service is Attributable to Network Rail;
or

- (d) in respect of which Network Rail:
 - (i) nominates an Alternative Train Slot for a reason which is Attributable to Network Rail under paragraphs 4 or 5 of Schedule 4 and the Train Operator reasonably rejects such Train Slot and:
 - (A) does not propose a different Alternative Train Slot; or
 - (B) proposes a different Alternative Train Slot and this is not accommodated by Network Rail as a Train Operator Variation; or
 - (ii) is not able to nominate an Alternative Train Slot under paragraphs 4 or 5 of Schedule 4.

8.2 **Network Rail liability**

8.2.1 Subject to paragraphs 8.2.2, 8.2.3 and 8.3 below, and paragraphs 4.5, 5.6 and 7.4 of Schedule 4, Network Rail shall be liable in any Charging Period for the Cancellation Sum in respect of each Cancellation of a Service Planned to depart its Origin in that Charging Period.

8.2.2 Network Rail shall not be liable under this paragraph 8 for any Cancellation Sum in respect of:

- (a) an Empty Service (save that, for the purpose of this paragraph 8, a service, pursuant to a contract with a third party, conveying empty wagons and/or coaching stock will not be an Empty Service), a Short Notice Service or an Ancillary Movement; or
- (b) any Service which is Planned to depart its Origin during a Week in respect of which a Prolonged Disruption Sum is payable and which is a Cancellation as a result of such Prolonged Disruption.

8.2.3 In respect of any Cancellation which is a Late Notice Cancellation, Network Rail shall not be liable for the Cancellation Sum in respect of that Late Notice Cancellation pursuant to paragraph 8.2.1 above but shall instead be liable for the Late Notice Cancellation Sum in respect of that Late Notice Cancellation.

8.3 **Late presentation of Service**

Network Rail shall have no liability to the Train Operator under the terms of this Schedule 8 where a Service is presented to Network Rail after the time at which it is Planned to depart its Origin to the extent such late presentation leads to:

- (a) a Cancellation as a result of Network Rail meeting its commitments in terms of train regulation as set out in any relevant Train Regulation Policies established pursuant to the Railway Operational Code; or

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- (b) a conflict with any restrictions on the use of the Network contained in the Timetable Planning Rules.

9. Payment

9.1 **Aggregate Net Liability of Network Rail and the Train Operator for Performance Sums**

- 9.1.1 The Aggregate Net Liability of Network Rail for a Performance Sum in respect of any Charging Period shall not exceed the Network Rail Charging Period Limit.
- 9.1.2 Subject to paragraph 9.1.3, if Network Rail would otherwise be liable for a Performance Sum which exceeds the Network Rail Charging Period Limit, then the amount by which such claim exceeds the Network Rail Charging Period Limit shall be taken into account when calculating Network Rail's Aggregate Net Liability for a Performance Sum in respect of the subsequent Charging Period or Charging Periods in that Financial Year.
- 9.1.3 In respect of any Financial Year, the Aggregate Net Liability of Network Rail under this paragraph 9.1 shall not exceed the Network Rail Cap.
- 9.1.4 The Aggregate Net Liability of the Train Operator for a Performance Sum in respect of any Charging Period shall not exceed the Train Operator Charging Period Limit.
- 9.1.5 Subject to paragraph 9.1.6, if the Train Operator would otherwise be liable for a Performance Sum which exceeds the Train Operator Charging Period Limit, then the amount by which such claim exceeds the Train Operator Charging Period Limit shall be taken into account when calculating the Train Operator's Aggregate Net Liability for a Performance Sum in respect of the subsequent Charging Period or Charging Periods in that Financial Year.
- 9.1.6 In respect of any Financial Year, the Aggregate Net Liability of the Train Operator under this paragraph 9.1 shall not exceed the Train Operator Cap.
- 9.1.7 In this paragraph 9.1, the "**Aggregate Net Liability**" of a party means, in respect of a Charging Period or Financial Year, its liability after setting off the liability of the other party to it under the same provisions in respect of the same period.

9.2 **Issue of invoice or credit note**

- 9.2.1 In respect of each Charging Period, subject to paragraph 9.1, Network Rail shall:
 - (a) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the period final statement providing in accordance with paragraph 11 of Appendix 3 within 28 days after the provision of such period final statement;
 - (a) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the period final statement provided in accordance with paragraph 12 of Appendix 3, within 28 days after the provision of such period final statement;
 - (b) issue a credit note in respect of the aggregate of all Normal Planned Disruption Sums and Enhanced Planned Disruption Sums for which Network Rail is liable in accordance with Schedule 4, if any, within 28 days after agreement of such liability.
- 9.2.2 In the event that (i) any of the period final statements referred to in subparagraphs 9.2.1(a) and 9.2.1(b) have not been provided within 28 days after the end of the Charging Period to which they relate or (ii) agreement referred to in sub-paragraph 9.2.1(c) has not been reached within those same 28 days, in both cases Network Rail may agree with the Train Operator that an interim payment be made. If such agreement is reached then the invoice or credit note (as appropriate) issued shall detail which of the relevant sums are thus settled and which remain outstanding; and any subsequent invoice or credit note (as appropriate) issued in respect of the same Charging Period under sub-paragraphs 9.2.1(a), 9.2.1(b) or 9.2.1(c) shall take account of the interim payments as well as remaining subject to paragraph 9.1.

9.3 **Resolution of disputes**

9.3.1 Without prejudice to Clause 13, Part B of the Network Code shall apply to any dispute under this Schedule 8 in relation to the attribution of delay or cancellation.

9.3.2 The Train Operator shall not dispute any matter which it has agreed or is deemed to have agreed under Appendix 3.

10. **Reviews of Network Rail Cap and Train Operator Cap**

10.1 **Not used**

10.2 **Adjustments to the Network Rail Cap and Train Operator Cap**

10.2.1 The Network Rail Cap and the Train Operator Cap that shall apply from 1 April in each Financial Year in relation to each Charging Period in that Financial Year shall be the Network Rail Cap and the Train Operator Cap, in each case as specified in Appendix 1 and as adjusted in accordance with this paragraph 10.2 and paragraphs 2.7.1 and 2.7.2 of Schedule 7, provided that no adjustment shall be made to the Network Rail Cap or the Train Operator Cap pursuant to the following subparagraphs of this paragraph 10.2 prior to 1 April 2020.

10.2.2 Within 28 days after the last day of Financial Year t, Network Rail shall notify the Train Operator in writing of:

- (a) the total number of Contract Miles operated by the Train Operator during Financial Year t (the "**Annual Contract Mileage**");
- (b) Network Rail's determination as to whether or not the Annual Contract Mileage for Financial Year t exceeds or is less than the Baseline Annual Contract Mileage (as determined in accordance with paragraph 10.2.3 below ("**Baseline Annual Contract Mileage**")) by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Contract Mileage (the "**Annual Contract Mileage Variation**"); and
- (c) if Network Rail determines that there has been an Annual Contract Mileage Variation, Network Rail's proposal for an adjusted Network Rail Cap and/or Train Operator Cap in respect of the Financial Year immediately following Financial Year t ("**Financial Year t+1**"), in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR.

10.2.3

- (a) The Baseline Annual Contract Mileage that shall apply from 1 April in each Financial Year shall be the Baseline Annual Contract Mileage specified in Appendix 1, unless it is adjusted in accordance with paragraph 10.2.3(b).
- (b) If, in accordance with paragraph 10.2.2(b), Network Rail determines that there has been an Annual Contract Mileage Variation, then the Baseline Annual Contract Mileage for Financial Year t+1 and each subsequent Financial Year until any further adjustment is made to the Baseline Annual Contract Mileage pursuant to this paragraph 10.2.3(b) shall be the Annual Contract Mileage for the Financial Year t in which the Annual Contract Mileage Variation has occurred.

10.2.4 Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 10.2.2, the parties shall endeavour to agree whether the Network Rail Cap and/or the Train Operator Cap should be adjusted in accordance with this paragraph 10.2 and, if so, the adjustment (in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR), provided that any adjustment to the Network Rail Cap and/or the

Train Operator Cap pursuant to this paragraph 10.2 shall be subject to the prior approval of ORR.

- 10.2.5 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 10.2.2, the Train Operator and Network Rail reach agreement as to any adjustment to the Network Rail Cap and/or the Train Operator Cap, the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine whether or not to approve the proposed adjustment. The parties agree to abide by any determination issued by ORR.
- 10.2.6 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 10.2.2, either:
- (a) the parties fail to reach agreement; or
 - (b) prior to the expiry of that 56 day period both parties agree that agreement is unlikely to be reached prior to expiry of that period,
- the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine the matter. The parties agree to abide by any determination issued by ORR.
- 10.2.7 Any adjustment to the Network Rail Cap and/or the Train Operator Cap shall take effect only when it has been approved by ORR and, unless otherwise specified by ORR, any such adjustment shall take effect from 1 April in Financial Year t+1.
- 10.2.8 Promptly following any adjustment to the Network Rail Cap and/or the Train Operator Cap pursuant to this paragraph 10.2, and in order to give effect to that adjustment, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:
- (a) any invoices and credit notes already issued; and
 - (b) any payments already made in respect of Performance Sums,
- in each case relating to the Charging Periods in Financial Year t+1.
- 10.2.9 Any statement issued by Network Rail pursuant to paragraph 10.2.8 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 9.2.

11. **Selection by the Train Operator of the Incident Cap and Exposure Level**

[Network Rail comment: As explained in the main body of our response, we propose that the Train Operator should have the option to select an alternative incident cap regime (30% exposure above the incident cap). Paragraph 11 below has been amended accordingly.]

11.1 **Selection by the Train Operator of the Incident Cap and Exposure Level**

- 11.1.1 ~~On~~Subject to paragraph 11.1.3, on or before the date on which this paragraph 11.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Incident Cap ~~it wishes to apply (the "Initial Incident Cap Notice"), and the level of exposure above the Incident Cap ("Exposure Level") it wishes to apply, being either no exposure above the Incident Cap, as described in paragraph 4.1.1(a) ("Zero Exposure"), or 30% exposure above the Incident Cap, as described in paragraph 4.1.1(b) ("30% Exposure") (such notification being the "Initial Incident Cap Notice").~~ The Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in ~~that part of~~ column B (if the Train Operator selects Zero Exposure) or column C (if the Train Operator selects 30% Exposure) adjacent to the level of Incident Cap selected by the Train Operator in

the Initial Incident Cap Notice until it is replaced by a different level of Incident Cap and Exposure Level selected by the Train Operator in an Incident Cap Notice issued pursuant to paragraph 11.1.2.

11.1.2 ~~The~~Subject to paragraph 11.1.3, the Train Operator may change the level of Incident Cap and Exposure Level previously selected by it (either in the Initial Incident Cap Notice or any subsequent Incident Cap Notice issued pursuant to this paragraph 11.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Incident Cap and Exposure Level it wishes to apply for that Financial Year (the "**Incident Cap Notice**"). Any such Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Incident Cap and Exposure Level to apply, and the Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in ~~the column~~that part of column B (if the Train Operator selects Zero Exposure) or column C (if the Train Operator selects 30% Exposure) adjacent to the Incident Cap selected by the Train Operator in the Incident Cap Notice until it is replaced by a different level of Incident Cap selected by the Train Operator pursuant to this paragraph 11.1.2.

11.1.3 For the avoidance of doubt, if the Train Operator selected an Incident Cap prior to Financial Year 2019/20, and did not issue a subsequent Incident Cap Notice in respect of Financial Year 2019/20 selecting 30% Exposure, the Train Operator shall be deemed, for the purposes of paragraphs 11.1.1 and 11.1.2, to have selected Zero Exposure for Financial Year 2019/20.

11.1 **Level of Incident Cap, Exposure Level, and Incident Cap Access Charge Supplement Rate**

For the purposes of paragraph 11.1, the Train Operator shall select one of the following Incident Caps and, in respect of the relevant Incident Cap, the Exposure Level as set out in either Column B or C:

<u>A</u>	<u>B</u>	<u>C</u>
Incident Cap	Incident Cap <u>Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period) expressed in pounds sterling and rounded to four decimal places – Zero Exposure above the Incident Cap</u>	Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period) expressed in pounds sterling and rounded to four decimal places – 30% Exposure above the Incident Cap
1,000 minutes	[•]	
2,000 minutes	[•]	
3,000 minutes	[•]	
4,000 minutes	[•]	
5,000 minutes	[•]	
6,000 minutes	[•]	
7,000 minutes	[•]	
8,000 minutes	[•]	
9,000 minutes	[•]	

<u>A</u>	<u>B</u>	<u>C</u>
Incident Cap	Incident Cap <u>Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period) expressed in pounds sterling and rounded to four decimal places – Zero Exposure above the Incident Cap</u>	Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period) <u>expressed in pounds sterling and rounded to four decimal places – 30% Exposure above the Incident Cap</u>
10,000 minutes	[•]	
No Incident Cap	None	None

12. **ETCS Amendments**

12.1 ***Circumstances in which ETCS Amendments can be made***

- (a) Either party may by notice to the other propose that amendments are made to this Schedule 8 (and to any other provisions of this contract as a result of those amendments) as a consequence of the introduction of ETCS on any part of the Network that is used by the Train Operator ("**ETCS Amendments**").
- (b) ORR may make ETCS Amendments, subject to complying with paragraph 12.3.

12.2 ***ETCS Amendments agreed by the parties***

- (a) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:
 - (i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and
 - (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.
- (b) The party receiving a notice under paragraph 12.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.
- (c) Promptly, and in any event within 20 Working Days following service of a response pursuant to paragraph 12.2(b), the parties shall use reasonable endeavours to agree the wording of the proposed ETCS Amendments and the date on which they are to have effect.
- (d) If:
 - (i) the parties agree to make ETCS Amendments pursuant to paragraph 12.2(c); or
 - (ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 12.2(a), or prior to that date the parties agree that it is unlikely that agreement will be reached within that period,
 they shall notify ORR.

12.3 ***ORR right to approve, determine or make ETCS Amendments***

- (a) If ORR:
 - (i) receives a notification under paragraph 12.2(d); or
 - (ii) proposes to make ETCS Amendments itself,then in deciding whether to approve, determine or make (as the case may be) the ETCS Amendments it shall:
 - (A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and
 - (B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.
- (b) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 12.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

Appendix 1

Performance

Train Operator Performance

Train Operator Payment Rate	£[●] per Minutes Delay to Third Party Trains which are Attributable to the Train Operator.
Train Operator Cap	£[●]
Disruption Sum	£[●]

Network Rail Performance

Network Rail Payment Rate	£[●] per Minutes Delay to Services which are Attributable to Network Rail.
Network Rail Cap	£[●]
Prolonged Disruption Amount	means an amount equal to the Late Notice Cancellation Sum.

Benchmarks

Train Operator Benchmark

The Train Operator Benchmark (TOB) in relation to each Charging Period shall be [●] Minutes Delay per 100 Train Operator Miles.

Network Rail Benchmark

The Network Rail Benchmark (NRB) in relation to a Charging Period shall be [●] Minutes Delay per 100 Train Operator Miles;

Cancellation Sum

The Cancellation Sum shall be calculated as follows:

- (a) the Cancellation Sum shall be £[●] for each Cancellation below the Cancellation Threshold;
- (b) the Cancellation Sum shall be £[●] for each Cancellation equal to or above the Cancellation Threshold; and
- (c) the "**Cancellation Threshold**" in any Charging Period shall be [●] per cent of the total number of Services operated by the Train Operator in that Charging Period.

Late Notice Cancellation Sum

The Late Notice Cancellation Sum in respect of each Late Notice Cancellation shall be £[●].

Baseline Annual Contract Mileage

The Baseline Annual Contract Mileage shall be [●].

Appendix 2

Calculation of Minutes Delay

1. Subject to paragraph 2 below, the Minutes Delay for a train in respect of the Trigger of a Recording Point shall be equal to:
 - (a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train Triggers the Recording Point is later than the time at which the train is Planned to Trigger the Recording Point; and
 - (b) in respect of each other recorded Trigger, the lesser of:
 - (i) the number of minutes in respect of the first recorded Trigger calculated in accordance with paragraph 1(a); and
 - (ii) the greater of $((A1 - A2) + B)$ and zero,

where:

A1 is the number of minutes between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);

A2 is the Planned time between the Triggers mentioned in (a) above; and

B is any Recovery Time between such Triggers.
2. The Minutes Delay calculated in accordance with paragraph 1 above shall be allocated to the incidents causing those Minutes Delay as described in paragraph 3 of this Schedule 8. Any minutes of delay which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero and for the purposes of this Schedule 8 shall not be included in the Minutes Delay.

Appendix 3

Performance Statements

Interim statements provided by Network Rail

1. Using all reasonable endeavours, Network Rail shall provide to the Train Operator an interim statement listing all incidents which are in connection with Services which were Planned to depart from their Origin during each day. Such interim statements shall be issued on the eighth day after the end of each particular day (or, if the eighth day is not a Working Day, on the next Working Day thereafter) indicating:
 - (a) which incidents are Attributable to the Train Operator and, in respect of such incidents, the Minutes Delay to Third Party Trains;
 - (b) which incidents are Attributable to Network Rail and, in respect of such incidents, the Minutes Delay to Services;
 - (c) which incidents are Attributable to both the Train Operator and Network Rail, and in respect of such incidents (i) that portion of Minutes Delay to Third Party Trains which is allocated to the Train Operator and (ii) that portion of Minutes Delay to Services which is allocated to Network Rail; and
 - (d) which incidents in categories (a) to (c) above remain, at the time of production of the interim statement, under further investigation following a referral by the Train Operator under Condition B2.3.2 of the Network Code.
2. As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, Network Rail shall provide to the Train Operator an interim statement listing all Disruption Sums arising during that Week for which it believes the Train Operator is liable under paragraph 5 of Schedule 8.
3. As soon as reasonably practicable after the end of each Charging Period, and using all reasonable endeavours to provide such interim statement within six Working Days after the end of each Charging Period, Network Rail shall provide to the Train Operator an interim statement listing:
 - (a) the total Contract Miles; and
 - (b) the total number of Services,in each case operated by the Train Operator during that Charging Period.

Interim statements provided by the Train Operator

4. As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, the Train Operator shall provide to Network Rail the following interim statements:
 - (a) an interim statement listing (i) all Cancellations occurring during that Week for which the Train Operator considers it is entitled to a Cancellation Sum, and (ii) any Late Notice Cancellations for which the Train Operator considers it is entitled to a Late Notice Cancellation Sum, in each case under paragraph 8 of Schedule 8;
 - (b) an interim statement listing all Prolonged Disruptions occurring or continuing during that Week for which the Train Operator considers it is entitled to a Prolonged Disruption Sum under paragraph 7 of Schedule 8; and

- (c) an interim statement listing all Service Variations arising during that Week for which the Train Operator considers it is entitled to a Service Variation Sum under Schedule 4.

Dispute of interim statement

- 5. Within two Working Days of receipt of any interim statement under paragraph 1, 2, 3 or 4 of this Appendix the recipient shall notify the provider of the interim statement of any reason why it disputes the interim statement by endorsing the interim statement and returning it to the provider of such statement.
- 6. Within the next five Working Days after notification of any dispute under paragraph 5 above, nominated representatives of the parties shall meet and attempt to resolve that dispute.
- 7. If any matter is still in dispute ten Working Days after the meeting held under paragraph 6 above, either party may refer such matter for resolution under paragraph 9.3.1 of Schedule 8.

Deemed agreement

- 8. Except to the extent that it has, within two Working Days of receipt, notified the provider of an interim statement under paragraph 5 above that it disputes the contents of such interim statement, the recipient shall be deemed to have agreed the contents of that statement.

Period final statements

- 9. After the resolution of any investigations listed in an interim statement in accordance with paragraph 1(d) above, and of any disputes notified under paragraph 5 above, Network Rail shall provide to the Train Operator a final statement in respect of each Charging Period, listing:
 - (a) the total Cancellations and the aggregate of the Cancellation Sums payable under Schedule 8;
 - (b) the total Late Notice Cancellations and the aggregate of the Late Notice Cancellation Sums payable under Schedule 8;
 - (c) the total Service Variations and the aggregate of the Service Variation Sums payable under Schedule 4;
 - (d) the aggregate of the Disruption Sums payable under Schedule 8; and
 - (e) the aggregate of the Prolonged Disruption Sums payable under Schedule 8,in each case applicable to Services Planned to depart from their Origin during that Charging Period.
- 10. After the resolution of any incidents referred for further investigation under Condition B2.3.2 of the Network Code, Network Rail shall provide to the Train Operator a final statement in respect of each Charging Period, listing:
 - (a) the total Performance Sum for which Network Rail is liable under Schedule 8; and
 - (b) the total Performance Sum for which the Train Operator is liable under Schedule 8in each case including such relevant calculations as the parties shall agree from time to time.

Statement of adjustment

Network Rail mark-up: Freight contract, Schedules 4, 7 & 8

11. If Condition B3.3 of the Network Code (Adjustment to prior results) applies in respect of all or part of a Charging Period, Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to any Performance Sums, Cancellation Sums, Late Notice Cancellation Sums, Normal Planned Disruption Sums, Enhanced Planned Disruption Sums, Disruption Sums and Prolonged Disruption Sums already paid in respect of the Charging Period.
12. Any statement issued by Network Rail under paragraph 11 above shall be accompanied by an adjusting invoice or credit note.

Schedule 7

(Track Charges)

Part 1

(Interpretation)

1. Definitions

1.1 In Parts 1-8 inclusive, unless the context otherwise requires:

"Cancellation Charge" has the meaning given to that term in paragraph 5.1 of Part 2;

"Charter Capacity Charge" means a variable charge calculated in accordance with paragraph 8 of Part 2;

"Charter Capacity Charge Wash-Up" means the charge calculated in accordance with paragraph 8 of Part 2;

"Core Operational Period" in relation to any part of the Network, means the period of the day when that part is generally open to train movements;

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

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

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

"Current Control Period" means the period of five years commencing at 0000 hours on 1 April 2019 and due to end at 2359 hours on 31 March 2024;

"Default Train Consist Data" means the Train Consist Data for a Class 67/0 locomotive plus 11 Mark 1 coaches;

"ECS" means empty coaching stock (trains used to bring carriages into or take them out of service);

"Electrification Asset Usage Charge" means the electrification asset usage charge calculated in accordance with paragraph 7.1 of Part 2, as adjusted in accordance with paragraph 7.2 of Part 2;

"kWh" means kilowatt hours;

"Initial Indexation Factor" is derived from the following formula:

$$IIF = \left(1 + \frac{CPI_{2018} - CPI_{2017}}{CPI_{2017}}\right)^2$$

where:

Network Rail mark-up: Charter contract, Schedules 7 & 8

IIF means the Initial Indexation Factor;

CPI₂₀₁₇ means the CPI published or determined with respect to the month of November 2017;
and

CPI₂₀₁₈ means the CPI published or determined with respect to the month of November 2018;

The value derived from this formula shall be rounded to three decimal places;

"light locomotive movement" means the movement of

- (a) a single locomotive; or
- (b) a single steam locomotive hauling no more than one other item of rolling stock (not being a locomotive),

before working, or after having worked, a Relevant Service;

"Non-Core Operational Charge" means the charge calculated in accordance with paragraph 1.1 of Part 5;

"Period" has the meaning ascribed to it in Schedule 8;

"Proposed Review Notice" means the most recently proposed Review Notice given by ORR during the course of the Current Control Period, in accordance with Schedule 4A of the Act;

"Repeat Business Slot Charge" means the charge payable in respect of a particular Service in accordance with paragraph 4.2 of Part 2;

"Relevant Year" means a year commencing at 00:00 hours on 1 April and ending at 23:59 hours on the following 31 March;

"Relevant Year t" means the Relevant Year for the purposes of which any calculation falls to be made;

"Relevant Year t-1" means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

"Review Implementation Notice" has the meaning given to "review implementation notice" in paragraph 7 of Schedule 4A of the Act;

"Review Notice" has the meaning given to "review notice" in paragraph 4 of Schedule 4A of the Act;

"Route Clearance Charge" means, in respect of a particular Train Slot a charge payable in respect of works identified in paragraph 1.2 of Part 5 as calculated in accordance with that paragraph;

"route type k" means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;

"Slot Charge" means the charge payable for vehicle type i for journey type j as established in accordance with paragraph 4.1 of Part 2;

"Track Charge" means the Variable Usage Charge, Slot Charge, Cancellation Charge and where the context admits, Charter Capacity Charge, Charter Capacity Charge Wash-up, Traction Electricity Charge and Electrification Asset Usage Charge;

Network Rail mark-up: Charter contract, Schedules 7 & 8

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about [20 December 2018];

"Traction Electricity Charge" means the charge calculated in accordance with paragraph 6 of Part 2;

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about [20 December 2018] and specifying freight, passenger and charter traction electricity modelled consumption rates;

"Traction Electricity Rate" means such amount (in £ per kWh) as Network Rail shall specify for the purpose of each Relevant Year as reflecting, as accurately as reasonably practicable, the actual cost to Network Rail of providing traction electricity to the Train Operator, and subject to the agreement of the Train Operator to those amounts, such agreement not to be unreasonably withheld or delayed;

"Train Consist Data" means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;

"Train Mile" in relation to a train, means a mile travelled by that train on the Network and includes loaded Train Miles and ECS Train Miles;

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2; and

"Vehicle Mile" in relation to a railway vehicle, means a mile travelled by that vehicle on the Network.

Part 2

(Track Charges)

1. Principal formula

For each Relevant Year, Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = V_t + S_t + E_t + EAV_t + C_t + K_t + KW_t$$

where:

T_t means Track Charges for the Relevant Year t;

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

S_t means an amount in respect of the Slot Charge for the Relevant Year t which is derived from the formula in paragraph 4.1;

E_t means an amount in respect of the Traction Electricity Charge for the Relevant Year t which is derived from the formula in paragraph 6.1;

EAV_t means an amount in respect of the Electrification Asset Usage Charge for Relevant Year t which is derived from the formula in paragraph 7.1;

C_t means an amount in respect of the Cancellation Charge (whether of a positive or negative value) for the Relevant Year t calculated in accordance with the provisions in paragraph 5.1;

K_t means an amount in respect of the Charter Capacity Charge for the Relevant Year t which is calculated in accordance with paragraph 8; and

KW_t means an amount in respect of the Charter Capacity Charge Wash-Up for the Relevant Year t which is calculated in accordance with paragraph 8.

2. **Not used**

3. **Variable Usage Charge**

3.1 **Variable Usage Charge**

For the purposes of paragraph 1, the term V_t means an amount in respect of the Variable Usage Charge for the Relevant Year t (including any light locomotive movements) which is derived from the following formula:

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

where:

V_{it} means an amount for vehicle type i for Relevant Year t, expressed in pounds sterling per Train Mile and round to four decimal places, which is derived from the following formula:

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

where:

CPI_{t-1} means the CPI published or determined with respect to November in Relevant Year t-1; and

CPI_{t-2} means the CPI published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2019, V_{it} shall have, in respect of each Train Mile, the value set out in the section of the Track Usage Price List entitled "Charter Variable Usage Charge rates", multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

\sum means the summation across all relevant vehicle types i.

4. **Slot Charge**

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

$$S_t = \sum S_{ijt} \cdot US_{ijt}$$

where:

S_{ijt} means an amount in respect of the Slot Charge for vehicle type i for journey type j for Relevant Year t, expressed in pounds sterling and rounded to four decimal places, which is derived from the following formula:

$$S_{ijt} = S_{ijt-1} \cdot \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}}\right)$$

where:

CPI_{t-1} has the meaning set out in paragraph 3.1 above; and

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

but so that in relation to the Relevant Year commencing on 1 April 2019, S_{ijt} shall have the value of the Slot Charge for vehicle type i and journey type j set out in the section of the Track Usage Price List entitled "Charter Slot Charge rates", multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year S_{ijt-1} shall have the same value;

US_{ijt} means the actual number of journeys for the Relevant Year t for vehicle type i for journey type j (referred to in the Track Usage Price List) operated by or on behalf of the Train Operator under this contract; and

\sum means the summation across all relevant vehicle types i and journey types j .

4.2 When a Train Operator Variation Request indicates a requirement for the Service to operate on more than one date, then, provided that all dates of operation fall within the same Timetable Period, Network Rail may levy and the Train Operator shall pay:

- (a) the Slot Charge as defined in paragraph 4.1 in respect of the first such Service; and
- (b) for each subsequent Service the Slot Charge shall equal the Repeat Business Slot Charge which is derived from the following formula:

$$RS_t = RS_{t-1} \cdot \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}}\right)$$

where:

RS_t means an amount in respect of the Repeat Business Slot Charge in Relevant Year t ;

CPI_{t-1} has the meaning set out in paragraph 3.1 above; and

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

but so that in relation to the Relevant Year commencing on 1 April 2019, RS_t shall have the value set out in the section of the Track Usage Price List entitled "Charter Repeat Business Slot Charge rates", multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year RS_{t-1} shall have the same value.

4.3 When a Train Operator Variation Request is received by Network Rail on or before the Priority Date for the timetable in question, the Slot Charge S_t shall equal zero.

5. Cancellation Charge

5.1 In the event of a Network Rail Cancellation or a Train Operator Cancellation the party cancelling the Service (the "**Cancelled Service**") shall pay a Cancellation Charge, C_t , which shall be equivalent to:

10% of the Slot Charge for the Cancelled Service where notice of such cancellation is given more than 25 Working Days in advance of the Planned date of operation of the Cancelled Service;

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50% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 20 but less than 26 Working Days in advance of the Planned date of the Cancelled Service;

75% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 15 but less than 20 Working Days in advance of the Planned date of the Cancelled Service;

85% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 5 but less than 15 Working Days in advance of the Planned date of the Cancelled Service; and

in all other cases the Slot Charge for the Cancelled Service.

6. Traction Electricity Charge

6.1 If the Train Operator procures the supply of electricity from or through Network Rail (whether as its agent or otherwise) for the purpose of running trains under this contract, the Traction Electricity Charge, E_t , shall be calculated in accordance with the following formula:

$$E_t = TER_t \cdot TM_t \cdot TEC_t$$

where:

TER_t means the Traction Electricity Rate for Relevant Year t ;

TM_t means the total electrified Train Miles for all trains operated by or on behalf of the Train Operator under this contract in Relevant Year t ; and

TEC_t means the modelled consumption rate for all charter operators set out in the section of the Traction Electricity Modelled Consumption Rate List entitled "Charter Traction Electricity Modelled Consumption Rates for CP6".

Election to introduce on-train metering for a vehicle or vehicle type

6.2

- (a) If the Train Operator wishes to propose the introduction of on-train metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 6.2(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 6.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 6.2(a), that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.

- (e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 6.2(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.
- (f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 6.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- (g) Where ORR determines the matter pursuant to sub-paragraph 6.2(f), it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

7. Electrification Asset Usage Charge

- 7.1 For the purposes of paragraph 1, the term EAV_t means an amount in respect of the Electrification Asset Usage Charge for electrification asset usage which is derived from the following formula:

$$EAV_t = \sum(EV_{tk} \cdot UV_{tk})$$

where:

\sum means the summation across all route types k;

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile, expressed in pence and rounded to two decimal places, on route type k in Relevant Year t, which is derived from the following formula:

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

where:

CPI_{t-1} has the meaning set out in paragraph 3.1 above; and

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

but so that in relation to the Relevant Year commencing on 1 April 2019, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k, the relevant value per electrified Vehicle Mile on route type k set out in the section of the Track Usage Price List entitled "Charter Electrification Asset Usage Charge rates", multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year EV_{t-1k} shall have the same value; and

UV_{tk} means the actual number of electrified Vehicle Miles for all railway vehicles operated by or on behalf of the Train Operator under this contract on route type k in Relevant Year t.

8. Charter Capacity Charge and Charter Capacity Charge Wash-Up

- 8.1 In respect of the Relevant Year ending 31 March 2019, the terms K_t and KW_t respectively mean an amount in respect of the Charter Capacity Charge for the Relevant ~~Service~~ Services and the Charter Capacity Charge Wash-Up which shall be derived from the ~~formula~~ formulae that ~~was~~ were contained in paragraph 8 of Schedule 7 of the version of this

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contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t and KW_t shall each have a value of zero.

9. **Not used**

10. **Not used**

11. **Payment of Track Charges and other sums due under the Contract**

11.1 ***Payment of Track Charges and other sums due under the Contract***

(a) The Train Operator shall pay or procure the payment to Network Rail of:

- (i) the Variable Usage Charge;
- (ii) the Traction Electricity Charge;
- (iii) the Charter Capacity Charge;
- (iv) the Electrification Asset Usage Charge
- (v) the Slot Charge;
- (vi) the Cancellation Charge; and
- (vii) any other sums which have fallen due in accordance with any provision of this contract,

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

(b) Where, in accordance with paragraph 8, Network Rail calculates that the Charter Capacity Charge Wash-up is a positive amount then, as soon as practicable, it shall issue to the Train Operator an invoice for that amount and the Train Operator shall pay or procure payment of it.

11.2 ***Train Consist Data***

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

11.3 ***Invoices and right to object to invoices***

(a) Not used.

(b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Track Charges in respect of any and all train movements operated by the Train Operator during that Period based on:

- (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed;
- (ii) not used; and
- (iii) not used.

Each such invoice will be payable in accordance with the provisions of paragraph 11.1.

- (c) Either party shall be entitled, at any time prior to the later of 23:59 hours on the fourteenth day following the expiration of the relevant Period and 7 days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data on which the whole or any part of the Track Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). For the avoidance of doubt, the Train Operator may serve a notice of objection in which it provides the relevant Train Consist Data where the Track Charges in the relevant invoice or credit note were based on the Default Train Consist Data. In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties.
- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within ~~7~~**14** days of any Train Consist Data being agreed or determined in accordance with paragraph 11.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Track Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within 7 days after the date of its issue. **[Network Rail comment: Amended to reflect ORR's comment in its paper entitled "Conclusions to our January 2018 consultation on improvements to the drafting of Schedule 4,7 and 8" that the timescale for financial adjustments in respect of amended train consist data would be extended to 14 days in both the franchised passenger and charter contracts.]**
- (f) Not used.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 11.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

11.4 **Unrepresentative Train Consist Data**

Not used.

11.5 **Disputed amounts repayment and interest rate**

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 11.5(a) that it disputes part of any invoiced amount:

- (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
- (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

Part 3

(Not Used)

Part 3A

(Not Used)

Part 4

(Not Used)

Part 5

(Additional Charges)

1. Specific Additional Charges

1.1 Non-Core Operational Charge

The Train Operator shall, in respect of any Service (and its associated Ancillary Movements) that it wishes to operate wholly or partly outside of the Core Operational Period, or wholly or partly on routes which form part of the Network over which passenger services do not operate, pay to Network Rail a Non-Core Operational Charge. The Non-Core Operational Charge applicable to any such Service or Ancillary Movement shall consist of such reasonable out-of-pocket costs and expenses (including any costs and expenses in respect of additional staff reasonably required to facilitate that Service or Ancillary Movement) which Network Rail will incur by reason of the operation of that Service or Ancillary Movement, being costs and expenses which Network Rail, but for the operation of that Service or Ancillary Movement, would not have incurred, but only to the extent that, on or prior to accepting the Train Operator Variation Request for the Service or Ancillary Movement, Network Rail provides to the Train Operator:

- (a) details, reasonably satisfactory to the Train Operator, of those items in respect of which Network Rail will, or is likely to, levy the Non-Core Operational Charge; and
- (b) an estimate, prepared in good faith, of the likely amount of such costs and expenses.

1.2 Route Clearance Charge

Where any route clearance or investigative work is required as a result of a Train Operator Variation Request which involves in excess of checking the relevant equipment against the relevant sectional appendices for the routes concerned, Network Rail shall be entitled to charge the Train Operator its reasonable costs in carrying out such work (whether or not the Service, the subject of the Train Operator Variation Request, is operated) provided that:

- (a) Network Rail notifies the Train Operator of its intention to carry out such work and obtains the Train Operator's consent (failing receipt of which within a reasonable time Network Rail shall be entitled to reject the Train Operator Variation Request in question) before incurring such costs;

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- (b) Network Rail shall not be entitled to charge the Train Operator for its costs in obtaining information which it has already procured or should reasonably have procured to meet the requirements of Network Rail through its Rolling Stock Acceptance Board, whether or not in connection with rolling stock operated or to be operated by the Train Operator; and
- (c) Network Rail shall endeavour to keep the level of its reasonable costs to the minimum reasonably required.

Part 6

(Supplemental Provisions)

Each invoice or credit note issued by Network Rail to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information (as relevant) in respect of the period covered by the invoice or credit note:

- (a) the amount of the Slot Charge levied in respect of each vehicle type *i* and journey type *j*;
- (b) the rate of Variable Usage Charge and the relevant number of Train Miles applicable to vehicle type *i*;
- (c) the rate of Traction Electricity Charge, if any, and the number of electrified Train Miles;
- (d) the amount of the Cancellation Charge, if any, levied in respect of vehicle type *i* and journey type *j*;
- (e) the rate of the Electrification Asset Usage Charge, if any, on route type *k* and the number of electrified Vehicle Miles on route type *k*;
- (f) Not used;
- (g) the amount of any sum K_i payable as provided in paragraph 8 of Part 2; and
- (h) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

Part 7

(Future Access Charges Reviews)

1. General

ORR may carry out one or more access charges reviews of all or part of this contract as follows:

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review; and
- (b) not used.

2. Not used

3. Interpretation

- 3.1 In this Part 7, references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

4. **Interim treatment of future access charges reviews**

4.1 ***Interim treatment prior to implementation***

If the terms of a Proposed Review Notice proposing amendments to the Contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the Contract set out in the Proposed Review Notice shall have effect for the period (the "Interim Period") commencing on that date (or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

- (a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or **Network Rail comment: paragraph indentation corrected.**
- (b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the Contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

4.2 ***Reconciliation Payment***

- (a) Within [28] days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the Interim Period, with (ii) the sums which would have been payable if the amendments required by either paragraphs 4.1(a) or (b) above had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:
 - (i) a statement of the amount due to or from the Train Operator; and
 - (ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.
- (b) Within [28] days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this Contract.

Part 8

(Not Used)

Appendix 7A

Not Used

Appendix 7B

Not Used

Appendix 7C

Not Used

Schedule 8

(Performance regime)

1. Interpretation

1.1 Definitions

In this Schedule 8 and its Appendix 8A, unless the context requires otherwise:

"100 Train Operator Miles" means the distance travelled by the Services operated by the Train Operator on the Network in any Period as recorded in Network Rail's billing systems (unless there is a manifest error in such figure), divided by 100;

"30% Exposure" has the meaning ascribed to it in paragraph 9.1.1; **[Network Rail comment: Definition used in the new drafting included in paragraph 9 relating to the Planned Service Incident Cap.]**

"Adjustment Fraction" means the number of Periods or parts of a Period in the first or final Financial Year, divided by 13;

"Applicable Timetable" means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00 hours on the day prior to that day, and which is applicable to the Service or other trains;

"Baseline Annual Train Mileage" has the meaning ascribed to it in paragraph 8.2.2(b); **[Network Rail comment: This defined term needs to be included as it is used in paragraphs 8.2.1, 8.2.2 and 8.2.3 and Appendix 8A.]**

"Cancellation" means, in respect of any Service, the failure to operate at all and "Cancelled" shall be construed accordingly;

"Charter Service Variation Sum" means, in respect of paragraphs 3.4 and 4.4, the amount specified in Appendix 8A as the Charter Service Variation Sum (as adjusted in accordance with paragraph 7); **[Network Rail comment: expressed in pounds sterling and rounded to zero decimal places;]**

"CPI" has the meaning ascribed to it in Schedule 7;

"Diversion" means a Service which operates but which is diverted off its Planned route and for these purposes, running on different lines on the same route shall not constitute such a Diversion;

"ETCS" means the European Train Control System;

"Exposure Level" has the meaning ascribed to it in paragraph 9.1.1; **[Network Rail comment: Definition used in the new drafting included in paragraph 9 relating to the Planned Service Incident Cap.]**

"Failure to Stop" means a Service which, whether or not it is the subject of a Diversion, fails to call at one or more of the intermediate stations at which it is Planned to call;

"Financial Year" means a year commencing at 00:00 hours on 1 April and ending immediately before 00:00 hours on the next succeeding 1 April save that:

- (a) the first such period shall commence on the date upon which all the provisions of this contract come into effect in accordance with Clause **Error! Reference source not found.**; and
- (b) the last such period shall end on the Expiry Date;

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"Indexed Figures" means the Network Rail Payment Rate, Train Operator Payment Rate, Network Rail Annual Cap and Train Operator Annual Cap, Network Rail Cancellation Sum, Joint Cancellation Sum and the Charter Service Variation Sum;

"Initial Indexation Factor" has the meaning ascribed to it in Schedule 7;

"Initial Planned Service Incident Cap Notice" has the meaning ascribed to it in paragraph 9.1.1;

"Interim Statement" means a written summary showing, in respect of Network Rail performance, the information required under paragraph 3.5 and, in respect of Train Operator performance, the information required under paragraph 4.5;

"Joint Cancellation Sum" means, in the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, the amount specified in Appendix 8A as the Joint Cancellation Sum for that Planned Service Cancellation (as adjusted in accordance with paragraph 7); expressed in pounds sterling and rounded to two decimal places;

"Minutes Delay" means the number of minutes of delay in respect of a Trigger of a Recording Point calculated in accordance with paragraph 5;

"Network Rail Annual Cap" means the Network Rail Annual Cap specified in Appendix 8A and in respect of the first and last Financial Year means the Network Rail Annual Cap specified in Appendix 8A multiplied by the Adjustment Fraction, as adjusted in accordance with paragraphs 7 and 8.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"Network Rail Benchmark" or "NRB" means the Network Rail Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as specified in Appendix 8A;

"Network Rail Cancellation Sum" means, in the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, the amount specified in Appendix 8A as the Network Rail Cancellation Sum for that Planned Service Cancellation (as adjusted in accordance with paragraph 7); expressed in pounds sterling and rounded to zero decimal places;

"Network Rail Payment Rate" means, in respect of a Planned Service, the rate, expressed as pounds per NR Performance Minute, specified in Appendix 8A as the Network Rail Payment Rate for that Planned Service (as adjusted in accordance with paragraph 7); expressed in pounds sterling and rounded to two decimal places;

"NR Performance Minute" has the meaning set out in paragraph 3.1;

"Performance Sum" means an amount for which Network Rail or the Train Operator is liable under paragraphs 3 or 4 following a Period in relation to Minutes Delay in that Period and the preceding Periods, as adjusted in accordance with paragraph 8;

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

"Planned" means entered into the Applicable Timetable;

"Planned Incident" means an incident described as such in paragraph 6.6;

"Planned Service" means a passenger carrying Service (excluding any Ancillary Movement) of the Train Operator under this contract which is entered in the Applicable Timetable;

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"Planned Service Cancellation" means the Cancellation or Termination of a Planned Service;

"Planned Service Incident Cap" means, in respect of a Planned Service (and its associated Ancillary Movements) operated by or on behalf of the Train Operator, the Planned Service Incident Cap selected by the Train Operator in accordance with paragraph 9.1;

"Planned Service Incident Cap Notice" has the meaning ascribed to it in paragraph 9.1.2;

"Recording Point" means a location at which Network Rail records the times at which trains arrive, pass or depart that location;

"Recovery Time" means additional time incorporated into the Applicable Timetable to allow a train to regain time lost earlier in its journey as a result of a Restriction of Use;

"Relevant Year" has the meaning ascribed to it in Schedule 7;

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

"Service Characteristics" means, in relation to any Service, the characteristics of that Service specified in any Train Operator Variation Request;

"Service Incident" means an incident which arises from, is caused by or results from a Planned Service or any of its associated Ancillary Movements;

"Termination" means, in respect of any Service, the operation of such train in such a way that it:

- (a) fails to reach its Planned final destination station; or
- (b) commences at a point other than its Planned station start point and does not call at its Planned station start point

and which is not a Cancellation;

"Third Party Train Cancellation" means the Cancellation or Termination of any train excluding any Ancillary Movements and excluding any Planned Service;

"Third Party User" means the operator (including the Train Operator) of any train excluding any Ancillary Movements and excluding any Planned Service;

"Third Party User Cancellation Minutes" means, in respect of a Third Party Train Cancellation, the number of minutes specified in Appendix 8A as the Third Party User Cancellation Minutes;

"TO Performance Minute" has the meaning set out in paragraph 4.1;

"Train Mile" has the meaning ascribed to it in Schedule 7;

"Train Operator Annual Cap" means the Train Operator Annual Cap specified in Appendix 8A and in respect of the first and last Financial Year means the Train Operator Annual Cap specified in Appendix 8A multiplied by the Adjustment Fraction, as adjusted in accordance with paragraphs 7 and 8.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"Train Operator Benchmark" or **"TOB"** means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as specified in Appendix 8A;

"Train Operator Payment Rate" means, in relation to delay caused to a Third Party User, the rate, expressed as pounds per TO Performance Minute, specified in Appendix 8A (as adjusted in accordance with paragraph 7); expressed in pounds sterling and rounded to two decimal places;

"Trigger" means the act of a train arriving at, passing or departing from a Recording Point;

"Week" means a period of 7 days beginning on Sunday and ending on the immediately following Saturday (both days inclusive), save that where that period of 7 days would otherwise fall within two Periods ("Period A" and "Period B") for the purposes of this Schedule each of the following shall constitute a Week:

- (a) Sunday to the last day of Period A (both days inclusive); and
- (b) the first day of Period B to the immediately following Saturday (both days inclusive);

"Zero Exposure" has the meaning ascribed to it in paragraph 9.1.1. [Network Rail comment: Definition used in the new drafting included in paragraph 9 relating to the Planned Service Incident Cap.]

1.2 For the purposes of Schedule 8 events in respect of a Service shall be treated as occurring on the day on which the Service was Planned to depart from its point of origin.

2. General principles and performance information

2.1 In respect of Cancellation, this Schedule 8 shall only apply to any Planned Service Cancellation for which Network Rail is responsible or jointly responsible with the Train Operator and which occurs after 22:00 on the day before such Planned Service is due to run.

2.2 Each of the Train Operator and Network Rail shall use all reasonable endeavours to keep the other of them informed of any known or anticipated delay to, or Cancellation, Termination or Diversion of, Planned Services or any Ancillary Movements associated therewith.

2.3 Each of Network Rail and the Train Operator shall take reasonable steps to avoid and mitigate the effects of:

- (a) any incidents upon the Planned Services; and
- (b) any Service Incident affecting other trains.

2.4 Network Rail shall use recordings made using the Performance Monitoring System for the purposes of this Schedule 8 including the times at which the Services and other trains Trigger Recording Points. Where appropriate Network Rail may require the Train Operator, in respect of Services only, to make the relevant entry, to record such times on the Performance Monitoring System. Network Rail and the Train Operator shall each comply with and be bound by the provisions of the Performance Data Accuracy Code referred to in Part B of the Network Code and the provisions of that Code shall apply to this contract. Accordingly, the provisions of this Schedule 8 concerning the recording of train performance information or which refer to information regarding train performance (including references to the time at which a train Triggers a Recording Point), and the rights and remedies of the Train Operator in respect of the same, shall be subject to and interpreted in accordance with the provisions of that Code.

2.5 In respect of each Trigger of a Recording Point Network Rail shall use its reasonable endeavours to record separately, as unexplained delay, those minutes of delay of three minutes or more included in Minutes Delay for which it is unable to identify the incident(s) which caused that delay. The Train Operator shall co-operate with Network Rail on request by providing all such information as it has in its possession regarding the identification of the incident(s) which caused that delay.

2.6 All unexplained delay recorded in accordance with paragraph 2.5 shall, notwithstanding the provisions of paragraph 6.3(b) be allocated between the parties as follows:

- (a) any Minutes Delay or Cancellation Minutes in respect of Service Incidents arising either off the Network or at stations at which the Train Operator's Services are Planned to call shall be included in the TO Performance Minutes; and
- (b) any Minutes Delay to a Service or Planned Service Cancellation arising on the Network and which are not allocated to the Train Operator under this Schedule (including paragraph 2.6(a)) shall be included in the NR Performance Minutes.

2.7

- (a) Network Rail shall provide to the Train Operator through the Performance Monitoring System as soon as reasonably practicable, and in any event no later than the following Working Day, the information recorded or provided to it under paragraphs 2.4 or 2.5.
- (b) the Train Operator shall be deemed to have agreed the information recorded by Network Rail and Network Rail shall be deemed to have agreed the information recorded by the Train Operator except, in either case, to the extent that it has, within 2 clear Working Days of the information being provided, notified the other that it disputes the information. Any such notification shall specify the reasons for the dispute, so as to assist resolution of the dispute. The parties shall endeavour to resolve each such dispute within 2 Working Days of its notification.

2.8 Within 5 Working Days of a Trigger occurring, Network Rail shall be entitled to re-allocate responsibility to the Train Operator for each minute of delay included in Minutes Delay where further information becomes available to Network Rail which would otherwise result in responsibility for the relevant incident being allocated to the Train Operator in accordance with paragraph 6.4. Paragraph 2.7(b) shall apply to the allocation of responsibility under this paragraph 2.8.

2.9 Network Rail shall have no liability to the Train Operator under the terms of this Schedule in respect of Minutes Delay to a Planned Service or a Planned Service Cancellation to the extent that it is caused, in either case, by that Planned Service being presented to Network Rail on the Network after the time Planned for such presentation. In such circumstances, Network Rail shall use its reasonable endeavours to facilitate the movement of the Planned Service as expeditiously as possible subject to

- (a) any access rights which it may have granted to third parties; and
- (b) any Restrictions of Use of the Network in the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules.

3. Network Rail performance

3.1 The performance minutes allocated to Network Rail in respect of any Planned Service (the "**NR Performance Minutes**") shall be equal to the sum of:

- (a) the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated responsibility under paragraphs 2.6(b) and 6.3; and/or
- (b) 50% of the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated joint responsibility with the Train Operator under paragraph 6.5.

3.2

Network Rail mark-up: Charter contract, Schedules 7 & 8

- 3.2.1 The NR Performance Minutes shall be converted into a per 100 Train Operator Miles figure (the "**Adjusted NR Performance Minutes**") using the formula below:

$$\text{Adjusted NR Performance Minutes} = \frac{\text{NR Performance Minutes}}{100 \text{ Train Operator Miles}}$$

- 3.2.2 The Adjusted NR Performance Minutes calculated in accordance with paragraph 3.2.1 shall then be compared with the NRB and:

- (a) if the Adjusted NR Performance Minutes figure is less than NRB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$((\text{NRB} - \text{the Adjusted NR Performance Minutes}) \times \text{Network Rail Payment Rate}) \times \left(\frac{\text{CPCM}}{100}\right)$$

where:

CPCM means the total number of Train Miles operated by the Train Operator in the relevant Period;

- (b) if the Adjusted NR Performance Minutes figure exceeds NRB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$((\text{the Adjusted NR Performance Minutes} - \text{NRB}) \times \text{Network Rail Payment Rate}) \times \left(\frac{\text{CPCM}}{100}\right)$$

where CPCM has the meaning ascribed to it in paragraph 3.2.2(a); and

- (c) if the Adjusted NR Performance Minutes figure is equal to NRB, neither party shall be liable to the other for a Performance Sum under this paragraph 3.2.

- 3.3 In the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, Network Rail shall, in respect of that Planned Service be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Network Rail Cancellation Sum. In the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, then in respect of that Planned Service Network Rail shall be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Joint Cancellation Sum.

- 3.4 If a Planned Service is the subject of a Diversion or Failure to Stop due to a Service Incident for which Network Rail is allocated responsibility under paragraph 6.3 and, as a result, the Train Operator incurs, in relation to such Planned Service, additional costs which but for the Diversion or Failure to Stop it would not have incurred, Network Rail shall, in addition to any liability under paragraph 3.2, pay the Train Operator the Charter Service Variation Sum in respect of the Planned Service provided that the Train Operator shall have notified to and supplied Network Rail with evidence (to its reasonable satisfaction) of such costs on or before the end of the Period following the Period in which such Service Incident occurred.

- 3.5 Within 5 Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement showing in respect of each Planned Service which was Planned to depart from its point of origin during that Week and for which Network Rail is liable to make payment under this paragraph 3 either:

- (a) the Performance Sum calculated in accordance with paragraph 3.2; or
- (b) whether it is a Planned Service Cancellation for which Network Rail is liable to the Train Operator under paragraph 3.3.

Any unresolved dispute under paragraph 2.7 in relation to a Planned Service the subject of an Interim Statement shall be indicated as such on the Interim Statement. Within 2 Working

Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

4. Train Operator performance

- 4.1 The performance minutes allocated to the Train Operator in respect of any Third Party User (the "**TO Performance Minutes**") shall be calculated as follows:

$$TO \text{ Performance Minutes} = (A + B) + (C + D)$$

where:

A = the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated responsibility under paragraphs 2.6(a) and 6.4; and

B = 50% of the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5;

C = the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated sole responsibility under paragraphs 2.6(a) and 6.4, provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation; and

D = 50% of the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5 provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation.

- 4.2 For the avoidance of doubt, in the event of a Planned Service Cancellation for which the Train Operator is allocated sole responsibility under paragraph 6.4, then in respect of that Cancellation the Train Operator shall only be liable to pay Network Rail the applicable charge under paragraph 5.1 of Part 2 of Schedule 7 and in the event of a Planned Service Cancellation for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5, then in respect of that Planned Service the Train Operator shall be liable to pay Network Rail 50% of the applicable charge under Schedule 7.

4.3

- 4.3.1 For the purposes of this paragraph 4.3, the TO Performance Minutes arising in respect of a Planned Service (and its associated Ancillary Movements) shall be ~~capped at the Planned Service Incident Cap, so that any such minutes in excess of the Planned Service Incident Cap shall be disregarded.~~ capped as follows:

(a) where the Train Operator has elected to have no exposure above the Planned Service Incident Cap in accordance with paragraph 11, any such minutes in excess of the Planned Service Incident Cap shall be disregarded; or

(b) where the Train Operator has elected to have 30% exposure above the Planned Service Incident Cap in accordance with paragraph 11, 70% of any such minutes in excess of the Planned Service Incident Cap shall be disregarded.

[Network Rail comment: These amendments reflect the inclusion of the option for the Train Operator to select an alternative incident cap regime (30% exposure above the incident cap) under paragraph 9.]

- 4.3.2 The TO Performance Minutes shall be converted into a per 100 Train Operator Miles figure (the "**Adjusted TO Performance Minutes**") using the formula below:

$$\text{Adjusted TO Performance Minutes} = \frac{\text{TO Performance Minutes}}{100 \text{ Train Operator Miles}}$$

- 4.3.3 The Adjusted TO Performance Minutes calculated in accordance with paragraph 4.3.2 shall then be compared with the TOB and:

- (a) if the Adjusted TO Performance Minutes figure is less than TOB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$((\text{TOB} - \text{the Adjusted TO Performance Minutes}) \times \text{Train Operator Payment Rate}) \times \left(\frac{\text{CPCM}}{100}\right)$$

where:

CPCM means the total number of Train Miles operated by the Train Operator in the relevant Period;

- (b) if the Adjusted TO Performance Minutes figure exceeds TOB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$((\text{the Adjusted TO Performance Minutes} - \text{TOB}) \times \text{Train Operator Payment Rate}) \times \left(\frac{\text{CPCM}}{100}\right)$$

where CPCM has the meaning ascribed to it in paragraph 4.3.3(a); and

- (c) if the Adjusted TO Performance Minutes figure is equal to TOB, neither party shall be liable to the other for a Performance Sum under this paragraph 4.3.

- 4.4 If:

- (a) any service operated by a Third Party User is the subject of a Diversion or Failure to Stop but does not become a Third Party Train Cancellation for which Third Party User Cancellation Minutes are allocated to the Train Operator under paragraph 4.1; or
- (b) Network Rail has to postpone a Restriction of Use or has to keep open any part of the Network beyond the time at which such part of the Network is generally open to passenger carrying movements

due to a Service Incident for which the Train Operator is allocated responsibility under paragraph 6.4 and, as a result, Network Rail incurs additional costs which, but for the Service Incident it would not have incurred, the Train Operator shall, in addition to any liability under paragraph 4.2, pay Network Rail the Charter Service Variation Sum in respect of the Planned Service provided that Network Rail shall have notified to and supplied the Train Operator with evidence (to its reasonable satisfaction) of such costs on or before the end of the Period following the Period in which such Service Incident occurred.

- 4.5 Within 5 Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement listing all Service Incidents during that Week for which the Train Operator is allocated responsibility under paragraph 6.4 or joint responsibility with Network Rail under paragraph 6.5 and showing, for each such Service Incident, the TO Performance Minutes. Any unresolved dispute under paragraph 2.7 in relation to any such Service Incident shall be indicated as such on the Interim Statement. Within 2 Working Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes,

giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

5. Calculation of minutes delay

5.1 Subject to paragraph 5.2 the Minutes Delay for a Planned Service in respect of a Trigger of a Recording Point shall be equal to:

- (a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train so Triggers the Recording Point is later than the time at which that train is Planned so to Trigger the Recording Point; and
- (b) in respect of each other recorded Trigger by a train, the lesser of:
 - (i) the number of minutes in respect of the Trigger calculated as in paragraph 5.1(a) above; and
 - (ii) the greater of $((A1 - A2) + B)$ and zero

where:

A1 is the number of minutes, between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);

A2 is the Planned time between such Triggers; and

B is any Recovery Time between such Triggers.

5.2 The Minutes Delay calculated in accordance with paragraph 5.1 shall be allocated to the incident(s) causing those Minutes Delay as described in paragraph 6. Any minutes of delay which are included in any Minutes Delay and which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall for the purposes of this Schedule 8 be deemed to be zero.

6. Allocation of responsibility

6.1 For the purposes of this Schedule 8 responsibility for each minute of delay included in Minutes Delay, each Third Party Train Cancellation, each Diversion, each Failure to Stop and each Planned Service Cancellation shall be allocated according to the responsibility for the incident which caused such Minutes Delay, Third Party Train Cancellation, Diversion, Failure to Stop or Planned Service Cancellation as established in accordance with the following provisions of this paragraph 6.

6.2 In assessing the causes of any Minutes Delay, Third Party Train Cancellation, Diversion, Failure to Stop or Planned Service Cancellation there shall be taken into account all incidents contributing thereto including:

- (a) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents contributing thereto;
- (b) where a train is affected by the cancellation of or delay to an Ancillary Movement, the incident(s) giving rise to that cancellation or delay; and

- (c) where a Restriction of Use overruns, due to the start of such Restriction of Use being delayed by a late running train (including a Planned Service or an Ancillary Movement associated therewith), the incident(s) giving rise to that late running.
- 6.3 Subject to paragraph 6.5, Network Rail shall be allocated responsibility for an incident other than a Planned Incident if that incident is:
 - (a) caused by breach by Network Rail of any of its obligations under this contract or any of its obligations in its safety authorisation which are relevant to the operation of the Services;
 - (b) caused by failures of or delays to Services arising on the Network which are not allocated to the Train Operator under this contract; or
 - (c) caused by acts or omissions of Network Rail's staff or Network Rail's contractors in breach of this contract.
- 6.4 Subject to paragraph 6.5, the Train Operator shall be allocated responsibility for an incident other than a Planned Incident if that incident is:
 - (a) caused by breach by the Train Operator of any of its obligations under this contract or any of its obligations in its safety certificate which are relevant to the operation of the Services;
 - (b) caused by circumstances within the control of the Train Operator (whether or not the Train Operator is at fault) in its capacity as an operator of trains under this contract; or
 - (c) caused (whether or not the Train Operator is at fault) by any defect in or other failure by the Specified Equipment to comply with the Service Characteristics of a Service whether or not such Specified Equipment is owned by the Train Operator; or
 - (d) caused by acts, or omissions of the Train Operator's staff, customers, contractors (including any associates or associate sub-contractors of the Train Operator) in connection with this contract, or passengers using the Services; or
 - (e) caused by circumstances arising:
 - (i) off the Network and which are not caused by Network Rail in breach of its obligations under this contract; or
 - (ii) in connection with the operation of any station, light maintenance depot or other facility to which the Train Operator has been granted access for the purpose of the operation of the relevant Service; or
 - (iii) under a connection agreement to which Network Rail is a party in relation to a light maintenance depot or other facility referred to under (ii) above.
- 6.5 Network Rail and the Train Operator shall be allocated joint responsibility for:
 - (a) any incident caused by or in connection with any incident arising at or in a station which is not within the reasonable control of either party; or
 - (b) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 6.3 or 6.4.
- 6.6 An incident in connection with a Restriction of Use shall be treated as a Planned Incident to the extent that there is Recovery Time in respect of that Restriction of Use incorporated in the Applicable Timetable.

7. Payment terms and supplementary provisions

- 7.1.1 The aggregate of any and all sums for which each party is liable under this Schedule in relation to Planned Services which were Planned to depart from their point of origin during a Period shall be set off against each other and the balance, if any, shall be invoiced by Network Rail to the Train Operator or, as the case may be, shall be the subject of a credit note issued by Network Rail to the Train Operator within 14 days after the end of the Period and shall be payable within 28 days after the end of the Period.
- 7.1.2 In respect of any Financial Year, the aggregate liability of Network Rail to make balance payments to the Train Operator under paragraph 7.1.1 shall not exceed the Network Rail Annual Cap.
- 7.1.3 In respect of any Financial Year, the aggregate liability of the Train Operator to make balance payments to Network Rail under paragraph 7.1.1 shall not exceed the Train Operator Annual Cap.
- 7.1.4 Where any amount which is the subject of this Schedule is in dispute:
- (a) the undisputed amount shall be accounted for in accordance with paragraph 7.1.1 (and shall be subject to set off accordingly);
 - (b) the disputed balance ("disputed balance") shall be accounted for in the calculations made under paragraph 7.1.1 for the Period in which the dispute is resolved or otherwise determined (and shall be subject to set off accordingly); and
- 7.1.5 the disputed balance shall carry interest (accruing daily and compounded monthly) at the Default Interest Rate from the date on which the disputed balance would but for such dispute have been due to be so accounted for until the date of such account.

7.2 Indexation of Indexed Figures

- 7.2.1 For each Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted in accordance with paragraph 7.2.2.

7.2.2

- (a) For the Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted as at 1 April 2019 by multiplying them by the Initial Indexation Factor.
- (b) For the Relevant Year commencing on and from 1 April 2020, and for each subsequent Relevant Year, the adjusted Indexed Figures from the preceding Relevant Year shall be further adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 7.2.2(b), the Adjustment Factor in respect of Relevant Year t shall be calculated in accordance with the following formula:

$$\text{Adjustment Factor} = 1 + \frac{(CPI_t - CPI_{t-2})}{CPI_{t-2}}$$

where:

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

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year t-2.

- (c) If this contract takes effect after 1 April 2019, the Indexed Figures shall be adjusted in accordance with paragraphs 7.2.2(a) and (b) as if this contract had been in effect on and from 1 April 2019.

Performance Monitoring System

- 7.3 Each Service shall be allocated an eight character code in the Performance Monitoring System (being a different code to that which applies to services of the Train Operator operated under any other access agreement) to allow for monitoring of each Planned Service and its associated Ancillary Movements.

8. Reviews of Network Rail Annual Cap and Train Operator Annual Cap

- 8.1 *Not used*

8.2 Adjustments to the Network Rail Annual Cap and Train Operator Annual Cap

- 8.2.1 The Network Rail Annual Cap and the Train Operator Annual Cap that shall apply from 1 April in each Financial Year in relation to each Period in that Financial Year shall be the Network Rail Annual Cap and the Train Operator Annual Cap, in each case as specified in Appendix 8A and as adjusted in accordance with paragraph 7.2 and this paragraph 8.2, provided that no adjustment shall be made to the Network Rail Annual Cap or the Train Operator Annual Cap pursuant to the following subparagraphs of this paragraph 8.2 prior to 1 April 2020; and thereafter an adjustment shall only be made if the total number of Train Miles operated by the Train Operator during Financial Year t or the Baseline Annual Train Mileage is 1,000,000 or greater.

- 8.2.2 Within 28 days after the last day of Financial Year t, Network Rail shall notify the Train Operator in writing of:

- (a) the total number of Train Miles operated by the Train Operator during Financial Year t (the "**Annual Train Mileage**");
- (b) Network Rail's determination as to whether or not the Annual Train Mileage for Financial Year t exceeds or is less than the Baseline Annual Train Mileage (as determined in accordance with paragraph 8.2.3 below (the "**Baseline Annual Train Mileage**")) by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Train Mileage (the "**Annual Train Mileage Variation**"); and
- (c) if Network Rail determines that there has been an Annual Train Mileage Variation, Network Rail's proposal for an adjusted Network Rail Annual Cap and/or Train Operator Annual Cap, in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR.

8.2.3

- (a) The Baseline Annual Train Mileage that shall apply from 1 April in each Financial Year shall be the Baseline Annual Train Mileage specified in Appendix 8A, unless it is adjusted in accordance with paragraph 8.2.3(b).
- (b) If, in accordance with paragraph 8.2.2(b), Network Rail determines that there has been an Annual Train Mileage Variation, then the Baseline Annual Train Mileage for the Financial Year immediately following Financial Year t ("**Financial Year t+1**") and each subsequent Financial Year until any further adjustment is made to the Baseline Annual Train Mileage pursuant to this paragraph 8.2.3(b) shall be the Annual Train Mileage for the Financial Year t in which the Annual Train Mileage Variation has occurred.

- 8.2.4 Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2,

the parties shall endeavour to agree whether the Network Rail Annual Cap and/or the Train Operator Annual Cap should be adjusted in accordance with this paragraph 8.2 and, if so, the adjustment (in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR), provided that any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2 shall be subject to the prior approval of ORR.

- 8.2.5 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the Train Operator and Network Rail reach agreement as to any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap, the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine whether or not to approve the proposed adjustment. The parties agree to abide by any determination issued by ORR.
- 8.2.6 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, either:
- (a) the parties fail to reach agreement; or
 - (b) prior to the expiry of that 56 day period both parties agree that agreement is unlikely to be reached prior to the expiry of that period,

the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine the matter. The parties agree to abide by any determination issued by ORR.

- 8.2.7 Any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap shall take effect only when it has been approved by ORR and, unless otherwise specified by ORR, any such adjustment shall take effect from 1 April in Financial Year t.
- 8.2.8 Promptly following any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2, and in order to give effect to that adjustment, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:
- (a) any invoices and credit notes already issued; and
 - (b) any payments already made in respect of Performance Sums,
- in each case relating to the Periods in Financial Year t+1.
- 8.2.9 Any statement issued by Network Rail pursuant to paragraph 8.2.8 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 7.1.1.

9. **Selection by the Train Operator of the Planned Service Incident Cap and Exposure Level**

[Network Rail comment: As explained in the main body of our response, we propose that the Train Operator should have the option to select an alternative incident cap regime (30% exposure above the incident cap). Paragraph 9 below has been amended accordingly.]

9.1 **Selection by the Train Operator of the Planned Service Incident Cap and Exposure Level**

- 9.1.1 ~~On~~ Subject to paragraph 9.1.3, on or before the date on which this paragraph 9.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Planned Service Incident Cap and the level of exposure above the Planned Service Incident Cap ("Exposure Level") it wishes to apply (being either no exposure above the Planned Service Incident Cap, as described in paragraph 4.3.1(a) ("Zero Exposure"), or 30% exposure above the Planned

Service Incident Cap, as described in paragraph 4.3.1(b) ("30% Exposure") (such notification being the "Initial Planned Service Incident Cap Notice"), and the The Planned Service Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in ~~the that part of~~ column B (if the Train Operator selects Zero Exposure) or column C (if the Train Operator selects 30% Exposure) adjacent to the level of Planned Service Incident Cap selected by the Train Operator in the Initial Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap and Exposure Level selected by the Train Operator in a Planned Service Incident Cap Notice issued pursuant to paragraph 9.1.2.

9.1.2 ~~The~~Subject to paragraph 9.1.3, the Train Operator may change the level of Planned Service Incident Cap and Exposure Level previously selected by it (either in the Initial Planned Service Incident Cap Notice or any subsequent Planned Service Incident Cap Notice issued pursuant to this paragraph 9.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Planned Service Incident Cap and Exposure Level it wishes to apply for that Financial Year (the "**Planned Service Incident Cap Notice**"). Any such Planned Service Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Planned Service Incident Cap and Exposure Level to apply, and the Planned Service Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in ~~the column that part of~~ column B (if the Train Operator selects Zero Exposure) or column C (if the Train Operator selects 30% Exposure) adjacent to the Planned Service Incident Cap selected by the Train Operator in the Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator pursuant to this paragraph 9.1.2.

9.1.3 For the avoidance of doubt, if the Train Operator selected a Planned Service Incident Cap prior to Financial Year 2019/20, and did not issue a subsequent Planned Service Incident Cap Notice in respect of Financial Year 2019/20 selecting 30% Exposure, the Train Operator shall be deemed, for the purposes of paragraphs 11.1.1 and 11.1.2, to have selected Zero Exposure for Financial Year 2019/20.

9.2 **Level of Planned Service Incident Cap, Exposure Level and Planned Service Incident Cap Access Charge Supplement Rate**

For the purposes of paragraph 9.1, the Train Operator shall select one of the following Planned Service Incident Caps and, in respect of the relevant Planned Service Incident Cap, the Exposure Level as set out in either Column B or C:

<u>A</u>	<u>B</u>	<u>C</u>
Planned Service Incident Cap	Planned Service Incident Cap <u>Planned Service Incident Cap Access Charge Supplement Rate (£ per Train Mile operated in a Period) expressed in pounds sterling and rounded to two decimal places – Zero Exposure above the Planned Service Incident Cap</u>	Planned Service Incident Cap Access Charge Supplement Rate (£ per TrainContract Mile operated in a Charging Period) expressed in pounds sterling and rounded to two decimal places – 30% Exposure above the Planned Service Incident Cap
93 minutes	•	
147 minutes	•	
500 minutes	•	

1,000 minutes	•	
5,000 minutes	•	
No Planned Service Incident Cap	None	None

10. **ETCS Amendments**

10.1

- (a) Either party may by notice to the other propose that amendments are made to this Schedule 8 (and to any other provisions of this contract as a result of those amendments) as a consequence of the introduction of ETCS on any part of the Network that is used by the Train Operator ("**ETCS Amendments**").
- (b) ORR may make ETCS Amendments, subject to complying with paragraph 10.3.

10.2

- (a) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:
 - (i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and
 - (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.
- (b) The party receiving a notice under paragraph 10.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.
- (c) Promptly, (and in any event within 20 Working Days) following service of a response pursuant to paragraph 10.2(b), the parties shall use reasonable endeavours to agree the wording of the proposed ETCS Amendments and the date on which they are to have effect.
- (d) If:
 - (i) the parties agree to make ETCS Amendments pursuant to paragraph 10.2(c); or
 - (ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 10.2(a), or prior to that date the parties agree that it is unlikely that agreement will be reached within that period,

they shall notify ORR.

10.3

- (a) If ORR:
 - (i) receives a notification under paragraph 10.2(d); or
 - (ii) proposes to make ETCS Amendments itself,

then in deciding whether to approve, determine or make (as the case may be) the ETCS Amendments it shall:

- (A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and
 - (B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.
- (b) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 10.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

Appendix 8A

Charter Service Variation Sum: £[●]

Joint Cancellation Sum: £[●]

Network Rail Cancellation Sum: £[●]

Network Rail Payment Rate: £[●] per NR Performance Minute

Network Rail Annual Cap: £[●]

Network Rail Benchmark (NRB): the NRB in relation to a Period shall be [●] Minutes Delay per 100 Train Operator Miles

Train Operator Payment Rate: £[●] per TO Performance Minute

Train Operator Annual Cap: £[●]

Train Operator Benchmark (TOB): the TOB in relation to each Period shall be [●] Minutes Delay per 100 Train Operator Miles

Third Party User Cancellation Minutes: [●] minutes

Baseline Annual Train Mileage: shall be [●]

Version 14

Effective date: 1st April 2018

Traction Electricity Rules

Explanatory Note

These Traction Electricity Rules set out:

- (A) for the purposes of calculating the Traction Electricity Charge:
 - (i) provisions relating to the calculation of Traction Electricity Charges based on actual metered consumption including:
 - (a) the process for collecting electricity consumption data and other related data from metering equipment installed on trains and supplying it to Network Rail; and
 - (b) the rules which apply where metered data is missing or not supplied to Network Rail within the prescribed time;
 - (ii) provisions relating to the calculation of Traction Electricity Charges for unmetered vehicles using a consumption rate extrapolated from metered data (Partial Fleet Metering);
 - (iii) provisions for applying Regenerative Braking Discounts to modelled consumption rates for those train operators using regenerative braking;
- (B) a rules change process for amending these Traction Electricity Rules (Note: where ORR carries out an access charges review which relates to track access contracts incorporating these Traction Electricity Rules, any amendments to those track access contracts to give effect to the conclusions of such access charges review may also include amendments to these rules made pursuant to Schedule 4A to the Railways Act 1993, rather than pursuant to the rules change process set out herein);
- (C) the volume and cost reconciliation provisions that apply to train operators using electric traction; and
- (D) other provisions relating to the procurement and billing of traction electricity.

This Explanatory Note does not form part of the Traction Electricity Rules.

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APPENDIX 1: TEMPLATE LOOK-UP TABLES

APPENDIX 2: (Not used)

APPENDIX 3: NETWORK RAIL DISTRIBUTION SYSTEM LOSS FACTORS

APPENDIX 4: (Not used)

APPENDIX 5: THE GEOGRAPHIC AREAS

APPENDIX 6: PERCENTAGE LOADING FACTORS

[Network Rail comment: Table of Contents to be updated]

1. Definitions and Interpretation

1.1 Unless otherwise defined in these Traction Electricity Rules or the context requires otherwise, words and expressions used in these Traction Electricity Rules shall have the meanings, constructions and interpretation ascribed to them in the relevant track access contract.

1.2 In these Traction Electricity Rules, unless the context otherwise requires:

“**Act**” means the Railways Act 1993;

“**AC System**” means the alternating current system of electricity traction supply on the Network;

“**Bimodal Electric Multiple Unit**” has the meaning ascribed to it in Schedule 7 of the relevant track access contract;

“**Bimodal Locomotive**” has the meaning ascribed to it in Schedule 7 of the relevant track access contract;

“**Charge Correction Amount**” has the meaning ascribed to it in paragraph 18.3A of these Traction Electricity Rules;

“**Charter Train Operator**” means a train operator whose track access agreement is based on the model agreement entitled "Track Access Contract (Charter Passenger Services)" published by ORR (as either the train operator's agreement or the model agreement are amended from time to time with the approval of ORR);

“**Consist Tonnage**” means, in respect of a Journey, the weight (in tonnes) of the Specified Equipment for that Journey divided by the number of operating locomotives forming part of such Specified Equipment;

“**Consultees**” means all Metered Train Operators, all freight or regular scheduled passenger operators of trains using electric traction, and freight or regular scheduled passenger operators of trains that do not use electric traction who give notice to Network Rail that they are seeking either new track access contracts or amendments to existing track access contracts which will involve them using trains using electric traction;

“**Consumption Data**” means data in respect of the amount of electricity consumed (in kWh);

“**Cost Reconciliation**” means, for each train operator ω , the process for the calculation and payment of the supplementary amount $S_{2\omega}$ set out in paragraph 18 of these Traction Electricity Rules;

“**Data Record**” means a record of either: (a) Consumption Data; (b) Regenerative Braking Data; or (c) GPS Data, as the case may be, in respect of each 5-minute period during a Journey or Non-Journey;

“**DC System**” means the direct current system of electricity traction supply on the Network;

~~“Default Modelled Consumption Rate” means the rate entitled “Traction Electricity Model Default Rate” set out in the Traction Electricity Modelled Consumption Rates List, and applied to New Modelled Trains; [Network Rail comment: We suggest replacing this with the defined term “Traction Electricity Modelled Default Rate”, which is the same as used as in Schedule 7 of the relevant track access contracts. See suggested definition below, and consequential changes throughout.]~~

“Delivery Costs” means those components of the traction electricity costs in respect of which the rate charged to Network Rail varies by Geographic Area g. These include costs associated with electricity supply industry transmission and distribution;

“Derived Rate” shall mean:

- (a) for PFM Year 1, the rate calculated in accordance with paragraph 14.13; and
- (b) for PFM Year 2 and subsequent PFM Years, the rate calculated in accordance with paragraph 14.14 or (in the case of a PFM Data Threshold Failure), determined in accordance with paragraph 14.17;

“Electricity Data” means Consumption Data and (where relevant) Regenerative Braking Data;

“Electricity Type (AC/DC)” means either the alternating current (AC), or the direct current system (DC) of electricity supplied through the electrification system;

“EMU Length” means the number of individual vehicles in the electric multiple unit;

“Energy Costs” means all traction electricity costs that are not Delivery Costs;

“Geographic Area g” means the relevant geographic section of the Network as set out in Appendix 5;

“GPS Data” means data in respect of geographical location;

“Gross Tonne Mile” or **“gtm”** means:

- (i) for passenger operators, in relation to a train, a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question; and
- (ii) for freight operators, in respect of each locomotive, loaded wagon, empty wagon or coaching stock, the Locomotive Miles, Loaded Wagon Miles, Empty Wagon Miles or Coaching Stock Miles multiplied by the relevant Locomotive Weight, Loaded Wagon Weight, Empty Wagon Weight or Coaching Stock Weight respectively;

“Infill Value” means the relevant value in respect of Consumption Data or Regenerative Braking Data, as the case may be, set out in the Journey Look-Up

Tables or the value in respect of Consumption Data set out in the Non-Journey Look-Up Table, as the case may be;

"Initial Opt-in Notice" has the meaning ascribed to it in paragraph 14.1;

"Initial PFM Rate" means, in respect of a particular Metered Train Operator, the first PFM Rate to take effect in respect of any of its PFM Fleets;

"Journey" means a movement of Specified Equipment which has a designated headcode;

"Journey Look-Up Tables" means the tables containing Data Records in respect of Consumption Data and Regenerative Braking Data calculated or otherwise determined in accordance with paragraph 3, the templates for which are set out in Tables 1.1 and 1.2 respectively (in the case of passenger journeys) or Tables 1.3 and 1.4 respectively (in the case of freight and locomotive-hauled passenger journeys) in appendix 1;

"kgtm" means 1000 Gross Tonne Miles;

"Look-Up Tables" means the Journey Look-Up Tables and the Non-Journey Look-Up Table;

"Metered Charges" means the amounts E_{tme} , E_{tmuAC} and E_{tmuDC} which are calculated using metered consumption data in accordance with Schedule 7 of the relevant track access contract;

"Metered Data" means Electricity Data and GPS Data in respect of a train which has been collected from the train's On-Train Meter;

"Metered Train m" means, as the context requires, either:

- (a) a train of a particular type; or
- (b) a specific train having a train ID,

in either case as specified in Appendix 7D or Appendix 3 to Schedule 7 of the relevant track access contract

"Metered Train Operator" means a train operator whose Traction Electricity Charge is calculated (either wholly or partly) based on metered consumption data, and/or a train operator who has notified Network Rail that it intends to amend its track access contract to calculate its Traction Electricity Charge based (either wholly or partly) on metered consumption data from the start of the next financial year;

"Metering Audit" means the exercise by Network Rail, the Metered Train Operator or any other train operator of any of the rights set out in paragraph 16.2(A), 16.10 or 16.19 respectively, as the case may be;

"Modelled Train Operator" means a train operator, other than a Charter Train Operator, that is charged by Network Rail for traction electricity based on

modelled consumption rates or the ~~Default~~Traction Electricity Modelled ~~Consumption~~Default Rate, and which is not a Metered Train Operator;

“Net Infilled Electricity Data Value” means, in respect of a particular Period, the total value (in kWh) of Data Records for Consumption Data which have been substituted with Infill Values, less the total value (in kWh) of Data Records for Regenerative Braking Data which have been substituted with Infill Values;

“Network Rail Distribution System Loss Factor” means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail’s meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in Appendix 3 of these Traction Electricity Rules;

“Network Rail Metering Data Interface Specification” means a document which shall be updated by Network Rail from time to time, in which Network Rail shall specify, in accordance with any applicable standards, the manner and format in which Metered Data shall be provided to it;

~~**“New Modelled Train”** means a type of passenger train operated by a Modelled Train Operator in relation to which no train category i, and no modelled consumption rate, is shown in either the Passenger or Generic tables in the Traction Electricity Modelled Consumption Rates List, or the PFM Rates List;~~

~~**“New Modelled Train”** has the meaning ascribed to it in Schedule 7 of the relevant track access contract; **[Network Rail comment: We suggest that the definition cross-refers to the relevant track access contract, for consistency (we note that the definition as originally proposed differed to the definition in the track access contracts.)]**~~

“Non-Journey” means a period during which the Specified Equipment is parked or laid up for maintenance or other purposes and is consuming electricity, in relation to which there is no designated headcode;

“Non-Journey Look-Up Table” means a table containing Consumption Data calculated or otherwise determined in accordance with paragraph 3, a template for which is set out in Table 2.1 in appendix 1;

“Office of Rail and Road” has the meaning ascribed to it in Section 15 of the Railways and Transport Safety Act 2003, and "ORR" shall be construed accordingly;

“On-Train Meter” means a meter or other device or technology which measures a train’s actual consumption of electricity, geographic location and, where relevant, electricity generated by braking and **“On-Train Metering”** shall be construed accordingly;

“On-Train Metering Commencement Date” means the date from which Metered Data is first used to calculate all or part of the Train Operator’s Traction Electricity Charge;

“Opt-in Notice” has the meaning ascribed to it in paragraph 14.1;

“OTM Incentive Charge” means the additional amount payable by the Metered Train Operator to Network Rail as a consequence of paragraph 7.1 of these Traction Electricity Rules;

“OTM Incentive Year” means the period of 13 consecutive Periods including and immediately preceding the relevant Trigger Period;

“Partial Fleet Metering” means the method of calculating the element of the Traction Electricity Charge relating to Unmetered Vehicles in a PFM Fleet using PFM Rates;

“Percentage Loading Factor” means the relevant factor that represents the relationship between electricity consumption and the number of electric multiple units in a train, applied to modelled consumption rates as applicable, as set out in the table in Appendix 6 of these Traction Electricity Rules;

“Period” means:

- (a) in the case of passenger operators, 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 seven days on reasonable prior notice from Network Rail to the train operator; and
- (b) in the case of freight operators, each period of 28 days which coincides with a Network Rail accounting period save that:
 - (i) the first period and the last period may be of less than 28 days if:
 - (A) the date of signature of the relevant track access contract does not coincide with the first day of one of Network Rail’s accounting periods; or
 - (B) the Expiry Date does not coincide with the last day of one of Network Rail’s accounting periods; and
 - (ii) the duration of the first and last such period in any Financial Year may be varied so as to coincide with the duration of Network Rail’s accounting periods by notice from Network Rail to the train operator;

“PFM Data Threshold” has the meaning ascribed to it in paragraph 14.4(A);

“PFM Data Threshold Failure” has the meaning ascribed to it in paragraph 14.16;

“PFM Effective Date” shall have the meaning ascribed to it in paragraph 14.8(A);

“PFM Financial Spreadsheet” means the financial spreadsheet model for calculating the PFM Rate, as published on Network Rail’s website from time to time;

"PFM Fleet" means a fleet of electric multiple units of the same vehicle type operating on the same Train Service Code, comprised partially of Metered Trains;

"PFM Qualification Threshold" has the meaning ascribed to it in paragraph 14.4(B);

"PFM Rate" means a modelled traction electricity consumption rate (in kWh per electrified Train Mile) for Unmetered Vehicles within a PFM Fleet applicable for 13 Periods, calculated in accordance with paragraphs 14.12 to 14.18 of these Traction Electricity Rules;

"PFM Rates List" means the document entitled the "PFM Rates List" published by Network Rail on its website and specifying PFM Rates, as updated from time to time in accordance with these Traction Electricity Rules;

"PFM Year" means, in respect of the PFM Rate for a particular PFM Fleet, each period of 13 (thirteen) consecutive Periods from the PFM Effective Date;

"PFM Year 1" means the first PFM Year following the PFM Effective Date, **"PFM Year 2"** means the second PFM Year following the PFM Effective Date and so on;

"PFM Year 0" means the period of 13 (thirteen) consecutive Periods up to and including the date on which the PFM Qualification Threshold was met;

"Previous PFM Year" means:

- (a) for the purpose of calculating the first PFM Rate to apply in respect of a particular PFM Fleet following the issue of an Opt-in Notice, PFM Year 0; and
- (b) for the purpose of calculating the PFM Rate to apply in respect of any other PFM Year, the immediately previous PFM Year;

"Prospective Metered Train Operator" means any train operator that has an application pending with ORR for approval of amendments to its track access contract by which its traction electricity charge would be based on metered consumption data;

"Regenerative Braking Audit" means the exercise by Network Rail, or a train operator of any of its rights set out in paragraph 16 in relation to the review of any Regenerative Braking System operated by any train operator;

"Regenerative Braking Data" means data in respect of the amount of electricity (in kWh) generated by braking;

"Regenerative Braking Discount" means the discount, applied by Network Rail in accordance with paragraph 15.1(B) in calculating the train operator's Traction Electricity Charges, which is provided in return for the train operator operating a Regenerative Braking System in respect of any vehicle for which the Traction Electricity Charges are payable based on modelled consumption ~~rates or the Default Modelled Consumption Rate~~; [Network Rail comment: As referred to in the main body of our response, we consider that services being charged a default modelled consumption rate should not be able to receive the Regenerative Braking Discount.]

“Regenerative Braking System” means a system used to generate electricity by braking;

“Relevant Complaint” means a complaint by a Consultee about the consultation process, or a complaint by a Metered Train Operator or a Modelled Train Operator about any part of the change procedure set out in paragraphs 17.1 to 17.16;

“Relevant Vehicle Categories” means the classes or sub-classes, as appropriate, of vehicle within a particular service code or service group, and using either the AC System or the DC System, as applicable;

“Relevant Year” means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; **“Relevant Year t”** means the Relevant Year for the purposes of which any calculation falls to be made; **“Relevant Year t-1”** means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

“Scheduled Call” in relation to the definition of Regenerative Braking Discount above, means a scheduled stop at a station for the purpose of allowing passengers to join or leave the service or train (including the stops where the service or journey starts and ends);

“Specified Equipment” has the meaning ascribed to it in Clause 1.1 of the relevant track access contract;

“Tariff band” means the tariff zone and time band in which the train in question is operated;

“Traction Electricity Modelled Default Rate” has the meaning ascribed to it in Schedule 7 of the relevant track access contract; **[Network Rail comment: See above comment re. definition of “Default Modelled Consumption Rate”]**

“Traction-Train Compatible” has the meaning ascribed to it in Schedule 7 of the relevant track access contract;

“Total Net Electricity Data Value” means, in respect of a particular Period, the total value (in kWh) of Data Records for Consumption Data (derived from both Metered Data and Infill Values) less the total value (in kWh) of Data Records for Regenerative Braking Data (derived from both Metered Data and Infill Values);

“Traction Electricity Charge” has the meaning ascribed to it in Schedule 7 of the relevant track access contract;

“Traction Electricity Modelled Consumption Rates List” has the meaning ascribed to it in Schedule 7 to the relevant track access contract;

“Train category” means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List or PFM Rates List, being either:

- (a) where there is no PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code:

- (i) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP6"; or
- (ii) where there is a generic consumption rate for a passenger vehicle type not referred to in paragraph (a)(i), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP6", or
- (b) where there is a PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the PFM Rates List; or
- (c) in respect of all electrified freight services, the relevant category set out in the table entitled "Freight Traction Electricity Modelled Consumption Rates for CP6";

~~For the avoidance of doubt, in respect of any New Modelled Train, the Traction Electricity Modelled Default Rate shall apply;~~

[Network Rail comment: We propose that this definition ends at paragraph (c) and does not include ORR's proposed wording beginning "For the avoidance of doubt,....". This definition explains where each particular train category (i) is listed, whereas the "For the avoidance of doubt" wording relates to the electricity consumption rate that applies to New Modelled Trains. Furthermore, as the definition of a New Modelled Train is one for which "no train category i" exists, it is unnecessary to refer to a New Modelled Train in this definition.]

"Train Mile" means in relation to a train, or a portion of a train, a mile travelled by that train, or that portion of a train, on the Network;

"Train Operator Energy Costs" the amount of E_t (calculated in accordance with Schedule 7 of the relevant train operator's track access contract) plus $S1_{tw}$ (calculated in accordance with paragraph 18.2 of these Traction Electricity Rules) payable in respect of Energy Costs;

"Train Operator Delivery Costs" the amount of E_t (calculated in accordance with Schedule 7 of the relevant train operator's track access contract) plus $S1_{tw}$ (calculated in accordance with paragraph 18.2 of these Traction Electricity Rules) payable in respect of Delivery Costs;

"Train Service Code" in the case of passenger operators has the meaning ascribed to it in paragraph 1.1 of Schedule 5 of the relevant track access contract, and in the case of freight operators means the eight character code used to identify Services ("Services" is defined in Clause 1.1 of the relevant track access contract);

"Trigger Period" has the meaning given to it in paragraph 7.1 of these Traction Electricity Rules;

"Unmetered Vehicles" means vehicles in a PFM Fleet which are not Metered Trains;

"Vehicle Mile" (in the case of passenger operators) in relation to a railway vehicle means a mile travelled by that vehicle on the Network;

"Volume Reconciliation" means, for each train operator ω , the process for the calculation and payment of the supplementary amount $S1_{\omega}$ set out in paragraph 18 of these Traction Electricity Rules;

"Working Day" has the meaning ascribed to it in Clause 1.1 of the relevant track access contract.

1.3 In these Traction Electricity Rules, unless the context otherwise requires:

(A) These Traction Electricity Rules

References to these Traction Electricity Rules mean these Traction Electricity Rules as modified from time to time.

(B) Appendices and paragraphs

References to appendices and paragraphs are to appendices and paragraphs of these Traction Electricity Rules.

(C) Definitions in the Act

Terms and expressions defined in the Act shall, unless the contrary intention appears, have the same meaning in these Traction Electricity Rules.

(D) Statutory provisions

References to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re-enactments (whether with or without modification).

(E) Interpretation Act

Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in these Traction Electricity Rules and the rules of interpretation contained in that Act shall apply to the interpretation of these Traction Electricity Rules.

(F) Include

The words "include" and "including" are to be construed without limitation.

(G) Other documents etc.

Any agreement, instrument, licence, standard, timetable, code or other document referred to in these Traction Electricity Rules or entered into,

approved, authorised, accepted or issued by a person pursuant to these Traction Electricity Rules shall be construed, at the particular time, as a reference to that agreement, instrument, licence, standard, timetable, code or other document, as it may then have been amended, varied, supplemented or novated.

(H) Conflict

In the event of any conflict of interpretation between these Traction Electricity Rules and an Access Agreement (not including these Traction Electricity Rules) the following order of precedence shall apply:

- (1) these Traction Electricity Rules; and
- (2) the Access Agreement.

(I) Time limits

Where in these Traction Electricity Rules any obligation of a party is required to be performed within a specified time limit that obligation shall continue after that time limit if the party fails to comply with that obligation within the time limit.

(J) Headings

The headings and references to headings shall be disregarded in construing these Traction Electricity Rules.

(K) Ruling language

All notices served under these Traction Electricity Rules shall be in the English language.

2. On-Train Metering - General

- 2.1 The Metered Train Operator shall ensure that its On-Train Meters comply with all relevant industry standards (to the extent that such standards are applicable to the Metered Train Operator).
- 2.2 The Metered Train Operator shall collect Metered Data from all of its On-Train Meters and shall provide such data to Network Rail in accordance with the Network Rail Metering Data Interface Specification (or as otherwise agreed between that Metered Train Operator and Network Rail), within 7 (seven) days of the day on which such data was generated.
- 2.3 In the event that any Data Records are missing from the Metered Data collected by the Metered Train Operator, Network Rail shall provide data calculated in accordance with paragraphs 4, 5 or 6 (as the case may be) in place of such missing Data Records.
- 2.4 In the event that the Metered Train Operator fails to provide any Metered Data to Network Rail within the 7 (seven) day period referred to in paragraph 2.2, the provisions of paragraphs 4.2 and 5.2 as applicable shall apply for the purposes of calculating that part of the Traction Electricity Charge relating to such data

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(except any part of such charge calculated using PFM Rates, in respect of which the provisions set out in paragraph 14 apply).

- 2.5 The Metered Train Operator shall use reasonable endeavours to notify Network Rail as soon as reasonably practicable of any changes to information relating to its vehicles (including but not limited to vehicle IDs) which Network Rail requires for the purposes of calculating that part of the Traction Electricity Charge based on Metered Data (or Infill Values).
- 2.6 Not used.
- 2.7 Each Metered Train Operator acknowledges that, for the purposes of calculating the Traction Electricity Charge, it shall only be charged based on Metered Data in respect of those metered trains specified in Appendix 7D of Part 2 of Schedule 7 (in the case of passenger operators) or Appendix 3 of Schedule 7 (in the case of freight operators) of its track access contract, in accordance with the provisions of that contract once Network Rail confirms that data-flow and billing system tests have been completed successfully.

3. Look-Up Tables

Journeys

- 3.1 Network Rail shall create and maintain Journey Look-Up Tables for each Metered Train Operator.
- 3.2 Subject to paragraphs 3.3 and 3.9:
 - (A) in the case of non locomotive-hauled passenger journeys, in relation to each Journey for a particular Train Service Code, Specified Equipment, Geographic Area, Electricity Type (AC/DC), EMU Length and number of units, the Journey Look-Up Tables shall include the mean value of:
 - (1) Consumption Data per 5-minute period; and
 - (2) where relevant, Regenerative Braking Data per 5-minute period,which shall be calculated using Metered Data for the previous Period; or
 - (B) in the case of freight and locomotive-hauled passenger journeys, in relation to each Journey for a particular Train Service Group, Specified Equipment, Geographic Area, Electricity Type (AC/DC) and number of units, the Journey Look-Up Tables shall include the mean value of:
 - (1) Consumption Data per 5-minute period per tonne; and
 - (2) where relevant, Regenerative Braking Data per 5-minute period per tonne,which shall be calculated using Metered Data for the previous Period.
- 3.3 If, in Network Rail's reasonable opinion, there is insufficient Metered Data for a particular Period to update the Journey Look-Up Table in accordance with paragraph 3.2, then Network Rail and the Metered Train Operator shall seek to

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agree the values to be included in the Journey Look-Up Table. If the parties are unable to agree within 7 (seven) days after the start of the relevant Period then Network Rail shall determine (acting reasonably) the values to be included in the Journey Look-Up Table for that Period.

Non-Journeys

- 3.4 Network Rail shall create and maintain a Non-Journey Look-Up Table for each Metered Train Operator.
- 3.5 Subject to paragraphs 3.6 and 3.9, in relation to Non-Journeys in each Geographic Area for particular Specified Equipment and Electricity Type (AC/DC), the Non-Journey Look-Up Table shall include the mean value of Consumption Data per 5-minute period of each relevant Non-Journey, which shall be calculated using Metered Data for the previous Period.
- 3.6 If, in Network Rail's reasonable opinion, there is insufficient Metered Data for a particular Period to update the Non-Journey Look-Up Table in accordance with paragraph 3.5, then Network Rail and the Metered Train Operator shall seek to agree the values to be included in the Non-Journey Look-Up Table. If the parties are unable to agree within 7 (seven) days after the start of the relevant Period then Network Rail shall determine (acting reasonably) the values to be included in the Non-Journey Look-Up Table for that Period.

General

- 3.7 Network Rail shall update the Look-Up Tables as soon as reasonably practicable after the start of each Period. The form of the Look-Up Tables shall be as set out in appendix 1, unless otherwise agreed between the parties.
- 3.8 ORR approval shall not be required for the creation or updating of the Look-Up Tables.
- 3.9 Unless sufficient relevant Metered Data is available in Network Rail's reasonable opinion, the Journey Look-Up Tables and the Non-Journey Look-Up Tables for the first Period and any subsequent consecutive Period following the On-Train Metering Commencement Date for a particular train category i shall be created using the modelled consumption rates shown in the Traction Electricity Modelled Consumption Rates List and, where relevant, the appropriate Regenerative Braking Discount.
- 3.10 In addition to any other rights of the Metered Train Operator, whether contained in its track access contract or otherwise, copies of the Metered Train Operator's current Look-Up Tables shall be made available by Network Rail to such Metered Train Operator upon request by the Metered Train Operator at all reasonable times.

4. Missing Data Records (Electricity Data) for Journeys

- 4.1 If, in respect of a Journey, any Data Record in relation to either Consumption Data or Regenerative Braking Data is missing from the Metered Data, the missing Data Record shall be substituted with the relevant Infill Value contained in the Journey Look-Up Tables and (in the case of freight and locomotive-hauled passenger journeys only) multiplied by the Consist Tonnage.

4.2 If, in respect of a Journey, Metered Data in respect of Electricity Data is not provided by the Metered Train Operator to Network Rail within 7 days (pursuant to paragraph 2.2 above), the missing Data Records for Consumption Data and Regenerative Braking Data shall be substituted with the relevant Infill Values contained in the Journey Look-Up Tables and (in the case of freight and locomotive-hauled passenger journeys only) multiplied by the Consist Tonnage.

5. Missing Data Records (Electricity Data) for Non-Journeys

5.1 If, in respect of a Non-Journey, any Data Record in relation to either Consumption Data or Regenerative Braking Data is missing from the Metered Data, the missing Data Record shall be substituted with the relevant Infill Value contained in the Non-Journey Look-Up Table.

5.2 If, in respect of a Non-Journey, Metered Data in respect of Consumption Data and Regenerative Braking Data is not provided by the Metered Train Operator to Network Rail within 7 days (pursuant to paragraph 2.2 above), the missing Data Records shall be substituted with the relevant Infill Values contained in the Non-Journey Look-Up Table.

6. Missing GPS Data

6.1 If, in respect of a Journey, any Data Record is missing from the GPS Data, the missing Data Record shall be interpolated as appropriate using the actual recorded GPS Data.

7. Consequences of use of Infill Values above threshold

7.1 If, in any Period following the On-Train Metering Commencement Date, the Net Infilled Electricity Data Value expressed as a percentage of the Total Net Electricity Data Value is greater than the percentage shown in Table 7.1: Threshold Percentage table, the OTM Incentive Charge for such Period (the “**Trigger Period**”) shall be as follows:

(1) in the first Trigger Period in any OTM Incentive Year, the OTM Incentive Charge shall be 5% of the Metered Charges for Infilled Values; and

(2) in the second or any further Trigger Period in any OTM Incentive Year, the OTM Incentive Charge shall be 10% of the Metered Charges for Infilled Values.

Table 7.1: Threshold percentage table

Period Since On-Train Metering Commencement Date				
Periods 1-3	Periods 4-6	Periods 7-9	Periods 10-13	All later Periods
30%	25%	20%	15%	10%

7.2 Network Rail shall pay to each Metered Train Operator which consumes traction electricity a portion of the total amount of all OTM Incentive Charges received by Network Rail from Metered Train Operators pursuant to paragraph 7.1 in each Relevant Year for such train operator for that Relevant Year, calculated in accordance with the following formula:

$$PTO_t = \frac{A_t \times TIC_t}{B_t}$$

where:

- PTO_t means the proportional amount of OTM Incentive Charges payable to the train operator for Relevant Year t;
- A_t means the amount of the train operator's metered Traction Electricity Charge (where relevant, following the Cost Reconciliation) in Relevant Year t;
- B_t means the total amount of metered Traction Electricity Charges (where relevant, following the Cost Reconciliation) for all train operators in Relevant Year t;
- TIC_t means the total OTM Incentive Charges received by Network Rail from all Metered Train Operators pursuant to paragraph 7.1 in Relevant Year t.

8. Data to be published by Network Rail

8.1 Within 14 (fourteen) days following the end of each Period, Network Rail shall publish the following data in respect of each Metered Train Operator:

- (A) the Total Net Electricity Data Value for such Period; and
- (B) the Net Infilled Electricity Data Value for such Period expressed as a percentage of the Total Net Electricity Data Value for such Period.

9. (Not used)

10. Network Rail Distribution System Loss Factor

10.1 Appendix 3 to these Traction Electricity Rules sets out the Network Rail Distribution System Loss Factor for each Traction electricity Geographic Area (g) the AC System (λ_{ACg}) and the DC System (λ_{DCg}) for the purposes of calculating the Traction Electricity Charge.

11. (Not used)

12. (Not used)

13. (Not used)

14. Partial Fleet Metering

Opting-in to Partial Fleet Metering

14.1 A Metered Train Operator who operates a PFM Fleet may opt-in to Partial Fleet Metering in respect of such PFM Fleet at any time during a Relevant Year by giving written notice to Network Rail in accordance with paragraphs 14.1 to 14.3 ("**Opt-in Notice**"). The first such notice issued by a Metered Train Operator shall be the "**Initial Opt-in Notice**" for that Metered Train Operator.

14.2 The Opt-in Notice shall contain:

- (A) a list of the PFM Fleet(s) in respect of which the Metered Train Operator reasonably considers that the PFM Qualification Threshold will be met, specifying in each case the relevant vehicle type and Train Service Code; and
- (B) the date on which the Metered Train Operator reasonably considers that the PFM Qualification Threshold will be met for each PFM Fleet specified.

14.3 The Opt-in Notice shall be provided to Network Rail no less than 90 (ninety) days prior to the date on which the Metered Train Operator reasonably considers that the PFM Qualification Threshold will be met for each relevant PFM Fleet specified in the Opt-in Notice, unless agreed otherwise with Network Rail.

PFM Data Threshold and PFM Qualification Threshold

14.4 In respect of a particular PFM Fleet:

- (A) the **PFM Data Threshold** shall be met in respect of a particular Period where the Metered Train Operator has provided to Network Rail metered Electricity Data for that PFM Fleet in respect of Journeys on no less than 20% of the total electrified Train Miles for that Period; and
- (B) the **PFM Qualification Threshold** shall be met where the PFM Data Threshold has been met for 13 (thirteen) consecutive Periods.

For the purpose of this paragraph 14.4, "metered Electricity Data" means Electricity Data from the Metered Trains in the relevant PFM Fleet which has been provided to Network Rail in accordance with these Traction Electricity Rules.

14.5 Metered Train Operators that opt-in to Partial Fleet Metering shall use reasonable endeavours to ensure that, in respect of the PFM Fleet(s) specified in the Opt-in Notice, those trains that are selected to be metered are representative of the PFM Fleet as a whole (including in respect of the usage of Regenerative Braking Systems).

Calculation and agreement or determination of PFM Rates

14.6 Following the receipt of an Opt-in Notice and once the PFM Qualification Threshold has been met in respect of the PFM Fleet(s) specified in the Opt-in Notice, Network Rail shall calculate the proposed PFM Rate for PFM Year 1 for each PFM Fleet specified in the Opt-in Notice in accordance with paragraphs 14.12 to 14.18.

14.7 Following the calculation by Network Rail of the proposed PFM Rate in respect of a particular PFM Fleet and PFM Year, Network Rail shall promptly notify the Metered Train Operator in writing of the proposed PFM Rate for the Metered Train Operator to agree or dispute as follows:

- (A) If the Metered Train Operator disputes Network Rail's calculation of the proposed PFM Rate, then, within 28 (twenty eight) days of that notification, the Metered Train Operator shall refer the matter to ORR for determination, failing which it shall be deemed to agree to Network Rail's calculation.

- (B) If the Metered Train Operator agrees (or is deemed to agree) with Network Rail's calculation of the proposed PFM Rate, Network Rail shall promptly request ORR's consent to the proposed PFM Rate (and shall provide a copy of its request to the Metered Train Operator). ORR may then give its consent, withhold its consent or determine the PFM Rate as it considers appropriate.

In either case (whether the referral to ORR is for consent or determination), the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require. Such information and evidence may include details of PFM Fleets operated by the Metered Train Operator which meet the Qualification Threshold but in respect of which the Metered Train Operator has not issued an Opt-in Notice. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to withhold its consent, or, as the case may be, determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

PFM Effective Date (respecting the year-end reconciliation provisions)

14.8 Once ORR has consented to or determined the PFM Rate in respect of a particular PFM Fleet and PFM Year, and provided that the Metered Train Operator's track access contract includes provision for PFM Rates to apply, such PFM Rate shall apply for 13 (thirteen) consecutive Periods from the date specified by ORR in its consent or determination, and Network Rail shall update the PFM Rates List accordingly within 28 (twenty-eight) days of such consent or determination. Provided always that it shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined such PFM Rate, and unless ORR specifies otherwise, the date shall be:

- (A) in the case of the Initial PFM Rate for a particular Metered Train Operator, the first day of the Period immediately following the Period in which the PFM Qualification Threshold was met following the issue of the Initial Opt-in Notice, unless such day would fall in January, February or March, in which case the date shall be the following 1 April (the date determined in accordance with this paragraph being the "**PFM Effective Date**"); and
- (B) in the case of annual revisions to an existing PFM Rate and any new PFM Rates for a particular Metered Train Operator, the relevant anniversary of the PFM Effective Date applicable to such Metered Train Operator.

14.9 Each PFM Rate shall be revised annually in accordance with paragraph 14.10.

14.10 Following the end of each PFM Year, Network Rail shall promptly calculate the proposed revised PFM Rate for the relevant PFM Fleet in accordance with paragraphs 14.12 to 14.18. Following such calculation, the revised PFM Rate shall be agreed or determined in accordance with paragraphs 14.7 to 14.8.

No reversion to modelled rate

14.11 Following the PFM Effective Date in respect of a particular PFM Fleet, PFM Rates shall apply in respect of such PFM Fleet unless and until all Unmetered Vehicles in such PFM Fleet become Metered Trains (at which point the PFM Fleet shall cease to be a PFM Fleet).

PFM Rate calculation methodology - general

14.12 Each PFM Rate shall be calculated using the PFM Financial Spreadsheet, in accordance with the methodology set out in paragraphs 14.13 to 14.18. In the event of any conflict or inconsistency between the PFM Financial Spreadsheet and these Traction Electricity Rules, these Traction Electricity Rules shall take precedence.

Creation of a kWh 'per Train Mile' Derived Rate

PFM Year 1

14.13 A derived electricity consumption rate shall be calculated for PFM Year 1 by summing the relevant consumption data from PFM Year 0 and then converting it into the relevant format for modelled usage (kWh per Train Mile) using the formula set out below:

$$\text{Derived Rate}_{i1} = \frac{K_{i0}}{M_{i0}} \cdot \frac{1}{(MU_{1i0} + MU_{2i0} + \dots + MU_{ni0})}$$

where, in respect of a particular PFM Fleet:

Derived Rate_{i1} means the derived electricity consumption rate in kWh / Train Mile, for train category i and for one electric multiple unit in PFM Year 1;

K_{i0} means the sum of the relevant consumption data for train category i in PFM Year 0 calculated using the formula below:

$$K_{i0} = \sum [P_{i0} \cdot (1 + A_{gi0} \Delta_{gi1}) - RGB_{i0}] \cdot N_{v0}$$

Where

Σ means the summation across PFM Year 0 as appropriate;

P_{i0} (the relevant metered data in kWh) means, for train category i and in PFM Year 0, the sum of Data Records (in kWh) for Journey Consumption Data that is Metered Data including Infill Values;

$A_{gi0} \Delta_{gi1}$ means the Network Rail Distribution System Loss Factor for train category i and in Geographic Area g as set out in Appendix 3 of these Traction Electricity Rules as applicable in PFM Year 01;

RGB_{i0} (the relevant regenerative braking data in kWh) means for train category i and in PFM Year 0, the sum of Data Records (in kWh) for Regenerative Braking Data that is Metered Data including Infill Values;

N_{v0} means the Non-Journey adjustment factor for PFM Year 0 and train category i calculated using the formula below:

$$N_{v0} = \frac{\Sigma T_{v0}}{\Sigma V_{v0}}$$

Where

Σ means the summation across PFM Year 0;

T_{v0} means the relevant metered data, calculated using the formula below;

$$T_{v0} = \Sigma [(P_{vJ0} \cdot (1 + A_{gv0} \Delta_{gv1}) - RGB_{vJ0}) + (P_{vN0} \cdot (1 + A_{gv0} \Delta_{gv1}) - RGB_{vN0})]$$

Where

Σ means the summation across PFM Year 0 and relevant Train Service Codes as appropriate;

P_{vJ0} means the sum of Data Records (in kWh) for Journey Consumption Data that is Metered Data, including Infill Values, for vehicle class V;

$A_{gv0} \Delta_{gv1}$ means the Network Rail Distribution System Loss Factor for vehicle class V and in Geographic Area g as set out in Appendix 3 of these Traction Electricity Rules as applicable in PFM Year 01;

RGB_{vJ0} means for vehicle class V, the sum of Data Records (in kWh) for Regenerative Braking Data that is Journey Consumption Data and is Metered Data including Infill Values;

P_{vN0} means the sum of Data Records (in kWh) for Non-Journey Consumption Data that is Metered Data including Infill Values, for vehicle class V;

RGB_{vN0} means for vehicle class V, the sum of Data Records (in kWh) for Regenerative Braking Data that is Non-Journey Consumption Data and is Metered Data including Infill Values;

V_{v0} means the relevant metered data, calculated using the formula below;

$$V_{v0} = \Sigma [(P_{vJ0} \cdot (1 + A_{gv0} \Delta_{gv1}) - RGB_{vJ0})]$$

Where

Σ means the summation across PFM Year 0 and relevant Train Service Codes as appropriate;

P_{vJ0} means the sum of Data Records (in kWh) for Journey Consumption Data that is Metered Data, including Infill Values, for vehicle class V;

$\lambda_{gv0}\lambda_{gv1}$ means the Network Rail Distribution System Loss Factor for vehicle class V and in Geographic Area g as set out in Appendix 3 of these Traction Electricity Rules as applicable in PFM Year 01; and

RGB_{vJ0} means for vehicle class V, the sum of Data Records (in kWh) for Regenerative Braking Data that is Journey Consumption Data and is Metered Data including Infill Values;

M_{i0} means the total electrified Train Miles by Metered Trains for train category i in PFM Year 0; and

$MU_{x_{i0}}$ means the Percentage Loading Factor for MU_{x_i} multiplied by the total metered Train Miles by MU_{x_i} and divided by the total metered Train Miles of the PFM Fleet for train category i in PFM Year 0 (where x is a positive number which denotes the number of electric multiple units), as set out in the formula below:

$$MU_{x_{i0}} = PLF_{x_{i0}} \cdot \frac{M_{x_{i0}}}{M_{i0}}$$

Where

$PLF_{x_{i0}}$ means the relevant Percentage Loading Factor in PFM Year 0 as set out in Appendix 6 of these Traction Electricity Rules;

$M_{x_{i0}}$ means the total electrified Train Miles by Metered Trains consisting of x number of electric multiple units for train category i in PFM Year 0; and

M_{i0} means the total electrified Train Miles by Metered Trains for train category i in PFM Year 0.

[Network Rail comment: We have proposed amendments to the formula in paragraph 14.13 so that the current Distribution System Loss Factor is used in the calculation, rather than the previous year's rate. The Distribution System Loss Factors may differ from one year to the next and this amendment will avoid a situation where an operator pays a rate that reflects and outdated assumption about losses.]

PFM Year 2 and subsequent PFM Years

14.14 A derived electricity consumption rate shall be calculated for PFM Year 2 and each subsequent PFM Year (relevant PFM Year y) by summing the relevant consumption data from PFM Year y-1 and then converting it into the relevant format for modelled usage (kWh per Train Mile) using the formula set out below:

$$\text{Derived Rate}_{iy} = \frac{K_{iy-1}}{M_{iy-1}} \cdot \frac{1}{(MU_{1iy-1} + MU_{2iy-1} + \dots + MU_{n_{iy-1}})}$$

where, in respect of a particular PFM Fleet:

Derived Rate_{iy} means the derived electricity consumption rate in kWh / Train Mile, for train category i and for one electric multiple unit in PFM Year y;

K_{iy-1} means the sum of the relevant consumption data for train category i in PFM Year y-1 calculated using the formula below:

$$K_{iy-1} = \sum [P_{iy-1} \cdot (1 + \lambda_{g_{iy-1}}) - \text{RGB}_{iy-1}] \cdot N_{vy-1}$$

Where

Σ means the summation across PFM Year y-1 as appropriate;

P_{iy-1} (the relevant metered data in kWh) means, for train category i and in PFM Year y-1, the sum of Data Records (in kWh) for Journey Consumption Data that is Metered Data including Infill Values;

λ_{g_{iy-1}} means the Network Rail Distribution System Loss Factor for train category i and in Geographic Area g as set out in Appendix 3 of these Traction Electricity Rules as applicable in PFM Year y-1;

RGB_{iy-1} (the relevant regenerative braking data in kWh) means for train category i and in PFM Year y-1, the sum of Data Records (in kWh) for Regenerative Braking Data that is Metered Data including Infill Values;

N_{vy-1} means the Non-Journey adjustment factor for PFM Year y-1 and train category i calculated using the formula below:

$$N_{vy-1} = \frac{\sum T_{vy-1}}{\sum V_{vy-1}}$$

Where

Σ means the summation across PFM Year y-1;

T_{vy-1} means the relevant metered data, calculated using the formula below;

$$T_{vy-1} = \Sigma [(P_{vJy-1} \cdot (1 + \lambda_{gvy-4}) - RGB_{vJy-1}) + (P_{vNy-1} \cdot (1 + \lambda_{gvy-1}) - RGB_{vNy-1})]$$

Where

Σ means the summation across PFM Year y-1 and relevant Train Service Codes as appropriate;

P_{vJy-1} means the sum of Data Records (in kWh) for Journey Consumption Data that is Metered Data, including Infill Values, for vehicle class V;

λ_{gvy-4} means the Network Rail Distribution System Loss Factor for vehicle class V and in Geographic Area g as set out in Appendix 3 of these Traction Electricity Rules as applicable in PFM Year y-4;

RGB_{vJy-1} means for vehicle class V, the sum of Data Records (in kWh) for Regenerative Braking Data that is Journey Consumption Data and is Metered Data including Infill Values;

P_{vNy-1} means the sum of Data Records (in kWh) for Non-Journey Consumption Data that is Metered Data including Infill Values, for vehicle class V;

RGB_{vNy-1} means for vehicle class V, the sum of Data Records (in kWh) for Regenerative Braking Data that is Non-Journey Consumption Data and is Metered Data including Infill Values;

V_{vy-1} means the relevant metered data, calculated using the formula below;

$$V_{vy-1} = \Sigma [(P_{vJy-1} \cdot (1 + \lambda_{gvy-4}) - RGB_{vJy-1})]$$

Where

Σ means the summation across PFM Year y-1 and relevant Train Service Codes as appropriate;

P_{vJy-1} means the sum of Data Records (in kWh) for Journey Consumption Data that is Metered Data, including Infill Values, for vehicle class V;

λ_{gvy-4} means the Network Rail Distribution System Loss Factor for vehicle class V and in Geographic Area g as set out in Appendix 3 of these Traction Electricity Rules as applicable in PFM Year y-4; and

RGB_{vjy-1} means for vehicle class V, the sum of Data Records (in kWh) for Regenerative Braking Data that is Journey Consumption Data and is Metered Data including Infill Values;

M_{iy-1} means the total electrified Train Miles by Metered Trains for train category i in PFM Year y-1; and

$MU_{x_{iy-1}}$ means the Percentage Loading Factor for MU_{x_i} multiplied by the total metered Train Miles by MU_{x_i} and divided by the total metered Train Miles of the PFM Fleet for train category i in PFM Year y-1 (where x is a positive number which denotes the number of electric multiple units), as set out in the formula below:

$$MU_{x_{iy-1}} = PLF_{x_{iy-1}} \cdot \frac{M_{x_{iy-1}}}{M_{iy-1}}$$

Where

$PLF_{x_{iy-1}}$ means the relevant Percentage Loading Factor in PFM Year y-1 as set out in Appendix 6 of these Traction Electricity Rules;

$M_{x_{iy-1}}$ means the total electrified Train Miles by Metered Trains consisting of x number of electric multiple units for train category i in PFM Year y-1; and

M_{iy-1} means the total electrified Train Miles by Metered Trains for train category i in PFM Year y-1.

[Network Rail comment: We have proposed amendments to the formula in paragraph 14.14 for the same reasons as explained in relation to the proposed amendments to the formula in paragraph 14.13.]

Failure to meet PFM Data Threshold – use of PFM Substitute Data

14.15 Subject to paragraphs 14.16 and 14.17, for the purpose of calculating the Derived Rate for PFM Year y, if the PFM Data Threshold was not met in any Period in PFM Year y-1, the data for such Period shall be substituted with the full set of data from the same Period in the Previous PFM Year (PFM Year y-2) to calculate the value of K_{iy-1} . If the PFM Data Threshold was not met in the Previous PFM Year, data from PFM Year y-3 shall be used (and so on).

Sustained failure to meet PFM Data Threshold

14.16 Where the PFM Data Threshold is not met for a particular PFM Fleet:

- (A) for 3 (three) consecutive Periods in a PFM Year; or
- (B) for 4 (four) non-consecutive Periods in a PFM Year,

this shall be a "**PFM Data Threshold Failure**" in respect of such PFM Fleet.

14.17 If there was a PFM Data Threshold Failure for a particular PFM Fleet in PFM Year y-1 then the Derived Rate due to be calculated for such PFM Fleet for PFM Year y shall be equal to the higher of:

- (A) the most recently established PFM Rate for such PFM Fleet; and
- (B) the modelled consumption rate applicable for vehicles of the same type and same Train Service Code as those in such PFM Fleet, as shown in the Traction Electricity Modelled Consumption Rates List. Where the Metered Train Operator operates a Regenerative Braking System, such modelled consumption rate shall be reduced by the Regenerative Braking Discount determined in accordance with paragraph 15.1(B).

Application of weighting structure to produce PFM Rate

14.18 A weighting structure shall be applied to the Derived Rates to create the PFM Rate for the relevant PFM Year, as follows.

where, in respect of a particular PFM Fleet:

PFM Rate_y means the PFM Rate for PFM Year y.

N_y means the Derived Rate for PFM Year y.

PFM Year 1 (y = 1)

$$\text{PFM Rate}_1 = N_1$$

PFM Year 2 (y = 2)

$$\text{PFM Rate}_2 = \frac{2N_2}{3} + \frac{N_1}{3}$$

PFM Year 3 (y = 3)

$$\text{PFM Rate}_3 = \frac{N_3}{2} + \frac{N_2}{3} + \frac{N_1}{6}$$

PFM Year 4 and subsequent PFM Years

$$\text{PFM Rate}_y = \frac{N_y}{2} + \frac{N_{y-1}}{3} + \frac{N_{y-2}}{6}$$

Additional PFM Fleets

Network Rail mark-up

- 14.19 A Metered Train Operator who has issued an Initial Opt-in Notice may issue further Opt-in Notices in respect of additional PFM Fleets at any time in any Relevant Year.
- 14.20 Notwithstanding the date on which a Metered Train Operator issues any further Opt-in Notice in respect of additional PFM Fleets, the PFM Rates in respect of such additional PFM Fleets shall be calculated at the same time as all other PFM Rates are calculated or revised for that Metered Train Operator in accordance with paragraph 14.10 and the PFM Rates for such additional PFM Fleets shall take effect in accordance with paragraph 14.8(B).

PFM information

- 14.21 Network Rail shall maintain and publish on its website details of Metered Train Operators who have opted-in to Partial Fleet Metering, including in respect of each such Metered Train Operator:
- (A) PFM Rates for the current PFM Year and all previous PFM Years;
 - (B) details of the ESTAs in which PFM Rates are applied;
 - (C) details of whether the PFM Data Threshold has been met in each Period for each PFM Rate; and
 - (D) details of the anniversary of the PFM Effective Date.
- 14.22 Network Rail shall maintain on its website the PFM Financial Spreadsheet along with an example of how it works, using notional data.

Updates to PFM Rates and the PFM Rates List

- 14.23 PFM Rates shall be calculated and updated, and the PFM Rates List updated by Network Rail, in accordance with these Traction Electricity Rules.
- 14.24 Following ORR's consent or determination of any PFM Rate in accordance with these Traction Electricity Rules, Network Rail shall within 28 (twenty-eight) days of such consent or determination issue any adjusting invoice or credit note to the Train Operator.
- 14.25 Network Rail shall be entitled to delete redundant entries in the PFM Rates List and make amendments to reflect Train Operator name changes.

15. Application of Regenerative Braking Discounts to modelled ~~(and default modelled)~~ consumption rates

15.1

Network Rail mark-up

- (A) A train operator who operates a Regenerative Braking System for any of its Relevant Vehicle Categories is entitled to receive a Regenerative Braking Discount in respect of each such Relevant Vehicle Category, subject to the provisions of this paragraph 15. A Regenerative Braking Discount shall not be applied to a PFM Rate. [Network Rail comment: Wording added for clarification.]
- (B) Network Rail, acting reasonably, will decide the level of Regenerative Braking Discount to apply to each of the train operator's service codes in a manner that, overall, best reflects the distances between the Scheduled Calls of the Journeys within that service code. The levels of Regenerative Braking Discount are applied by reducing the relevant modelled consumption rate ~~and/or Default Modelled Consumption Rate (as the case may be)~~ by the percentage discount specified below: [Network Rail comment: As referred to in the main body of our response, we consider that services being charged a default modelled consumption rate should not be able to receive the Regenerative Braking Discount.]

Type of infrastructure / service frequency	Discount (%)
AC, long distance (more than 10 miles between stations)	16%
AC, regional and outer suburban (less than or equal to 10 miles between stations)	18%
AC, local and commuter (less than or equal to 2.1 miles between stations)	20%
DC	15%

Opting-in process

15.2 A train operator who, as at 31 March 2014, was already receiving a Regenerative Braking Discount in respect of a Relevant Vehicle Category shall continue to receive such discount unless otherwise provided for by this paragraph 15. In respect of other Relevant Vehicle Categories, a train operator who wishes to receive a Regenerative Braking Discount shall follow the opting-in process in accordance with 15.2(A) to 15.2(C) below.

- (A) The train operator shall notify Network Rail in writing to request that a Regenerative Braking Discount be applied. The notification given by the train operator shall set out:
- (i) the Relevant Vehicle Categories in respect of which the train operator wishes to receive the Regenerative Braking Discount; and
 - (ii) any other information that the train operator considers Network Rail would require in reviewing its request.
- (B) The train operator shall provide promptly any other information which Network Rail, acting reasonably, considers that it requires in connection with the train operator's request under paragraph 15.2(A).

- (C) Within 28 days of receipt of the notification given by the train operator in accordance with paragraph 15.2(A) above, Network Rail shall determine, acting reasonably, whether a Regenerative Braking Discount should be applied to the notified Relevant Vehicle Categories and the level of that discount. Network Rail shall notify the train operator in writing of its decision and, if it determines that a Regenerative Braking Discount should be applied, of the date when the Regenerative Braking Discount shall start to be applied, which shall be the beginning of the next Period unless the train operator and Network Rail agree otherwise.

Train operator's obligation to maintain its Regenerative Braking Systems

- 15.3 The train operator shall use reasonable endeavours to ensure that the Regenerative Braking System for each vehicle in respect of which it receives a Regenerative Braking Discount continues to function effectively, such that the application of a Regenerative Braking Discount continues to be appropriate.

Regenerative Braking Discount change process

- 15.4 The train operator shall notify Network Rail promptly in writing if, in respect of one or more of its Relevant Vehicle Categories, it considers that either:

- (A) a Regenerative Braking Discount should no longer be applied; or
- (B) the level of Regenerative Braking Discount currently applied should be changed.

- 15.5 Network Rail shall either cease applying a Regenerative Braking Discount or change the level of Regenerative Braking Discount, as appropriate, in respect of any of the train operator's Relevant Vehicle Categories in the following circumstances only:

- (A) to give effect to the train operator's notification in accordance with paragraph 15.4 above;
- (B) where any of the train operator's Relevant Vehicle Categories cease to be billed on the basis of ~~either of the modelled consumption rates or the Default Modelled Consumption Rate~~, in which case the discount shall cease to apply in respect of such Relevant Vehicle Categories; or
- (C) where, following a Regenerative Braking Audit conducted in accordance with paragraph 16 below, Network Rail (acting reasonably) identifies that, in respect of one or more of the train operator's Relevant Vehicle Categories, either a Regenerative Braking Discount should no longer be applied or the level of Regenerative Braking Discount currently applied should be changed.

- 15.6 In the case of a notification served by the train operator under:

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- (A) paragraph 15.4(A) above, Network Rail shall cease to apply the Regenerative Braking Discount from the start of the next Period following the date of the notice, or such other time as Network Rail may determine, having first consulted the train operator; or
- (B) paragraph 15.4(B) above, promptly following the notice, Network Rail shall confirm the appropriate level of Regenerative Braking Discount that should be applied and shall apply this level with effect from the date that, acting reasonably, it determines is appropriate, having first consulted the train operator.

List of train operators receiving a Regenerative Braking Discount

15.7 Network Rail shall maintain, and make available on its website, a list of the Relevant Vehicle Categories which receive a Regenerative Braking Discount for each train operator. Network Rail shall update this list within 28 days of any change taking effect.

16. Metering and Regenerative Braking Audits

Network Rail Metering Audit and Regenerative Braking Audit

16.1 The Metered Train Operator shall, for a period of not less than two years, keep all data supplied by or on behalf of that Metered Train Operator to Network Rail in connection with On-Train Metering and all data used in or relating to the collection or creation of such data, and all material information relating to the supply, collection or creation of such data.

16.2 In addition to any other rights of Network Rail, including without limitation any rights set out in these Traction Electricity Rules or in any other provisions of the track access contract and subject to paragraph 16.8, Network Rail may, at Network Rail's cost and expense upon giving not less than 5 (five) Working Days prior notice to the train operator, but no more than once in any Relevant Year:

- (A) audit and inspect and take copies of such books, documents, data and other information (whether stored electronically or otherwise);
- (B) question such employees of the train operator and any of its agents, contractors, sub-contractors and consultants; and
- (C) inspect and/or test any On-Train Meters,

as Network Rail may reasonably require to verify either: (i) the accuracy of the data supplied to it by the Metered Train Operator pursuant to these Traction Electricity Rules; or (ii) whether in respect of one or more of the train operator's Relevant Vehicle Categories, either a Regenerative Braking Discount should not have applied or that a different level of Regenerative Braking Discount from the one currently applied should have applied. Where the train operator is party to more than one track access contract, Network Rail shall, if it wishes to exercise its rights to carry out a Metering Audit or a Regenerative Braking Audit, as the case may be, in respect of more than one of those contracts, exercise such rights simultaneously and not separately during any Relevant Year.

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16.3 The train operator shall, at Network Rail's cost and expense (subject to paragraph 16.8), procure that its agents, contractors, sub-contractors and consultants shall provide such access to Network Rail as is reasonably necessary for the purposes of the Metering Audit or the Regenerative Braking Audit, as the case may be.

16.4 If,

(A) following a Metering Audit carried out by Network Rail, any data is found by Network Rail to be materially inaccurate; or

(B) following a Regenerative Braking Audit carried out by Network Rail, Network Rail finds, in respect of one or more of the train operator's Relevant Vehicle Categories, either a Regenerative Braking Discount should not have applied or that a different level of Regenerative Braking Discount from the one currently applied should have applied,

Network Rail shall notify the train operator in writing and shall provide evidence (in a reasonable level of detail) of such inaccuracy or in support of its findings, and details of any consequential financial adjustment which is required to be made to any amount paid or payable by any train operator.

16.5 The train operator shall be entitled, within 14 days following receipt of notice from Network Rail pursuant to paragraph 16.4, to notify Network Rail in writing that it objects to the findings of Network Rail's Metering Audit or Regenerative Braking Audit, as the case may be. Any such notice shall specify in reasonable detail the reasons for such objection (and, in the case of a Metered Train Operator objecting to the findings of a Metering Audit, what that Metered Train Operator believes to be the accurate data) ("**notice of objection**"). In the absence of any notice of objection being served within such time the findings of Network Rail's Metering Audit or Regenerative Braking Audit, as the case may be, shall be deemed to be accepted by the train operator and shall be final and binding on the parties.

- 16.6 The parties shall seek to agree the details specified in any notice of objection and any consequential financial adjustment required. If the parties are unable to agree within 28 days following receipt of a notice of objection, the matter shall be determined at the request of either party in accordance with the ADRR, and where the dispute is allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR:
- (A) the parties shall use their respective endeavours to ensure a joint paper setting out their respective positions on the matter in dispute is agreed for delivery to the arbitrator no later than 14 days following the expiration of a period of 28 days following receipt of a notice of objection;
 - (B) the parties shall each request that the arbitrator's decision in writing (following any discussions or meetings between or with the parties that the arbitrator considers necessary) is delivered to the parties within 56 days of his appointment and that the arbitrator establish such rules and procedures for the conduct of the arbitration as he sees fit having regard to such timescale; and
 - (C) each of the parties shall accept and abide by the rules and procedures established by the arbitrator under paragraph 16.6(B).
- 16.7 Any consequential financial adjustment which is required to be made to any amounts paid or payable by any train operator pursuant to paragraph 16.4 or 16.5 shall be made through the Volume Reconciliation carried out in respect of the Relevant Year in which such amounts were paid or payable.
- 16.8 Where:
- (A) as a result of a Metering Audit carried out by Network Rail, any data supplied by the Metered Train Operator to Network Rail pursuant to these Traction Electricity Rules is shown to be inaccurate in any material respect; or
 - (B) as a result of a Regenerative Braking Audit carried out by Network Rail, it is found that a train operator is not entitled to any or all of the Regenerative Braking Discount it has claimed,
- that train operator shall bear the reasonable costs of the Metering Audit or the Regenerative Braking Audit, as the case may be.

Metered Train Operator Metering Audit

- 16.9 Network Rail shall, for a period of not less than seven (7) years, keep all data used in or relating to the calculation of the Metered Charges including all Metered Data provided to it in accordance with these Traction Electricity Rules.
- 16.10 In addition to any other rights of the Metered Train Operator, including without limitation any rights set out in these Traction Electricity Rules or in any other provisions of its track access contract and subject to paragraph 16.16, the Metered Train Operator may, at that Metered Train Operator's cost and expense, upon giving not less than 5 (five) Working Days prior notice to Network Rail, but no more than once in any Relevant Year:

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- (A) audit and inspect and take copies of such books, documents, data and other information (whether stored electronically or otherwise);
- (B) question such employees of Network Rail and any of its agents, contractors, sub-contractors and consultants; and
- (C) inspect and/or test any model or other application used by Network Rail in the calculation of the Metered Charges,

as the Metered Train Operator may reasonably require to verify the accuracy of the Metered Charges. Where the Metered Train Operator is party to more than one track access contract, the Metered Train Operator shall, if it wishes to exercise its rights to carry out a Metering Audit in respect of more than one of those contracts, exercise such rights simultaneously and not separately during any Relevant Year.

16.11 Network Rail shall, at the Metered Train Operator's cost and expense (subject to paragraph 16.16), procure that its agents, contractors, sub-contractors and consultants shall provide such access to the Metered Train Operator as is reasonable for the purposes of the Metering Audit.

16.12 If following a Metering Audit carried out by the Metered Train Operator any Metered Charges are found by the Metered Train Operator to be materially inaccurate, the Metered Train Operator shall notify Network Rail in writing and shall provide evidence (in a reasonable level of detail) of such inaccuracy and details of any consequential financial adjustment which is required to be made to any amounts paid or payable by the Metered Train Operator or any other train operator.

16.13 Network Rail shall be entitled within 14 days following receipt by Network Rail of notice from the Metered Train Operator pursuant to paragraph 16.12, to notify the Metered Train Operator in writing that it objects to the findings of the Metered Train Operator's Metering Audit. Any such notice shall specify in reasonable detail the reasons for such objection and what Network Rail believes to be the relevant charges for the purposes of such Metering Audit ("**notice of objection**"). In the absence of any notice of objection being served within such time the findings of the Metered Train Operator's Metering Audit shall be deemed to be accepted by Network Rail and shall be final and binding on the parties.

16.14 The parties shall seek to agree the details specified in any notice of objection and any consequential financial adjustment required. If the parties are unable to agree such charges within 28 days following receipt of a notice of objection, the matter shall be determined at the request of either party in accordance with the ADRR, and where the dispute is allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR:

- (A) the parties shall use their respective endeavours to ensure a joint paper setting out their respective positions on the matter in dispute is agreed for delivery to the arbitrator no later than 14 days following the expiration of a period of 28 days following receipt of a notice of objection;
- (B) the parties shall each request that the arbitrator's decision in writing (following any discussions or meetings between or with the parties that the arbitrator considers necessary) is delivered to the parties within 56 days of

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his appointment and that the arbitrator establish such rules and procedures for the conduct of the arbitration as he sees fit having regard to such timescale; and

- (C) each of the parties shall accept and abide by the rules and procedures established by the arbitrator under paragraph 16.14(B).

16.15 Any consequential financial adjustment which is required to be made to any amounts paid or payable by the Metered Train Operator or any other train operator pursuant to paragraph 16.12 or 16.14 shall be made through the Volume Reconciliation carried out within 90 days after the end of the Relevant Year in which such amounts were paid or payable.

16.16 Where any Metered Charges are shown as a result of a Metering Audit carried out by the Metered Train Operator to be inaccurate in any material respect, Network Rail shall bear the reasonable costs of the Metering Audit and the Metered Train Operator shall issue an invoice to Network Rail in the amount of those costs.

Additional Metering Audits or Regenerative Braking Audits by Network Rail or the Metered Train Operator

16.17 Neither Network Rail nor the Metered Train Operator shall be entitled to carry out more than one Metering Audit of one another in any Relevant Year, without the prior written consent of ORR. If either party wishes to carry out more than one Metering Audit of one another in any Relevant Year, such party shall notify ORR in writing, providing reasons why it considers that an additional Metering Audit is required.

16.18 Network Rail shall not be entitled to carry out more than one Regenerative Braking Audit of the train operator in any Relevant Year, without the prior written consent of ORR. If Network Rail wishes to carry out more than one such audit in any Relevant Year, it shall notify ORR in writing, providing reasons why it considers that an additional Regenerative Braking Audit is required.

16.19 If ORR consents to either party carrying out more than one Metering Audit, or to Network Rail carrying out more than one Regenerative Braking Audit, as the case may be, in any Relevant Year, any such additional audit shall be carried out by either Network Rail in accordance with the procedure set out in paragraphs 16.2 to 16.8 (inclusive) or by the Metered Train Operator in accordance with the procedure set out in paragraphs 16.9 to 16.16 (inclusive) (as the case may be), with such provisions being deemed to apply with such changes as are necessary in order to give effect to this paragraph 16.19.

Metering Audit and Regenerative Braking Audit requests by third party train operators

16.20 Any train operator may submit a request to ORR for a Metering Audit or Regenerative Braking Audit to be carried out in respect of any other train operator as appropriate. Such request shall be in writing and shall specify the reasons why the train operator considers that a Metering Audit or a Regenerative Braking Audit, as the case may be, is necessary.

16.21 If ORR consents to such request, such Metering Audit or Regenerative Braking Audit, as the case may be, shall be carried out by Network Rail on behalf of such train operator in accordance with the procedure set out in paragraphs 16.2 to

16.7 (inclusive), with such provisions being deemed to apply with such changes as are necessary in order to give effect to this paragraph 16.21.

16.22 Where:

- (A) as a result of a Metering Audit carried out pursuant to paragraph 16.21, any data supplied by the Metered Train Operator to Network Rail pursuant to these Traction Electricity Rules is shown to be inaccurate in any material respect; or
- (B) as a result of a Regenerative Braking Audit carried out pursuant to paragraph 16.21, it is found that the train operator was not entitled to any or all the Regenerative Braking Discount it has claimed,

the train operator who was the subject of the audit shall bear the reasonable costs of the Metering Audit or Regenerative Braking Audit, as the case may be, and in all other cases such costs shall be borne by the train operator who requested the audit.

Time for completion of a Metering Audit

Any Metering Audit or Regenerative Braking Audit (including the resolution of any dispute arising out of such audit in accordance with paragraph 16.6 or 16.14, as the case may be) shall be concluded no later than 28 days after the end of the Relevant Year in which the Metering Audit was commenced. If any dispute arising out of such Metering Audit or Regenerative Braking Audit is not resolved within such time the findings of such Metering Audit or Regenerative Braking Audit, as the case may be, shall be final and binding on the parties

17. Changes to these Traction Electricity Rules

Entitlement to make Proposed Rules Change

17.1 A proposal to change these Traction Electricity Rules (a "**Proposed Rules Change**") may be made by:

- (A) a Metered Train Operator or a Modelled Train Operator, save in respect of a proposal to change Appendix 3 (Network Rail Distribution System Loss Factors) or Appendix 5 (the Geographic Areas);
- (B) Network Rail; or
- (C) ORR,

(in each case a "**Proposing Party**").

17.2 Any such proposal shall:

- (A) be sent to Network Rail (except where Network Rail is the Proposing Party);
- (B) be in writing;

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- (C) specify the wording of the Proposed Rules Change and the date or series of dates on which it is proposed that it come into effect, if other than the period of 14 days after any approval notified by ORR pursuant to paragraph 17.16 below; and
- (D) be supported by an explanation in reasonable detail of the reasons for the Proposed Rules Change.

Notice of Proposed Rules Change

17.3 Network Rail shall, when making a Proposed Rules Change, or, within 7 days following receipt of a Proposed Rules Change, or, if later, within 7 days following receipt of any clarification that Network Rail may reasonably request from the Proposing Party:

- (A) give notice of that Proposed Rules Change to the Consultees and ORR, as applicable, unless any such person has notified Network Rail that it does not wish to receive notice of a Proposed Rules Change; and
- (B) invite the submission to Network Rail of written representations in respect of that proposal within such period as is reasonable in all the circumstances (the “**Consultation Period**”), being a period of not less than 28 days from the date of notification under paragraph (A) above. Network Rail may make a written representation if it considers it appropriate to do so.

17.4 A Proposing Party shall promptly comply with all reasonable written requests of Network Rail for further clarification of the Proposed Rules Change.

17.5 Network Rail shall, within 7 days of the end of the Consultation Period, publish all written representations received in accordance with paragraph 17.3(B) above on its website, and shall send copies of the same to the Proposing Party.

17.6 The Proposing Party shall consider all written representations received from Network Rail in accordance with paragraph 17.5 above. If and to the extent the Proposing Party considers it appropriate, it shall modify its Proposed Rules Change to take account of such representations in accordance with paragraph 17.7 below. If the Proposing Party considers that no modification is required, the Proposed Rules Change shall be put to a vote in accordance with paragraph 17.9 below, save where the Proposed Rules Change is made by Network Rail in respect of Appendix 3 (Network Rail Distribution System Loss Factors) or Appendix 5 (the Geographic Areas) in which case Network Rail shall as soon as reasonably practicable submit the proposal to ORR in accordance with paragraph 17.13 below (without it being put to a vote in accordance with paragraph 17.9).

17.7 If the Proposing Party makes any modifications to its original Proposed Rules Change, together with Network Rail it shall take appropriate action as follows:

- (A) if either of the Proposing Party or Network Rail consider that the modification is material, the Proposing Party shall provide Network Rail with the modified Proposed Rules Change in writing, and the provisions of paragraphs 17.1 to 17.6 inclusive shall apply as if set out again in full, save that the Consultation Period in respect of the modified Proposed Rules Change (the “**Re-Consultation Period**”) shall be 21 days (or longer if the

Proposing Party so elects); or

- (B) if both the Proposing Party and Network Rail consider that the modification is immaterial, the modified proposal shall be put to a vote in accordance with paragraph 17.9 below, save where the Proposed Rules Change is made by Network Rail in respect of Appendix 3 (Network Rail Distribution System Loss Factors) or Appendix 5 (the Geographic Areas) in which case Network Rail shall as soon as reasonably practicable submit the proposal to ORR in accordance with paragraph 17.13 below (without it being put to a vote in accordance with paragraph 17.9).

17.8 If the Proposing Party considers it appropriate to make further modifications to the Proposed Rules Change after the Re-Consultation Period, paragraph 17.7 shall apply again, and this process shall continue until no further material modifications are made, at which point the modified Proposed Rules Change shall be put to a vote in accordance with paragraph 17.9 below, save where the Proposed Rules Change is made by Network Rail in respect of Appendix 3 (Network Rail Distribution System Loss Factors) or Appendix 5 (the Geographic Areas) in which case Network Rail shall as soon as reasonably practicable submit the proposal to ORR in accordance with paragraph 17.13 below (without it being put to a vote in accordance with paragraph 17.9).

Voting on a Proposed Rules Change

17.9 Save where a Proposed Rules Change is made by Network Rail in respect of Appendix 3 (Network Rail Distribution System Loss Factors) or Appendix 5 (the Geographic Areas), Network Rail shall promptly arrange for a vote to take place on whether a Proposed Rules Change is accepted or not, as follows:

- (A) the vote shall be open to Metered Train Operators, Modelled Train Operators and Network Rail, who shall each cast one vote either for or against each Proposed Rules Change, as they consider appropriate;
- (B) Network Rail shall specify a period for casting a vote, which shall be open for voting for not less than 7 days; and
- (C) the vote shall be conducted by e-mail.

17.10 A Proposed Rules Change shall have been endorsed only if a majority of the votes cast are in favour of the relevant Proposed Rules Change, provided that the failure of a party timeously to vote or a party intimating its abstention shall be treated as abstentions and not be included in the counting of votes to ascertain whether the Proposed Rules Change has been endorsed or rejected.

17.11 If the vote taken in accordance with paragraph 17.9 above endorses the Proposed Rules Change, Network Rail shall as soon as reasonably practicable submit the proposal to ORR in accordance with paragraph 17.13 below.

17.12 If the vote taken in accordance with paragraph 17.9 above rejects the Proposed Rules Change, Network Rail shall as soon as reasonably practicable notify the Proposing Party of that decision.

ORR consent

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- 17.13 When submitting a proposal to ORR, Network Rail shall include a written memorandum:
- (A) containing details of the results of the consultation process (including copies of all representations made pursuant to paragraph 17.3(B) above, and any responses the Proposing Party may have made to the same);
 - (B) stating the results of any vote conducted pursuant to paragraph 17.9 above (including identifying how each relevant party voted); and
 - (C) stating the date or series of dates upon which it is considered that the proposal is to take effect, the first date being no earlier than 14 days after the date on which ORR consents to the proposal.
- 17.14 The Consultees and Network Rail shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Proposed Rules Change by ORR.
- 17.15 No Proposed Rules Change shall have effect unless ORR gives notice to Network Rail in writing that it consents to the proposal. As part of its consent process, ORR may have regard to whether modifications made to the Proposed Rules Change and classed as immaterial in accordance with paragraph 17.7(B) above should in fact have been classed as material (and therefore should have been subject to a re-consultation).
- 17.16 If ORR consents to the proposed change Network Rail shall ensure that all Consultees shall be notified within 7 days of ORR's consent of the change and its effective date. Unless ORR otherwise determines, the effective date shall be 14 days from the date of the notification given by Network Rail pursuant to this paragraph 17.16.

Procedural Irregularities

- 17.17 If before the effective date or dates of any change (as notified under paragraph 17.16 above) a Relevant Complaint is made to ORR concerning a failure to comply with any part of the procedure relating to the relevant Proposed Rules Change, paragraph 17.18 shall apply.
- 17.18 In considering any Relevant Complaint, it shall be open to ORR to determine either that:
- (A) the change should become effective on the date notified under paragraph 17.16 above or any alternative date ORR considers appropriate in the circumstances; or
 - (B) the change should not become effective on the date notified under paragraph 17.16 above and to the extent ORR considers appropriate the rules change process in paragraphs 17.1 to 17.12 above shall be re-run.
- 17.19 A change in respect of which a complaint has been made under paragraph 17.17 above shall not become effective unless ORR makes a determination under paragraph 17.18(A) above.

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- 17.20 If a complaint is made to ORR concerning a failure to comply with any part of the procedure relating to a Proposed Rules Change after the effective date or dates of any change, such change will remain in full force and effect as though no complaint had been made.

Modification of the Traction Electricity Rules by ORR

- 17.21 A modification made by ORR in accordance with paragraphs 17.22 to 17.27 below, does not need to be proposed in accordance with paragraphs 17.1 to 17.4 above.

- 17.22 The Traction Electricity Rules shall have effect with the modifications specified in any notice given by ORR for the purposes of these paragraphs 17.22 to 17.27, provided that:

- (A) ORR shall be satisfied as to the need for the modification as provided in paragraph 17.23 below;
- (B) the procedural requirements of paragraph 17.25 below shall have been satisfied; and
- (C) the modification shall not have effect until the date provided for in paragraph 17.26 below.

- 17.23 Subject to paragraph 17.24 below, a notice given by ORR under paragraph 17.22 above shall have effect if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:

- (A) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and/or
- (B) the interests of any relevant person would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.

- 17.24 ORR may give a notice under paragraph 17.22 above without the conditions in paragraph 17.23 being satisfied where the modification which is the subject of ORR's notice relates to an amendment to paragraphs 17.1 to 17.20 above and is necessary, in the opinion of ORR, to remedy an inefficiency in the change process contained within those paragraphs.

- 17.25 The procedural requirements which require to have been followed for the purposes of paragraph 17.22 above are:

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- (A) in its consideration of the matters referred to in paragraph 17.23 above, ORR shall have consulted Network Rail and the Consultees together with any other persons which ORR considers ought properly to be consulted, in relation to the modification which it proposes to make;
 - (B) in the consultation referred to in paragraph 17.25(A) ORR have made available to each person so consulted such drafts of the proposed modification as it shall consider are necessary so as properly to inform such persons of the detail of the proposed modification;
 - (C) ORR shall have given each person so consulted the opportunity to make representations in relation to the proposed modification and shall have taken into account all such representations received within the time specified by ORR for such consultation (other than those which are frivolous or trivial) in making its decision on the modification to be made;
 - (D) ORR shall have notified each person consulted pursuant to paragraph 17.25(A) as to its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions; and
 - (E) in effecting the notifications required by paragraph 17.25(D), ORR may have regard to any representation (including any submission of written material) which (and to the extent that) the person making the representation shall, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.
- 17.26 A notice under paragraph 17.22 above shall have effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances have effect earlier than 90 days after the date upon which it shall have been given, with the exception of a notice to which paragraph 17.24 above applies, in which case the notice shall have effect 28 days after the date upon which it shall have been given.
- 17.27 A notice under paragraph 17.22 above shall not have effect in relation to any proposed modification of paragraphs 17.22 to 17.26 (inclusive) or this paragraph 17.27.

Network Rail's role as secretariat

- 17.28 Network Rail shall establish, maintain and update, as necessary, a website containing:

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- (A) the current version of the Traction Electricity Rules (which for the avoidance of doubt includes the appendices);
- (B) all previous versions of the Traction Electricity Rules (which for the avoidance of doubt includes the appendices) (together with a statement of the dates between which each respective version was in force);
- (C) any current Proposed Rules Changes together with any representations received in response to the same;
- (D) a fully searchable archive containing details of consultations held, representations received and votes held (including identifying how each party voted) in relation to all previous Proposed Rules Changes; and
- (E) the data referred to in paragraph 8 above.

17.29 Network Rail shall maintain an up-to-date list of Modelled Train Operators and Metered Train Operators, and make it available, on request, to train operators at all reasonable times

17.30 Network Rail shall, as soon as reasonably practicable following issue of a notice under paragraph 17.22 above or following consent to a Proposed Rules Change by the Office of Rail Regulation, supply to all Metered Train Operators and all Modelled Train Operators a revised version of the Traction Electricity Rules (which for the avoidance of doubt includes the appendices) incorporating the change.

18. Volume and Cost Reconciliation for all train operators

Timing and scope of Volume and Cost Reconciliation

18.1 Within 90 days after the end of Relevant Year t, Network Rail shall calculate, for each train operator ω :

- (A) supplementary amount $S1_{t\omega}$;
- (B) the Charge Correction Amount; and
- (C) (following and taking into account the calculation of $S1_{t\omega}$) supplementary amount $S2_{t\omega}$,

which shall be payable by or to the train operator in accordance with this paragraph 18. The calculations of $S1_{t\omega}$, the Charge Correction Amount and $S2_{t\omega}$ shall be made for all train operators using electric traction, other than Charter Train Operators.

Volume Reconciliation

18.2 For each train operator ω , $S1_{t\omega}$ is derived from the following formula:

$$S1_{t\omega} = \sum S1_{tg\omega}, \text{ summed over } g$$

where, for each Geographic Area g, $S1_{tg\omega}$ is derived from the following formula:

$$S1_{tg\omega} = E_{tmog\omega} \bullet (A_{gt} - L_{tmog} - L_{tmeg} - L_{tmug} - L_{tmng}) / (L_{tmog} + L_{tmng} + (\lambda_g / (1 + \lambda_g))) \bullet A_{gt}$$

where:

$E_{tmog\omega}$ means the amount E_{tmog} calculated for each train operator ω in accordance with paragraph 4.1.2 of Part 2 (in the case of passenger operators) and paragraph 2.4.1.2 (in the case of freight operators) of Schedule 7 of the relevant train operator's track access contract;

A_{gt} means the total actual electricity consumption (in kWh), if any, in Geographic Area g in Relevant Year t billed to Network Rail by its electricity suppliers in that Geographic Area for traction electricity consumed in accordance with the terms for the purchase of traction electricity entered into by Network Rail;

L_{tmog} means the total modelled traction electricity consumption (including any consumption calculated using the Default Traction Electricity Modelled Consumption Default Rate) charged to all train operators in Geographic Area g and in Relevant Year t which is derived from the following formula:

$$L_{tmog} = \sum C_i \bullet UE_{igt}$$

where:

Σ means the summation across all train categories i , New Modelled Trains, and tariff bands j for Relevant Year t for all train operators, as appropriate; Network Rail comment: Reference to New Modelled Trains has been added here and in the definition of UE_{igt} as New Modelled Trains are not covered by references to train category i

C_i means, as appropriate:

(a) the consumption rate:

- (i) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and-or
- (ii) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List taking into account any Regenerative Braking Discount applied in accordance with these Traction Electricity Rules or, if a PFM Rate applies in accordance with these Traction Electricity Rules, the PFM Rates List; or

(b) for New Modelled Trains, the ~~rate shall be the Traction Electricity Modelled Default Modelled Consumption Rate shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with these Traction Electricity Rules;~~

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm in

relation to locomotive-hauled units and all freight traffic), if any, of trains operated ~~in Relevant Year t~~ by or on behalf of all train operators in train category i and New Modelled Trains operated by or on behalf of all train operators, in Geographic Area g, where relevant, in tariff band j and in Relevant Year t, provided that where train category i or a New Modelled Train is a Bimodal Electric Multiple Unit or Bimodal Locomotive operating in a Traction-Train Compatible situation, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgtm in relation to locomotive-hauled units and all freight traffic), if any, of such trains is electrified, in respect of which charges for traction electricity consumption are payable based on modelled consumption rates pursuant to paragraph 4.1 or 4.1.2 (in the case of passenger operators) or paragraph 2.4.1 or 2.4.1.2 (in the case of freight operators) of Schedule 7 of each relevant train operator's track access contract; [Network Rail comment: Amended to include reference to deemed electrified mileage for Bimodal trains (similar to the amendments made to the equivalent definitions in the passenger and freight contracts).]

L_{tmeg} means the total metered traction electricity consumption charged to all train operators in Geographic Area g and Relevant Year t which is derived from the following formula:

$$L_{tmeg} = \sum [CME_{mgjt} - RGB_{mgjt}]$$

where:

Σ means the summation across all relevant Metered Trains m for Relevant Year t for all train operators, as appropriate;

CME_{mgjt} means the consumption of electricity (in kWh) by Metered Train m, as measured by the On-Train Meters or as otherwise determined in accordance with these Traction Electricity Rules, in Geographic Area g, in tariff band j and in Relevant Year t; and

RGB_{mgjt} means the electricity (in kWh) generated by braking by Metered Train m, as measured by the On-Train Meters or as otherwise determined in accordance with these Traction Electricity Rules, in Geographic Area g, in tariff band j and in Relevant Year t;

L_{tmug} means the total amounts in respect of the Network Rail Distribution System Loss Factor charged to all train operators in Geographic Area g and Relevant Year t which is derived from the following formula:

$$L_{tmug} = L_{tmugAC} + L_{tmugDC}$$

where:

L_{tmugAC} is derived from the following formula:

$$L_{tmugAC} = \sum [CME_{mgjtAC} \bullet EF_{gjt}] \bullet \lambda_{ACg}$$

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where:

Σ means the summation across all relevant Metered Trains m for Relevant Year t for all train operators, as appropriate;

CME_{mjtAC} means the consumption of electricity (in kWh) from the AC System by Metered Trains m , as measured by the On-Train Meters or as otherwise determined in accordance with these Traction Electricity Rules, in Geographic Area g , in tariff band j and in Relevant Year t ;

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the train operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of these Traction Electricity Rules; and

λ_{ACg} means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g ;

L_{tmugDC} is derived from the following formula:

$$L_{tmugDC} = \Sigma [CME_{mjtDC} \bullet EF_{gjt}] \bullet \lambda_{DCg}$$

where:

Σ means the summation across all relevant Metered Trains m for Relevant Year t for all train operators, as appropriate;

CME_{mjtDC} means the consumption of electricity (in kWh) from the DC System by Metered Trains m , as measured by the On-Train Meters or as otherwise determined in accordance with these Traction Electricity Rules, in Geographic Area g , in tariff band j and in Relevant Year t ;

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the train operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of these Traction Electricity Rules; and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g ;

L_{tmng} means the total traction electricity consumption in Geographic Area g and in Relevant Year t by: (a) Network Rail, and (b) all entities whose

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consumption is not modelled or metered in a track access contract subject to regulation by ORR in accordance with the Act; and

λ_g means, in any Geographic Area g which only uses the DC System, the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g (λ_{DCg}), and, in any other Geographic Area g , means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g (λ_{ACg}).

Cost Reconciliation

18.3A Prior to the calculation of $S2_{t\omega}$, Network Rail shall make any corrections for the charge for traction current (in pence per kWh) which, acting reasonably, it considers necessary (the “**Charge Correction Amount**”).

18.3 For each train operator ω , $S2_{t\omega}$ is derived from the following formula:

$$S2_{t\omega} = S2E_{t\omega} \bullet S2D_{t\omega}$$

where:

$S2E_{t\omega}$ is derived from the following formula:

$$S2E_{t\omega} = EN_{t\omega} \bullet EC_t$$

where:

$EN_{t\omega}$ means Train Operator Energy Costs payable by train operator ω in Relevant Year t ; and

EC_t is a reconciliation factor, derived from the following formula:

$$EC_t = \frac{(CSE_t - CWE_t)}{CWE_t}$$

where:

CSE_t means the total Energy Costs of traction electricity consumption payable by Network Rail to its electricity suppliers in Relevant Year t ;

CWE_t shall be derived from the following formula:

$$CWE_t = TEC_t + EN_{t\text{mn}} + ENRLOSS_t$$

where:

TEC_t means the summation of the Energy Costs of traction electricity consumption across all train operators in Relevant Year t ;

EN_{tmn} means the summation across all Geographic Areas g , of the Energy Costs of the traction electricity consumption in Relevant Year t by (a) Network Rail, and (b) all entities whose consumption is not modelled or metered in a track access contract subject to regulation by ORR, which Energy Costs Network Rail shall assess as accurately as possible after allocation of each $S1_{t\omega}$; and

$ENRLOSS_t$ means the Energy Costs of the traction electricity consumption allocated to Network Rail over and above its own consumption in the calculation of $S1_{t\omega}$, in paragraph 18.2 of these Traction Electricity Rules, which Network Rail shall assess as accurately as possible, across all Geographic Areas g in Relevant Year t .

For each train operator ω , $S2D_{t\omega}$ is derived from the following formula:

$$S2D_{t\omega} = \sum S2D_{tg\omega}$$

where \sum means the summation across all Geographic Areas g ; and

where, for each Geographic Area g , $S2D_{tg\omega}$ is derived from the following formula:

$$S2D_{tg\omega} = D_{tg\omega} \bullet DC_{tg}$$

where:

$D_{tg\omega}$ means Train Operator Delivery Costs payable by train operator ω in Geographic Area g in Relevant Year t ;

DC_{tg} is a reconciliation factor, derived from the following formula:

$$DC_{tg} = \frac{(CSD_{tg} - CWD_{tg})}{CWD_{tg}}$$

where:

CSD_{tg} means the total amount payable by Network Rail to its electricity suppliers in respect of Delivery Costs in Geographic Area g in Relevant Year t ;

CWD_{tg} shall be derived from the following formula:

$$CWD_{tg} = TED_{tg} + DEN_{tmng} + ENRLOSS_{tg}$$

where:

TED_{tg} means the summation of all Train Operator Delivery Costs across all train operators in Geographic Area g and Relevant Year t ;

DEN_{tmng} means the summation across all Geographic Areas g , of the Delivery Costs of the traction electricity consumption in Relevant Year t by: (a) Network Rail, and (b) all entities whose consumption is not modelled or metered in a track access contract subject to regulation by ORR, which Delivery Costs Network Rail shall assess as accurately as possible after allocation of each $S1_{tw}$; and

$DNRLOSS_{tg}$ means the amount payable by Network Rail to its electricity suppliers in respect of the Delivery Costs of traction electricity consumption allocated to Network Rail over and above its own consumption in the calculation of $S1_{tg\omega}$, in paragraph 18.2 of these Traction Electricity Rules, in Geographic Area g in Relevant Year t .

Payment of reconciliation sums

18.4 Network Rail shall, within 90 days after the end of Relevant Year t , provide to each train operator ω :

- (a) a statement of the amounts $S1_{tw}$ and $S2_{tw}$ and the Charge Correction Amount (in each case whether of a positive or negative amount);
- (b) such background workings as may reasonably be required for a proper understanding of the calculation; and
- (c) a certificate of the auditors of Network Rail confirming the accuracy of the calculation.

18.5 Within 30 days after the date upon which Network Rail shall have provided to the train operator the information referred to in paragraph 18.4, the amounts $S1_{tw}$ and $S2_{tw}$ and the Charge Correction Amount shall be invoiced for payment as provided under the relevant track access contract. If the aggregate of the amounts $S1_{tw}$ and $S2_{tw}$ and the Charge Correction Amount is positive, the invoice shall be issued by Network Rail and payable by the train operator. If the aggregate of the amounts $S1_{tw}$ and $S2_{tw}$ and the Charge Correction Amount is negative, Network Rail shall issue a credit note to the train operator.

19. Strategy for the procurement of traction electricity

19.1 At least three months prior to the start of each Relevant Year commencing on or after 1 April 2015, Network Rail shall consult with the train operator regarding a strategy for the procurement of traction electricity for the train operator in respect of that Relevant Year, and:

- (a) if Network Rail and the train operator agree on a strategy for the procurement of traction electricity, Network Rail will procure traction electricity for the train operator in accordance with that agreed strategy; or

- (b) if Network Rail and the train operator do not agree on a strategy for the procurement of traction electricity and the train operator has, during its consultation with Network Rail under this paragraph 19, notified Network Rail of the train operator's preferred strategy for the procurement of traction electricity and it is possible for Network Rail, acting reasonably, to implement that strategy, Network Rail will procure traction electricity for the train operator in accordance with the traction electricity procurement strategy so notified to Network Rail by the train operator; or
- (c) if Network Rail and the train operator do not agree on a strategy for the procurement of traction electricity and either (A) the train operator has not notified Network Rail of the train operator's preferred strategy for the procurement of traction electricity during its consultation with Network Rail in accordance with this paragraph 19, or (B) it is not possible for Network Rail, acting reasonably, to implement the train operator's preferred strategy for the procurement of traction electricity as notified to Network Rail during its consultation in accordance with this paragraph 19, Network Rail will:
 - (i) acting reasonably, determine the procurement strategy for traction electricity for the train operator, having regard to whatever information, if any, the train operator has supplied to Network Rail during its consultation under this paragraph 19; and
 - (ii) procure traction electricity for the train operator in accordance with that traction electricity procurement strategy.

20. Actual cost of traction electricity

- 20.1 Network Rail shall provide to the train operator within 30 days of the end of each Period in each Relevant Year, the actual cost of traction electricity consumed by railway vehicles operated by or on behalf of the train operator in the relevant Period against the budgeted amounts. Network Rail shall also provide to the train operator a provisional six month Volume Reconciliation by Geographic Area g before 30 October of each Relevant Year and a provisional nine month Volume Reconciliation by Geographic Area g before 30 January of each Relevant Year.

21. Dispute Resolution

- 21.1 Save as expressly provided otherwise in these Traction Electricity Rules, the dispute resolution processes set out in clause 13 of the relevant track access contract into which these Traction Electricity Rules are incorporated shall apply in respect of any dispute arising out of or in relation to these Traction Electricity Rules.

APPENDIX 1: TEMPLATE LOOK-UP TABLES

1. Journey Look-Up Tables

Table 1.1: Journey Look-Up Table for non locomotive-hauled passenger journeys – Consumption Data

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
						Consumption rate (kWh/5 minute interval)				
Train Operator	Train Service Code	Specified Equipment	Geographic Area	Electricity Type (AC/DC)	EMU Length	1 Unit	2x Unit	3x Unit	4x Unit	Other

Table 1.2: Journey Look-Up Table for non locomotive-hauled passenger journeys – Regenerative Braking Data

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
						Consumption rate (kWh/5 minute interval)				
Train Operator	Train Service Code	Specified Equipment	Geographic Area	Electricity Type (AC/DC)	EMU Length	1 Unit	2x Unit	3x Unit	4x Unit	Other

Table 1.3: Journey Look-Up Table for freight and locomotive-hauled passenger journeys – Consumption Data

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
					Consumption rate (kWh/5 minute interval/tonne)				
Train Operator	Train Service Code	locomotive class	Geographic Area	Electricity Type (AC/DC)	1 Unit	2x Unit	3x Unit	4x Unit	Other

Table 1.4: Journey Look-Up Table for freight and locomotive-hauled passenger journeys – Regenerative Braking Data

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
					Consumption rate (kWh/5 minute interval/tonne)				
Train Operator	Train Service Code	locomotive class	Geographic Area	Electricity Type (AC/DC)	1 Unit	2x Unit	3x Unit	4x Unit	Other

2. **Non-Journey Look-Up Table**

Table 2.1: Non-Journey Look-Up Table

1.	2.	3.	4.	5.
Train Operator	Specified Equipment	Geographic Area	Electricity Type (AC/DC)	Consumption rate (kWh/5 minute interval)

APPENDIX 2: (NOT USED)

APPENDIX 3: NETWORK RAIL DISTRIBUTION SYSTEM LOSS FACTORS

The table below sets out the Network Rail Distribution System Loss Factor for each traction electricity Geographic Area (g) for the AC System (λ_{AC}) and the DC System (λ_{DC}) for the purposes of calculating the Traction Electricity Charge.

ESTA	Traction electricity Geographic Area (g)	Network Rail Distribution System Loss Factor for the AC System (λ_{AC})	Network Rail Distribution System Loss Factor for the DC System (λ_{DC})
M	Merseyside	N/A	0.1156
N	Midland Main Line	0.0423	N/A
O	London Tilbury & Southend	0.0321	N/A
P	Great Eastern	0.0321	0.1701
Q	West Anglia	0.0386	N/A
R	East Coast Main Line South	0.0309	0.1701
A	East Coast Main Line Central	0.0423	N/A
B	East Coast Main Line North	0.0423	N/A
C	East Coast Main Line Leeds	0.0423	N/A
S	Scotland Glasgow	0.0423	N/A
D	Scotland East	0.0489	N/A
E	Scotland North & West	0.0423	N/A
F	Scotland WCML	0.0489	N/A
T	West Coast Main Line South	0.0341	0.1701
G	West Coast Main Line Central	0.0386	N/A
H	West Coast Main Line West Midlands	0.0386	N/A

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ESTA	Traction electricity Geographic Area (g)	Network Rail Distribution System Loss Factor for the AC System (λ_{AC})	Network Rail Distribution System Loss Factor for the DC System (λ_{DC})
J	West Coast Main Line North	0.0423	N/A
U	Southern	N/A	0.1701
V	Great Western	0.0386	N/A
L	Western	0.0386	N/A

APPENDIX 4: NOT USED

APPENDIX 5: THE GEOGRAPHIC AREAS

The table below describes the Geographic Area g for the purposes of Traction Electricity Charge calculations.

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
M	Merseyside	Comprises the Merseyside third rail electrified system between Liverpool, Southport, Ormskirk, Kirkby, Hunts Cross, Ellesmere Port, Chester, New Brighton and West Kirby.
N	Midland Main Line	Comprises the overhead line electrified routes from London St Pancras and City Thameslink to Bedford. There is a link to the East Coast at St Pancras and a planned link to the Gospel Oak to Barking line at Carlton Road Junction.
O	London Tilbury & Southend	Comprises the overhead line electrified London Tilbury and Southend routes from Fenchurch Street to Shoeburyness via Laindon, Rainham and Chafford Hundred; the route between Gas Factory Junction and Bow Junction and the routes from Barking to Forest Gate Junction & South Tottenham.
P	Great Eastern	Comprises the electrified Great Eastern Main Line routes from Liverpool Street to Bow Junction, Upminster, Southend Victoria, Southminster, Braintree, Clacton, Walton-on-Naze, Harwich Town and Norwich; the West Anglia route from Liverpool Street to Hackney Downs station; the Lea Valley Line between Stratford and Coppermill Junction, the ac and dc section of the North London Line route between Stratford and Camden Road and the various interfaces with HS1 & East Coast north of Kings Cross/St Pancras.. There is a boundary with TfL on the curve between Dalston Junction and the North London Line.
Q	West Anglia	Comprises the electrified West Anglia routes from Hackney Downs station to Chingford, Enfield Town, Hertford East, Stansted Airport, Cambridge and Kings Lynn; the electrified route between Cambridge Junction (on the East Coast Main Line near Hitchin) and Cambridge and up to the neutral sections at South Tottenham and Coppermill Junction.

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
R	East Coast Main Line South	Comprises the electrified East Coast Main Line between Kings Cross to the neutral section at Holme (between Huntingdon and Peterborough), the electrified route between Moorgate and Finsbury Park; the electrified route between Canonbury West Junction and Finsbury Park; the Kings Cross Incline between Camden Road East Junction and Freight Terminal Junction and the link to St Pancras Thameslin. A new link to the Gospel Oak to Barking line will also be added.
A	East Coast Main Line Central	Comprises the electrified East Coast Main Line between the neutral sections at Holme (between Huntingdon and Peterborough), South Kirkby and Hambleton Junction (between Doncaster and York).
B	East Coast Main Line North	Comprises the electrified East Coast Main Line between the neutral sections at Hambleton Junction (between Doncaster and York) and Chathill (between Alnmouth and Belford).
C	East Coast Main Line Leeds	Comprises the electrified East Coast Main Line between the neutral section at South Kirkby and Leeds, Bradford and Skipton.
S	Scotland Glasgow	Comprises the electrified routes in Scotland between the neutral sections at Gartoch, Garnqueen, Coatbridge, Auchengray (between Edinburgh and Carstairs), Carstairs, Lochwinnoch, Bishopston and Rutherglen.
D	Scotland East	Comprises the electrified routes in Scotland between the neutral sections at Chathill (between Alnmouth and Belford), Auchengray (between Edinburgh and Carstairs) and Haymarket.
E	Scotland North & West	Comprises the electrified routes in Scotland on the North Clyde bounded by the neutral sections at Rutherglen, Gartoch, Garnqueen, Coatbridge and Haymarket; the routes from Bishopton neutral section to Goourock & Wemyss Bay and the routes from Lochwinnoch neutral section to Ayr and Largs.
F	Scotland WCML	Comprises the electrified routes in Scotland between the neutral sections at Penrith and Carstairs.
T	West Coast Main Line South	Comprises the West Coast Main Line routes from Euston to the neutral sections at Berkswell and Nuneaton; the third rail electrified lines from Euston to Watford Junction; the West London Line to midway between

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
		North Pole junction and the Westway Road Bridge; the North London Line between South Acton and Camden Road; the route between the Primrose Hill tunnels and Camden Road and the route between Gospel Oak and South Tottenham.
G	West Coast Main Line Central	Comprises the West Coast Main Line routes between Nuneaton and Stafford (Whitmore) / Macclesfield (Prestbury) bounded by the neutral sections at Nuneaton, Queensville (Stafford), Whitmore, Kidsgrove and Prestbury
H	West Coast Main Line West Midlands	Comprises the West Coast Main Line routes around Birmingham between the neutral sections at Berkswell and Queensville (Stafford).
J	West Coast Main Line North	Comprises the West Coast Main Line routes between the neutral sections at Whitmore, Kidsgrove, Prestbury and Penrith including the Liverpool and Manchester areas. It will also include all new electrification in the Manchester to Blackpool area and towards Leeds.
U	Southern	Comprises all third rail electrified routes south from Farringdon, Cannon Street, Charing Cross, London Bridge, Waterloo and Victoria, to the Network Rail/Eurotunnel boundary; the Network Rail/HS1 boundaries at Ebbsfleet & Fawkham Jn; the West London Line to the south of North Pole junction and west to Reading, Basingstoke and Weymouth; and the North London Line between Richmond and Acton Central. There are boundaries with TfL at East Putney, Gunnersbury-Turnham Green and New Cross Gate. There are boundaries with non-electrified routes at: Dorchester South Jn, Worgret Jn, Hamworthy, Totton Jn (West), Redbridge Jn, 600m south of Northam Jn, Easleigh East Jn, Worting Jn, Basingstoke GW Jn, Reading Spur Jn. The following routes are not electrified within the above area: Wokingham Jn to Aldershot Jn South; Shalford Jn to Reigate (Level Crossing); Hurst Green Jn to Uckfield; Ore (582935, 111118, ATH 81m 225yds) to Ashford 'd' Jn; Old Kew Jn & New Kew Jn to South Acton Jn; Angerstein Jn to Angerstein Wharf; Hoo Jn to Grain;

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
I	Western Temporary	Comprises the Western routes between Maidenhead, Bristol and Bristol Parkway bounded by the neutral sections at Maidenhead and Filton.
V	Western	Comprises the electrified routes from Paddington to Maidenhead. There will also be neutral sections at Westbourne Park (Crossrail), Old Oak (Crossrail Depot) and Acton Wells (North London Line).
W	High Speed 1	St Pancras International to Eurotunnel Boundary.
Y	Crossrail	Comprises the electrified routes between the neutral sections at Westbourne Park (Westbourne) and Pudding Mill Lane (Great Eastern) and also within the Old Oak Common Crossrail Depot.
K	South Wales	Comprises the electrified routes from Swansea to the neutral sections at Stoke Gifford / Filton (Western).
L	Western	Comprises the electrified route from Maidenhead to Swindon.

APPENDIX 6: PERCENTAGE LOADING FACTORS

Number of Electric Multiple Unit(s)	Percentage Loading Factor (%)
1	100
2	192
3	285
4	380
5	475
6	570
7	665
8	760
9	855
10	950



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31st August 2018

Virgin Trains West Coast Ltd Response to ORR's CP6 Changes to Access Contracts and Payment Rates

Virgin Trains West Coast Ltd welcomes the opportunity to respond to ORR's Changes to Access Contracts Consultation published in July 2018 for Control Period 6 (CP6).

Having reviewed the Changes to Access Contracts Consultation, we would like ORR to consider the following two points.

Change from RPI to CPI

Please can ORR clarify that this change will affect inflationary increases from the start of CP6 on 1st April 2019, so increases due from that date which would usually be based on the previous November's RPI figure, will instead be based on the previous November's CPI figure? This will also apply so all increases are based on the usual corresponding month's CPI. For example, First Reserve Rent increase on the March RPI figure, this would now be the March CPI figure.

Variable Usage Charge 18/19

As part of the 'Supplementals to CP5 Track Usage Price List', the two rates for Class 390 Hall bushes shown below need to be captured in the table.

Franchised Passenger Variable Usage Charge rates

Operator	Vehicle Type	Pence per Vehicle Mile	Price Base	Date Supplemented to price list
West Coast Trains Limited	390HB/M	13.74	2018/19	06/07/2015
West Coast Trains Limited	390HB/T	12.33	2018/19	06/07/2015

Thank you again for the opportunity to respond to ORR's Changes to Access Contracts Consultation.

We look forward to working with and supporting ORR further with this workstream and look forward to ORR's response to this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'D Horley', with a long horizontal flourish extending to the right.

Darren Horley
Head of Commercial (Stations & Operations)
Virgin West Coast Trains Ltd