

PR13 Implementation - Proposed Schedule 7 for Open Access Operators

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

PART 1: INTERPRETATION

1 Definitions

In Parts 1-8 inclusive, unless the context otherwise requires:

- “2008 Final Determinations”** means the document entitled “Periodic Review 2008: Determination of Network Rail’s outputs and funding for 2009-14” and published by ORR on 30 October 2008;
- “2013 Final Determinations”** means the document entitled [“Periodic Review 2013: Determination of Network Rail’s outputs and funding for 2014-19”] and published by ORR on ● 2013;
- “access charges review”** has the meaning ascribed to it by Schedule 4A to the Act;
- “Alliance Agreement”** means an agreement between Network Rail and one or more train operators establishing an alliance in which those parties work jointly to carry out or otherwise share the risk of activities on a part of the Network;
- “Capacity Charge”** means a variable charge, calculated in accordance with paragraph 6 of Part 2;
- “Default Charge”** means the charge calculated in accordance with paragraph 3.3 of Part 2;

“Default Period”	<p>means the period from the later of:</p> <p>(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or</p> <p>(b) 1 April 2014,</p> <p>until the date on which ORR consents to or determines the supplement to the Track Usage Price List for that vehicle under paragraph 9.11 of Part 2;</p>
“Default Rate”	<p>means, in respect of any New Specified Equipment used on the Network, the corresponding passenger default rate for that type of vehicle set out in the Track Usage Price List;</p>
“Default Train Consist Data”	<p>means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;</p>
“Delivery Plan”	<p>means the document entitled [<i>insert title</i>], including its supporting documentation, published by Network Rail on or about 31 March 2014;</p>
“Efficiency Benefit Share”	<p>means the amount determined in accordance with paragraph 5.1 of Part 2;</p>
“List of Capacity Charge Rates”	<p>means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013;</p>
“New Specified Equipment”	<p>means a type of railway vehicle not included in the Track Usage Price List.</p>
“Outperformance Sum”	<p>shall be the amount, in the case of a REBS Outperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has exceeded the performance set in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;</p>
“Period”	<p>has the meaning ascribed to it in Schedule 8;</p>

“REBS Outperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in <i>[insert reference]</i> of the 2013 Final Determinations, that Network Rail’s performance has exceeded the performance set in the Route Baseline;
“REBS Route”	means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;
“REBS Underperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in <i>[insert reference]</i> of the 2013 Final Determinations, that Network Rail’s performance has not achieved the performance set in the Route Baseline;
“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 Baseline"	means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan, as adjusted for inflation in accordance with the methodology and principles set out in <i>[insert reference]</i> of the 2013 Final Determinations, and that ORR will use in its annual efficiency and finance assessment of Network Rail for the purposes of the Route Level Efficiency Benefit Share Mechanism;
“Route-Level Efficiency Benefit Share”	has the meaning ascribed to it in paragraph 1.1 of Part 3;
“Route Level Efficiency Benefit Share Mechanism”	means the provisions for the calculation and payment of the Route Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1.3 of Part 3.

“RPI”	means the General Index of Retail Prices All Items measured by CHAW and published each month, or: <ul style="list-style-type: none"> (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or (b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;
“Service Coded Group”	means a Service or collection of Services specified as such in the List of Capacity Charge Rates, 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 2013;
“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;
“Underperformance Sum”	shall be the amount, in the case of a REBS Underperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has not achieved the performance set out in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;
“Variable Charge”	means the Variable Usage Charges;
“Variable Usage Charge”	means a variable charge, calculated in accordance with paragraph 3 of Part 2;
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network; 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:

$$T_t = V_t + K_t + D_t - BS_t$$

where:

T_t means Track Charges in Relevant Year t;

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 derived from the formula in paragraph 6;

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

BS_t means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 3.2.

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 in Relevant Year t which is derived from the following formula:

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

where:

V_{rit} means an amount for a category of vehicle i for Relevant Year t which is derived from the following formula:

$$V_{rit} = V_{rit-1} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

RPI_{t-1} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December immediately preceding the relevant 1 April;

RPI_{t-2} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 16 months before the relevant 1 April; and

$$TRUEUP_{t-1} = \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} - \frac{(RPI_{t-2} - RPI_{t-3})}{RPI_{t-3}}$$

where:

RPI_{t-3} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 28 months before the relevant 1 April,

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

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

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

3.2 Not used.

3.3 *Default Charge*

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

$$\Sigma D_{nt} \cdot UD_{nt}$$

where:

D_{nt} means:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the Default Rate for that New Specified Equipment; and

- (b) in respect of any other Relevant Year t the total of the Default Rate for that New Specified Equipment multiplied by the following formula:

$$\left[\left(1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

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

RPI_{2013} means the average value of the monthly figures of RPI for the 12 months up to and including December 2013; and

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

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

Σ means the summation across all relevant New Specified Equipment.

4 Not used.

5. Efficiency benefit share

5.1 The Efficiency Benefit Share:

- (a) is an amount (which shall not be a negative value) representing a return of Track Charges which shall be identified in the ORR's annual assessment of Network Rail as the "Efficiency Benefit Share", if any, to be rebated to the Train Operator, such amount to be determined in accordance with the methodology and principles set out in paragraphs 27.34 to 27.53 (inclusive) of the 2008 Final Determinations; and
- (b) shall only be payable in respect of Relevant Years ending on or before 31 March 2014.

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

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

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

where:

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

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

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

provided that, in each case:

- (i) if this contract expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP';
- (ii) if this contract expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP';
- (iii) if this contract commences on or before the fourteenth day of a Period, such Period shall be included in the calculation of 'CP'; and
- (iv) if this contract commences on or after the fifteenth day of a Period, such Period shall not be included in the calculation of 'CP'.

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

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

Network Rail shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

6 Capacity Charge

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

$$K_t = \left[\sum (P_{g_{twd}} \cdot T_{g_{twd}}) + (P_{g_{twe}} \cdot T_{g_{twe}}) \right]$$

where:

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

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

$$P_{g_{twd}} = P_{g_{twd-1}} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

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

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

$TRUEUP_{t-1}$ has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year t commencing on 1 April 2014, $P_{g_{twd}}$ shall have the value for the Weekday rate per Service Coded Group i shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year, $P_{g_{twd-1}}$ shall have the same value;

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

$$P_{g_{twe}} = P_{g_{twe-1}} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

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

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

$TRUEUP_{t-1}$ has the meaning set out in paragraph 3.1 above,

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

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

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

7 Not used.

8 Not used.

9 Bilateral supplements to the List of Capacity Charge Rates and Track Usage Price List

9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall inform Network Rail 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 Default Rate shall apply to it during the Default Period.

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

- (a) agreed between the parties and ORR has consented to it; or
- (b) determined by a relevant ADRR Forum and ORR has consented to it; or
- (c) determined by ORR, following consultation with the parties.

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

- (a) the Track Usage Price List shall be supplemented to include a vehicle category which is not included in the list; or
- (b) the List of Capacity Charge Rates shall be supplemented to take account of changes in the pattern and number of 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 in reasonable

detail of the proposal and the reasons for it. The parties shall thereafter negotiate 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 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, either party shall be entitled to refer the matter for resolution in accordance with the ADRR.
- 9.9 If the matter is referred for resolution under paragraph 9.8, the parties shall agree, in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall reach a decision which is fair and reasonable to them, having regard to:
 - (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
 - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.
- 9.10 The parties shall procure that any determination by a relevant ADRR Forum shall be delivered to ORR within seven days after the date of the determination.
- 9.11 Following notification under paragraph 9.7 or 9.10 ORR may either consent to the supplement agreed by the parties or determined by the relevant ADRR Forum or may, having consulted the parties, determine a different supplement.
- 9.12 In the case of a supplement to the List of Capacity Charge Rates, the supplement shall have effect from such date as ORR shall determine by notice to the parties.
- 9.13 In the case of a supplement to the Track Usage Price List, the supplement shall have effect from the first day of the Default Period.
- 9.14 Following ORR's consent or determination under paragraph 9.11 Network Rail shall:
 - (a) apply the supplement from the date in accordance with paragraph 9.12 or 9.13 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; 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.

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) not used;
- (iii) the Capacity Charge;
- (iv) not used; 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 seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.
- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) 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. Route-Level Efficiency Benefit Share Mechanism

Calculation of the Route-Level Efficiency Benefit Share

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

(a) in the case of a REBS Outperformance:

$$O_t = \frac{V_t}{AV_t} \cdot \left[\frac{25 \cdot ORB_t}{100} \right]$$

and

(b) in the case of a REBS Underperformance:

$$U_t = \frac{V_t}{AV_t} \cdot \left[\frac{10 \cdot URB_t}{100} \right]$$

where:

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

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

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

ORB_t means the lower of:

- (i) the Outperformance Sum; and
- (ii) an amount equal to 10% of the Route Baseline in respect of the REBS Route in Relevant Year t;

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

URB_t means the lower of:

- (i) the Underperformance Sum; and
- (ii) an amount equal to 10% of the Route Baseline in respect of the REBS Route in Relevant Year t.

- 1.2 The Route-Level Efficiency Benefit Share (if any) calculated under paragraph 1.1 shall be payable for each REBS Route for Relevant Year t, unless the Train Operator has exercised a right to opt out in respect of a particular REBS Route in accordance with paragraph 1.3 or 1.4. Where the Train Operator has exercised such a right, no Route-Level Efficiency Benefit Share shall be payable, in respect of that REBS Route for the Relevant Year in the course of which the notice referred to in paragraph 1.3 was served and all subsequent Relevant Years up to 31 March 2019.

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

- 1.3 The Train Operator may serve a notice, in the form set out in Appendix 7B, on Network Rail (and shall provide a copy to ORR) informing Network Rail that the Route-Level Efficiency Benefit Share Mechanism shall not apply to the Train Operator in respect of one or more REBS Routes specified in the notice for the Relevant Year in the course of which the notice was served and all subsequent Relevant Years up to 31 March 2019 (an "**Opt-out Notice**"). Unless paragraph 1.4 applies, an Opt-out Notice may be served only before 1 June 2014.
- 1.4 If either of the following circumstances apply, the Train Operator may serve an Opt-out Notice at any time until 31 March 2019:
- (a) the Train Operator commences operating services for the carriage of passengers or freight by railway on one or more REBS Routes on which it did not previously operate such services, whether as a result of entering into a new franchise agreement or a new access agreement or otherwise, and such Opt-out Notice may be served only in respect of the REBS Routes on which the Train Operator commences operating those services; or
 - (b) Network Rail notifies the Train Operator that it has entered into an Alliance Agreement with another train operator in respect of a REBS Route or part thereof on which the Train Operator operates Services,

and the Train Operator has obtained written confirmation from ORR that the Alliance Agreement is likely to have a material direct financial impact on Network Rail's performance on that REBS Route as assessed by ORR in its annual efficiency and financial assessment of Network Rail, and such Opt-out Notice may only be served in respect of the REBS Route to which the Alliance Agreement applies,

and in either circumstance, the Opt-out Notice must be served within two months after:

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

as the case may be.

- 1.5 Network Rail shall serve notice on the Train Operator (copied to ORR) that it has entered into an Alliance Agreement with another train operator in respect of a REBS Route or part thereof on which the Train Operator operates Services within 14 days after entering into that Alliance Agreement.
- 1.6 Network Rail shall provide such information to the Train Operator as the Train operator may reasonably request in order to determine whether to serve an Opt-out Notice, and such information shall be provided within 14 days of the request.

Obligation to pay Route-Level Efficiency Benefit Share

- 1.7 If, pursuant to paragraph 1.1, a party is entitled to payment from the other of a Route-Level Efficiency Benefit Share in Relevant Year t, then, subject to paragraph 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 28 days after the date of publication of ORR's annual efficiency and finance assessment of Network Rail for Relevant Year t.
- 1.8 If, in respect of any Relevant Year t, a Route-Level Efficiency Benefit Share is payable in accordance with paragraph 1.7 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the party entitled to payment shall be entitled to a pro rata payment of the Route-Level Efficiency Benefit Share payable in respect of that REBS Route for Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 1.9) shall be calculated as follows:

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

where:

- REBS means either O_t or U_t as the case may be; and
- CP means the number of Periods during that Relevant Year t either:
- (a) where this contract commences during the course of that Relevant Year t , following commencement of this contract; or
 - (b) where this contract expires or is otherwise terminated during the course of that Relevant Year t , prior to the expiry or other termination of this contract,
- provided that, in each case:
- (i) if this contract expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP';
 - (ii) if this contract expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP';
 - (iii) if this contract commences on or before the fourteenth day of a Period, such Period shall be included in the calculation of 'CP'; and
 - (iv) if this contract commences on or after the fifteenth day of a Period, such Period shall not be included in the calculation of 'CP'.

- 1.9 Without prejudice to the generality of Clause 16.3.1, any payment of a Route-Level Efficiency Benefit Share (a "**REBS payment**") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the REBS payment is consideration for a supply for VAT purposes the party making that REBS payment shall in addition pay to the party receiving the REBS payment an amount equal to the amount of VAT due in respect of that REBS payment and either:
- (a) the party receiving the REBS Payment shall issue a VAT invoice to the party making such REBS payment in respect of the relevant amount; or
 - (b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the Value Added Tax Regulations 1995 (the "**VAT Regulations**")) that continues in force then the party making the REBS payment shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

PART 3A: NOT USED

PART 4: NOT USED

PART 5: *[TO BE USED FOR ADDITIONAL ITEMS WHERE PAYMENTS DUE, E.G. SIGNAL BOXES, ADDITIONAL OPENING HOURS.]*

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 and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) not used;
- (d) not used;
- (e) not used;
- (f) not used;
- (g) the amount of any Efficiency Benefit Share in respect of Relevant Years ending on or before 31 March 2014;
- (h) not used;
- (i) not used;
- (j) the amount of any sum K_t 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 2019 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.

PART 8: NOT USED

APPENDIX 7A – REBS ROUTES TABLE

Route	Route definition
Anglia	As defined in Network Rail's Delivery Plan supporting information
East Midlands	
Kent	
London North East	
London North West	
Scotland	
Sussex	
Wales	
Wessex	
Western	

APPENDIX 7B – ROUTE-LEVEL EFFICIENCY BENEFIT SHARE OPT-OUT NOTICE

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

Head of Regulatory Policy

Network Rail

Kings Place

90 York Way

London

N1 9AG

Dear Head of Regulatory Policy,

Opt-out from the CP5 route-level efficiency benefit sharing (REBS) mechanism

Following the publication by Network Rail of the REBS baselines for CP5, Table 1 sets out the operating routes in relation to which [*enter train operator name here*] will not be participating in REBS for CP5 (2014-15 to 2018-19). [*Enter train operator name here*] hereby exercises its right to opt-out of REBS under its track access contract and accordingly no sums will be payable to or from Network Rail arising from REBS in CP5 for the routes identified in Table 1.

Table 1: REBS opt-out matrix

Route	Route definition	Opt-out (please mark with an 'x')
Anglia	As defined in Network Rail's Delivery Plan supporting information	
East Midlands		
Kent		
London North East		
London North West		
Scotland		
Sussex		
Wales		

Wessex		
Western		

I understand that unless [*enter train operator name here*] has provided a notification to ORR to opt-out of REBS in CP5 within two months of [the start of the control period] [the start of new operations on the network] [the date of receipt of written confirmation from ORR that Network Rail has entered into a material alliance agreement], [*enter train operator name here*] will be eligible to make and receive payments under REBS for the remainder of CP5.

I have also sent a copy of this notice to the Director of Railway Markets and Economics at ORR.

Yours sincerely

[Name of train operator representative]

APPENDIX 7C – DEFAULT TRAIN CONSIST DATA