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United Kingdom

URGENT: ATTENTION FINANCE DIRECTOR AND COMPANY SECRETARY

13 March 2025

Dear Sirs / Madams,

Framework Track Access Agreement: Incorporation of Revised HS1 Passenger Access Terms

1. We refer to the framework track access agreement for passenger services dated 13 March 2014 originally between HS1 Limited ("**HS1 Ltd**") and London & South Eastern Railway Limited and subsequently transferred to SE Trains Limited (the "**Train Operator**") pursuant to a statutory transfer scheme with effect from 17 October 2021, as amended and supplemented from time to time (the "**Framework Track Access Agreement**").

2. Unless the context otherwise requires, capitalised terms and expressions used but not defined in this letter shall have the meaning given to such terms and expressions in the Framework Track Access Agreement as amended by this letter.

3. This letter is supplemental to the Framework Track Access Agreement.

4. Paragraph 1.2 of Section 1 of the Updated Terms (as defined in paragraph 7 below) shall be incorporated into this letter as if references to the "Contract" were references to this letter.

5. This letter is intended to be a deed and shall be legally binding to those parties to it and executed and delivered as a deed.

Revised HS1 Passenger Access Terms

6. HS1 Ltd has proposed amending the Terms incorporated into the Framework Track Access Agreement to implement certain changes that are outside of the scope of the Periodic Review being undertaken by the ORR in respect of the control period commencing 1 April 2025 (the "**Out of Scope Amendments**"). The Out of Scope Amendments address changes in certain legislation and regulations and ensure that the provisions relating to the Outperformance Sharing mechanism apply in the control period commencing 1 April 2025.

7. Following consultation with interested parties, including the Train Operator and the ORR, HS1 Ltd and the Train Operator agreed that, subject to approval from the ORR, the Framework Track Access Agreement shall be amended in accordance with the terms of this letter to incorporate the Out of Scope Amendments into the HS1 Passenger Access Terms as shown in annex 1 to this letter (the "**Updated Terms**").

8. The Parties acknowledge that a draft of this letter (including the Updated Terms) has been submitted to the ORR and the ORR has approved the form of this letter and the Updated Terms and that such approval complies with paragraph 5.2(a) of Section 9 of the Updated Terms.

9. Accordingly, the Parties agree that with effect from 00:01 hours on 1 April 2025 (the "**Effective Time**") the Framework Track Access Agreement shall be amended by deleting clause 1.1 and replacing it with the following provision:

> "In this Agreement, the "Terms" means the HS1 Passenger Access Terms, being as at 1 April 2025, the April 2025 edition of the HS1 Passenger Access Terms."

10. The Parties acknowledge and agree that from the Effective Time:

(a) all references to the Terms in the Framework Track Access Agreement shall be interpreted as references to the Updated Terms;

(b) in accordance with clause 2.1 of the Framework Track Access Agreement, the Updated Terms shall be incorporated into and form part of the Framework Track Access Agreement; and

(c) clause 2.4 of the Framework Track Access Agreement shall continue in full force and effect notwithstanding the amendment to the Framework Track Access Agreement pursuant to paragraph 9 of this letter.

Miscellaneous

11. The provisions of the Framework Track Access Agreement shall, except as amended by this letter, continue in full force and effect in accordance with its terms.

12. All references in the Framework Track Access Agreement to the "Agreement", "herein", "hereof", "hereunder" and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Framework Track Access Agreement as amended by this letter.

13. The provisions of paragraphs 1 (*Confidentiality*), 2 (*Assignment and Novation*), 3 (*Dispute Resolution*), 4 (*Railways Regulations*), 5.1 (*Non Waiver*), 5.2 (*Amendment*), 5.3 (*Entire Contract and Exclusive Remedies*), 5.4 (*Notices*), 5.7 (*Contracts (Rights of Third Parties) Act 1999*) and 5.8 (*Invalidity*) of Section 9 of the Updated Terms shall apply to this letter as though those paragraphs were set out in this letter, but as if references in those paragraphs to "the Contract" were references to "this letter".

14. This letter may be executed in any number of counterparts which, taken together, shall constitute one and the same document. Any Party may enter into this letter by signing any of such counterparts.

15. This letter and any non-contractual obligations arising out of or connected with this letter shall be governed by and construed in accordance with the laws of England and Wales.

In witness whereof this letter has been executed and delivered as a deed by the Parties hereto on the date first written above.

EXECUTED as a **DEED** by)
HS1 LIMITED acting by:)
Mattias Bjornfors under a)
power of attorney dated)
27 September 2024)
in the presence of:)

Mattias Bjornfors (Mar 13, 2025 16:44 GMT)

Authorised signatory

Chloe Barton

Witness name

5th Floor, King's Place

90 York Way

London, N1 9AG

Witness address

Chloe Barton (Mar 13, 2025 16:46 GMT)

Witness signature

EXECUTED as a **DEED** by)
SE TRAINS LIMITED acting by:)
Steve White and)
Paul Barlow)

Steve White (Mar 11, 2025 15:51 GMT)

Director

Paul Barlow (Mar 13, 2025 08:16 GMT)

Director

Annex 1

Updated Terms

Sew
Sew

Paul Barlow
Paul Barlow

MB
MB

CB
CB

HIGH SPEED 1 PASSENGER ACCESS TERMS

Edition Date: April 2025

TABLE OF CONTENTS

Clause	Headings	Page
SECTION 1 – DEFINITIONS AND INTERPRETATION		5
1.	INTERPRETATION	5
SECTION 2 – DURATION		14
1.	CONDITIONS PRECEDENT AND DURATION	14
SECTION 3 – OPERATIONAL PROVISIONS		16
1.	PERMISSION TO USE	16
2.	STANDARD OF PERFORMANCE	17
3.	OPERATION AND MAINTENANCE OF TRAINS AND NETWORK	17
4.	TRANSITION	18
SECTION 4 – COMPENSATION FOR RESTRICTIONS OF USE		20
1.	DEFINITIONS	20
2.	APPLICATION OF THIS PART	22
3.	COMPENSATION FOR HS1 RESTRICTIONS OF USE	23
4.	ASSET MAINTENANCE PLAN	23
5.	SECTION 8 APPLICATION	24
6.	RESTRICTION OF USE DAY AND CORRESPONDING DAY	24
7.	COMPETENT AUTHORITY RATE	24
8.	PAYMENT PROCEDURES	25
9.	CAP ON COMPENSATION	27
SECTION 5 – LIABILITY		28
1.	LIABILITY	28
2.	RESTRICTIONS ON CLAIMS	28
3.	LIMITATION ON LIABILITY	30
4.	INSURANCE	31
5.	FORCE MAJEURE EVENTS	32
SECTION 6 – EVENTS OF DEFAULT, SUSPENSION AND TERMINATION		35
1.	EVENTS OF DEFAULT	35
2.	SUSPENSION	36
3.	TERMINATION	38
4.	CONSEQUENCE OF TERMINATION	39
5.	NOVATION OF THE CONTRACT ON TERMINATION OF THE CONCESSION AGREEMENT	39
SECTION 7 – TRACK CHARGES		41
PART 1: INTERPRETATION		41
1.	DEFINITIONS	41
PART 2: TRACK CHARGES		49
1.	PRINCIPAL FORMULA	49

2. INVESTMENT RECOVERY CHARGE 50
3. OMRC 52
4. TRACTION ELECTRICITY CHARGE 54
5. TRACTION ELECTRICITY ARRANGEMENTS 59
6. CAPACITY RESERVATION CHARGE 62
7. CONGESTION TARIFF 64
8. OTHER SERVICES CHARGE 64
9. NOT USED 64
10. WASH UP AMOUNT 64
10A. QUARTERLY WASH UP AMOUNT 66
11. NOT USED 68
12. OUTPERFORMANCE SHARING 68
PART 3: REVIEW 69
1. DEFINITIONS 69
2. PERIODIC REVIEW 69
3. INTERIM REVIEWS 70
4. PROTECTED PROVISIONS 70
5. IMPLEMENTATION OF AN ACCESS REVIEW 70
6. PROVISION OF REVISED TEXTS 71
7. CONSEQUENTIAL EFFECTS 71
PART 4: PAYMENTS 72
1. PAYMENT OF ACCESS CHARGES 72
2. ADDITIONAL PERMITTED CHARGES 73
3. PAYMENTS, INTEREST AND VAT 74
SECTION 8 – PERFORMANCE REGIME 75
PART 1: GENERAL PROVISIONS 75
1. INTERPRETATION 75
2. CALCULATION OF MINUTES DELAY AND CANCELLATION MINUTES 78
3. RECORDING OF PERFORMANCE INFORMATION 78
4. ALLOCATION OF RESPONSIBILITY FOR MINUTES DELAY AND CANCELLED TRAINS 80
5. STATEMENT OF ALLOCATED RESPONSIBILITY 82
6. NOTIFICATION OF PERFORMANCE SUMS 83
7. PAYMENT PROCEDURES 83
8. NOT USED 84
9. BENCHMARKING AND REVIEW 84
10. NOTICES 84
11. DISPUTES 85
PART 1A: N-1 ENERGY SAVING INITIATIVE 86
1. DEFINITIONS 86
2. TERM 87

3. N-1 SCHEME 87
PART 2: CALCULATION OF THE PERFORMANCE SUMS 90
1. HS1 LTD PERFORMANCE SUMS 90
2. HS1 LTD PERFORMANCE BONUS 91
3. TRAIN OPERATOR PERFORMANCE SUMS 92
4. TRAIN OPERATOR PERFORMANCE RECEIPT 94
5. PERFORMANCE IMPROVEMENT PLANS 95
SECTION 9 – MISCELLANEOUS 96
1. CONFIDENTIALITY 96
2. ASSIGNMENT AND NOVATION 97
3. DISPUTE RESOLUTION 98
4. RAILWAYS REGULATIONS 98
5. MISCELLANEOUS 99
6. GOVERNING LAW 102
TRACTION ELECTRICITY ANNEX 103

SECTION 1 – DEFINITIONS AND INTERPRETATION

1. INTERPRETATION

1.1 **Definitions**

In the Contract unless the context otherwise requires:

"Act" means the Railways Act 1993;

"Affected Party" has the meaning ascribed to it in paragraph 5.1 of Section 5;

"Affiliate" has the meaning ascribed to the term "affiliate" in Part A of the HS1 Network Code;

"Aggregate DI Costs" means, in respect of any Relevant Year, the aggregate amount of the DI Costs anticipated as being payable by the Train Operator during that Relevant Year calculated on the basis described in Section 7 and on the basis that all capacity which is reserved by the Train Operator in Schedule 5 to the Contract is timetabled in the Applicable Timetable;

"Aggregate IRC/OMRC" means, in respect of any Relevant Year, the aggregate amount of the IRC and OMRC anticipated as being payable by the Train Operator during that Relevant Year calculated on the basis described in Section 7 and on the basis that all capacity which is reserved by the Train Operator in Schedule 5 to the Contract is timetabled in the Applicable Timetable;

"Ancillary Movements" has the meaning ascribed to it in Part D of the HS1 Network Code;

"Applicable Engineering Access Statement" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Applicable Timetable Planning Rules" has the meaning ascribed to it in Part A of the HS1 Network Code;

"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 Part D of the HS1 Network Code as at 2200 hours on the Day prior to that Day, and which is applicable to the Trains;

"Ashford East Boundary" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Ashford East Junction" means Ashford East junction on HS1;

"Ashford International" means Ashford International Station;

"Ashford West Boundary" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Ashford West Junction" means Ashford West junction on HS1;

"Asset Maintenance Plan" means an asset maintenance plan issued by HS1 Ltd from time to time which describes the assets and equipment on HS1 and the means of renewal, maintenance and inspection of the same;

"Associate" has the meaning ascribed to the term "associate" in section 17 of the Act;

"Change in Circumstances" has the meaning ascribed to it in the Concession Agreement as at the Effective Date;

"Collateral Agreements" means the agreements and arrangements listed in Schedule 3 to the Contract;

"Commencement Date" has the meaning given to it in paragraph 4 of Schedule 1 to the Contract;

"Concession Agreement" means the agreement made on 14 August 2009 between the Secretary of State and HS1 Ltd granting the concession for the operation and financing of HS1 and the repair, maintenance and replacement of HS1 as amended and restated on 25 May 2018 and as amended from time to time;

"Confidential Information" means information relating to the affairs of one party to the Contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of the Contract, or any matter or thing contemplated by the Contract or to which the Contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

"Contract" means any Framework Track Access Agreement or Track Access Agreement between HS1 Ltd and the Train Operator which incorporates the Terms, the HS1 Network Code and the HS1 Operational Codes;

"CTRL Act" means the Channel Tunnel Rail Act 1996;

"CTRL Claims Allocation and Handling Agreement" means the agreement of that name between or acceded to by the Parties (and others), providing for (inter alia) the allocation and handling of third party claims against railway industry participants operating on any part of HS1;

"D-22" has the meaning ascribed to it in Part D of the HS1 Network Code;

"Day" means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours;

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

"Diversionary Routes" means the routes specified as such in Schedule 2 to the Contract, which routes the Train Operator is permitted to use for:

(a) providing the Services and making Ancillary Movements during the unavailability of some or all of the Main Routes as a result of the Operational Disruption on the Main Routes; and

(b) making Ancillary Movements of the relevant Specified Equipment for crew training purposes;

"Ebbsfleet International" means Ebbsfleet International Station;

"Effective Date" means the later of the Commencement Date and the date on which the conditions precedent specified in paragraph 1.2 of Section 2 have been satisfied in full;

"Emergency Access Code" means the HS1 Emergency Access Code;

"Environmental Condition" has the meaning ascribed to it in Part E of the HS1 Network Code;

"Environmental Damage" has the meaning ascribed to it in Part E of the HS1 Network Code;

"Eurotunnel Boundary" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Event of Default" means a Train Operator Event of Default or a HS1 Event of Default;

"Expiry Date" has the meaning given to it in paragraph 5 of Schedule 1 to the Contract;

"Failure to Use Notice" has the meaning ascribed to it in Part J of the HS1 Network Code;

"First Working Timetable" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Force Majeure Event" has the meaning ascribed to it in paragraph 5.1 of Section 5;

"Force Majeure Notice" has the meaning ascribed to it in paragraph 5.1 of Section 5;

"Force Majeure Report" has the meaning ascribed to it in paragraph 5.1 of Section 5;

"Forum" has the meaning given to it in the HS1 Access Dispute Resolution Rules;

"Framework Track Access Agreement" means an agreement between HS1 Ltd and a Train Operator setting out the rights and obligations of the parties in relation to the infrastructure capacity to be allocated and the charges to be levied over a period in excess of one Timetable Period;

"Franchise Agreement" means any franchise agreement with the Secretary of State referred to in Schedule 3 to the Contract;

"HS1" or **"High Speed 1"** has the meaning ascribed to it in Part A of the HS1 Network Code;

"HS1 Access Dispute Resolution Rules" has the meaning ascribed to it in Part A of the HS1 Network Code;

"HS1 Event of Default" has the meaning ascribed to it in paragraph 1.3 of Section 6;

"HS1 Network Code" means the document entitled "HS1 Network Code" dated December 2012, as may be amended from time to time;

"HS1 Operational Codes" means the Performance Data Accuracy Code, the Systems Code, the Emergency Access Code and such other codes or agreements as may be adopted pursuant to Part C of the HS1 Network Code;

"Innocent Party" means, in relation to a breach of an obligation under the Contract, the party who is not in breach of that obligation;

"Insolvency Event", in relation to either of the parties, has occurred where:

(a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;

(b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:

  (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£100,000" or such higher figure as the parties may agree in writing from time to time; and

  (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;

(c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition or moratorium with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;

(d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrator, administrative receiver, monitor manager or similar person to enforce that security or any notice of intention to appoint such officer is issued;

(e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or

(f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

(i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the Act (as modified by section 19 of the Channel Tunnel Rail Link Act 1996) and for so long as any such order (or application) remains in force or pending; or

(ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"Legal Requirement" has the meaning given to it in Part A of the HS1 Network Code;

"Liability" means any liability, whether pursuant to a claim for contribution or under statute, tort (including but not limited to liability for negligence), contract or otherwise (save that any exclusions or limitations of liability shall not apply in respect of fraud), and "liable" shall be construed accordingly;

"Liability Cap" means, in respect of each Relevant Year, the greater of:

(a) the Aggregate DI Costs in respect of that Relevant Year; and

(b) £1,000,000 (Indexed);

"Longstop Date" means the date falling one week after the date of the Contract;

"Main Routes" means the routes specified as such in Schedule 2 to the Contract and which are not the Diversionary Routes;

"Network Statement" means the network statement published by HS1 Ltd in accordance with regulation 13 of the Railways Regulations;

"NR(HS)" means Network Rail (High Speed) Limited, a company incorporated under the laws of England and Wales (company number 04434562) and whose registered address is Waterloo General Office, London, SE1 8SW;

"NRIL" means Network Rail Infrastructure Limited, a company incorporated under the laws of England and Wales (company number 02904587) and whose registered address is Waterloo General Office, London, SE1 8SW;

"NR Network" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Operational Disruption" has the meaning given to it in Part H of the HS1 Network Code;

"Operator" means NR(HS) or such successor operator of HS1 appointed by HS1 Ltd from time to time;

"ORR" or "**Office of Rail and Road**" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Performance Data Accuracy Code" means the HS1 Performance Data Accuracy Code;

"Period" means each consecutive period of 28 days during the term of the Contract commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to 14 days on reasonable prior notice from HS1 Ltd to the Train Operator;

"**Periodic Review**" means the periodic review that is to be carried out by the ORR in accordance with the Concession Agreement;

"Permitted Transferee" means:

(a) if the Concession Agreement is terminated, any undertaking which replaces HS1 Ltd as the concessionaire of HS1;

(b) any nominated undertaker of HS1 (other than HS1 Ltd) under section 34 of the CTRL Act;

(c) any lender, security or other trustee, bank, trust, fund or other financial institution or entity with whom HS1 Ltd has at any time entered into any arrangement in connection with the provision of finance to HS1 Ltd; and

(d) in relation to HS1 Ltd, any undertaking falling within the definition of "group undertaking" in section 1161 of the Companies Act 2006;

"Previous Access Agreements" means any access agreements referred to in paragraph 6 of Schedule 1 to the Contract;

"Principal Change Date" has the meaning given to it in Part D of the HS1 Network Code;

"Public Holiday" means any Day other than Saturday or Sunday on which the banks in the City of London are not open for business;

"Railway Code System" has the meaning ascribed to it in the HS1 Railway Systems Code;

"Railway Undertaking Licence" means:

(a) a railway undertaking passenger licence and a passenger statement of national regulatory provisions granted by the ORR under the Railway (Licensing of Railway Undertakings) Regulations 2005; or

(b) a European passenger licence which had effect immediately before 23:00 GMT on 31 January 2020 and a passenger statement of national regulatory provisions, granted by the ORR pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005;

"Railways Regulations" means the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;

"Recovery Time" means additional time incorporated in the First Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the First Working Timetable and HS1 Ltd complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;

"Relevant Force Majeure Event" has the meaning ascribed to it in paragraph 5.1 of Section 5;

"Relevant Losses" means, in relation to:

(a) a breach of the Contract; or

(b) in the case of paragraph 1 of Section 5, any of the matters specified in paragraph 1.1 or paragraph 1.2 of Section 5 (each a "breach" for the purpose of this definition),

all costs, losses (including loss of profit and revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

"Relevant Obligation" has the meaning ascribed to it in paragraph 5 of Section 5;

"Relevant Quarter" means each of the following periods:

(a) the first three Periods in a Relevant Year;

(b) the three Periods comprising the fourth, fifth and sixth Periods in any Relevant Year;

(c) the three Periods comprising the seventh, eighth and ninth Periods in any Relevant Year; and

(d) the final four Periods in any Relevant Year;

"Relevant Year" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March or, in respect of the first Relevant Year, the period from the Effective Date until 2359 hours on the following 31 March and, in respect of the last Relevant Year, the period ending or on the expiry or termination of the Contract and beginning at 0000 hours on the immediately preceding 1 April;

"Routes" means the Main Routes and the Diversionary Routes;

"RPI" means the UK All Items Retail Prices Index as published by the United Kingdom Office for National Statistics (January 1987 = 100) contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or failing such publication, such other index which replicates RPI as closely as possible (with the intention of putting HS1 Ltd in no better nor worse position than it would have been had the index not ceased to be published);

"Rule Book" means the HS1 Rule Book dated January 2015 (as updated and amended from time to time);

"Safety Authorisation" has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Safety Certificate" has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Safety Obligations" means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain;

"Scheduled" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Secretary of State" means the Secretary of State for Transport;

"Sectional Appendix" means the HS1 Sectional Appendix dated November 2013 (as updated and amended from time to time);

"Services" means the Scheduled passenger railway services to be operated by the Train Operator on HS1 pursuant to the permission to use the Routes granted under Section 3 and in accordance with the rights provided in Schedule 5 to the Contract;

"Specified Equipment" means, in relation to each of the Routes, the railway vehicles which the Train Operator is entitled to use in the provision of Services on that Route as specified in Schedule 5 to the Contract;

"Stable" means the parking or laying up of the Specified Equipment or such other railway vehicles being necessary or reasonably required in connection with the provision of the Services and "Stabling" shall be construed accordingly;

"St Pancras International" means London St Pancras International Station;

"Stratford International" means Stratford International Station;

"Suspension Notice" means a notice in writing served by the relevant party on the other party under paragraph 2 of Section 6;

"Systems Code" means the HS1 Railway Systems Code;

"Temple Mills Boundary" means the boundary of the Temple Mills Depot;

"Temple Mills Depot" means the light maintenance depot located at Temple Mills, north of Stratford, London

"Termination Notice" means a notice in writing served by the relevant party on the other party under paragraph 3 of Section 6;

"Terms" means these High Speed 1 Passenger Access Terms as may be amended from time to time;

"Timetable Change Date" has the meaning ascribed to it in Part D of the HS1 Network Code;

"Timetable Period" has the meaning ascribed to in Part D of the HS1 Network Code;

"Timetable Year" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Track Access Agreement" means an agreement between HS1 Ltd and a Train Operator setting out the rights and obligations of the parties in relation to the infrastructure capacity to be allocated and the charges to be levied over a period of up to one Timetable Period;

"Track Charges" means the charges payable by or on behalf of the Train Operator to HS1 Ltd, as set out in or calculated under Part 2 of Section 7;

"Train" means each train, whether operated by the Train Operator or another train operator, operating a scheduled service for the carriage of passengers or goods by railway, excluding any and all trains making an Ancillary Movement ;

"Train Operator" means the relevant train operator who executes the Contract with HS1 Ltd;

"Train Operator Event of Default" has the meaning ascribed to it in paragraph 1.1 of Section 6;

"Train Operator Variation" has the meaning ascribed to it in Part D of the HS1 Network Code;

"Train Slot" means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement;

"Value Added Tax" means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and "VAT" shall be construed accordingly;

"Working Day" has the meaning ascribed to it in Part A of the HS1 Network Code; and

"Working Timetable" has the meaning ascribed to in Part A of the HS1 Network Code.

1.2 **Interpretation**

In the Contract, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) any one gender includes the other;

(c) all headings are for convenience of reference only and shall not be used in the construction of the Contract;

(d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;

(e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;

(f) reference to a party is to a party to the Contract, its successors and permitted assigns;

(g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to the Contract; reference to a Section is to a section of the Terms; reference in a Schedule or Section to a Part of or an Appendix to a Schedule or Section is to a part of or an appendix to the Schedule or Section in which the reference appears; reference in a Part of a Schedule or Section to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;

(h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;

(i) references to the word "person" or "persons" or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;

(j) "otherwise" and words following "other" shall not be limited by any foregoing words where a wider construction is possible;

(k) the words "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;

(l) words and expressions defined in the Channel Tunnel Rail Link Act 1996, the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008, the Railways Acts 1993 and 2005, the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, the Railway (Licensing of Railway Undertakings) Regulations 2005 and the Railways and Other Guided Transport Systems (Safety) Regulations 2006 shall, unless otherwise defined in the Contract, have the same meanings in the Contract;

(m) any reference to the term "possession", either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use as defined in Section 4;

(n) words and expressions defined in the HS1 Network Code shall, unless that word or expression is defined in the Contract (excluding the HS1 Network Code), have the same meanings in the Contract;

(o) save as otherwise expressly stated in the Contract, where at any time any sum is stated to be 'Indexed' then at such time, the said sum shall be multiplied by I where I equals:

$RPI_t \div RPI_0$

where:

RPI_t means the RPI published or determined with respect to February in Relevant Year t-1; and

RPI_0 means the RPI published or determined with respect to February 2009 provided that where a value of RPI published or determined with respect to any February is lower than the value of RPI published or determined with respect to any previous February in or after 2009, RPI shall remain at the higher value;

(p) all sums payable under the Contract are expressed in Pounds Sterling; and

(q) all sums payable under the Contract exclude VAT (unless otherwise stated).

1.3 **Indemnities**

Indemnities provided for in the Contract are continuing indemnities in respect of the Relevant Losses to which they apply, and hold the indemnified party harmless on an after tax basis.

SECTION 2 – DURATION

1. CONDITIONS PRECEDENT AND DURATION

1.1 **Effective date**

The provisions of the Contract, other than paragraph 1 of Section 3, shall take effect from the signature of the Contract.

1.2 **Conditions precedent to paragraph 1 of Section 3**

Paragraph 1 of Section 3 shall take effect on the later of the Commencement Date and the date on which the following conditions precedent have been satisfied in full:

(a) the Concession Agreement is still in force and effect and/or HS1 Ltd is the nominated undertaker of HS1 under section 34 of the CTRL Act;

(b) the Train Operator is authorised to be the operator of trains for the provision of the Services by a Railway Undertaking Licence unless it is exempt from the requirement to be so authorised;

(c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to the Contract becoming unconditional);

(d) the Train Operator holds a Safety Certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 that permits the operation of the Services on HS1;

(e) HS1 Ltd or the Operator holds a Safety Authorisation under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 in relation to HS1; and

(f) the provisions of the Contract, other than paragraph 1 of Section 3, have taken effect in accordance with paragraph 1.1.

1.3 **Obligations to satisfy conditions precedent**

Each party shall use all reasonable endeavours to ensure that the following conditions precedent are satisfied as soon as practicable and in any event not later than the Longstop Date:

(a) in the case of HS1 Ltd, in so far as within its control, the conditions precedent contained in paragraphs 1.2(c) and 1.2(e); and

(b) in the case of the Train Operator, the condition precedent contained in paragraph 1.2(b) and, in so far as within its control, the conditions precedent contained in paragraphs 1.2(c) and 1.2(d).

1.4 **Consequences of non-fulfilment of conditions precedent to paragraph 1 of Section 3**

If the conditions precedent set out in paragraph 1.2 have not been satisfied in full on or before the Longstop Date:

(a) the Contract shall lapse save for the obligations of confidence contained in paragraph 1 of Section 9 which shall continue in force; and

(b) neither party shall have any liability to the other except in respect of any breach of its obligations under the Contract.

1.5 **Expiry**

The Contract shall continue in force until the earliest of:

(a) lapse under paragraph 1.4;

(b) the date specified in any Failure to Use Notice terminating all of the Services;

(c) termination under Section 6; and

(d) 0159 hours on the Expiry Date.

1.6 **Previous Access Agreements**

(a) Paragraph 1.6(b) shall have effect if any Previous Access Agreement is identified in paragraph 6 of Schedule 1 to the Contract.

(b) On the Effective Date, the Previous Access Agreements shall terminate with immediate effect. Such termination shall be without prejudice to accrued rights and obligations under the Previous Access Agreements.

SECTION 3 – OPERATIONAL PROVISIONS

1. PERMISSION TO USE

1.1 **Permission to use the Routes**

HS1 Ltd grants the Train Operator permission to use the Routes.

1.2 **Meaning**

References in the Contract to permission to use the Routes shall, except where the context otherwise requires, be construed to mean permission:

(a) to use the track comprised in the Routes for the provision of the Services using the Specified Equipment;

(b) to use the track comprised in HS1 in order to implement any plan established under Part H of the HS1 Network Code;

(c) to make Ancillary Movements;

(d) to Stable, which shall be treated, for the purposes of Part D of the HS1 Network Code, as the use of a Train Slot;

(e) for the Train Operator and its Associates to enter upon that part of HS1 comprising the Routes, with or without vehicles;

(f) for the Train Operator and its Associates to bring things onto that part of HS1 comprising the Routes and keep them there; and

(g) for the Train Operator and its Associates to use the track to stop at any station on HS1 for which the Train Operator either has a station access agreement or is the station facility owner;

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

(i) the HS1 Network Code;

(ii) the Applicable Engineering Access Statement;

(iii) the Applicable Timetable Planning Rules;

(iv) the Rule Book, including, the Sectional Appendix; and

(v) the HS1 Standards.

1.3 **Permission under paragraphs 1.2(e) and 1.2(f)**

In relation to the permissions specified in paragraphs 1.2(e) and 1.2(f):

(a) the Train Operator shall, and shall procure that its Associates shall, wherever reasonably practicable, first obtain the consent of HS1 Ltd, which consent shall not be unreasonably withheld or delayed;

(b) the Train Operator shall remove any vehicle or other thing so brought onto any part of HS1 when reasonably directed to do so by HS1 Ltd; and

(c) whilst exercising any rights conferred by paragraphs 1.2(e) and 1.2(f), the Train Operator shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as HS1 Ltd shall specify.

1.4 **Stabling**

Without prejudice to HS1 Ltd's obligations, if any, under Schedule 5 to provide Stabling, HS1 Ltd shall use all reasonable endeavours to provide such Stabling facilities as are necessary

or expedient for or in connection with the provision of the Services in accordance with the Working Timetable.

2. STANDARD OF PERFORMANCE

2.1 General standard

Without prejudice to all other obligations of the parties under the Contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under the Contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

(a) network owner and operator (in the case of HS1 Ltd); and

(b) train operator (in the case of the Train Operator).

2.2 Good faith

The parties to the Contract shall, in exercising their respective rights and complying with their respective obligations under the Contract (including when conducting any discussions or negotiations arising out of the application of any provisions of the Contract or exercising any discretion under them), at all times act in good faith.

3. OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

3.1 General

Without prejudice to the other provisions of the Contract:

(a) the Train Operator shall maintain and operate the Specified Equipment used on HS1 in accordance with paragraph 2.1 with a view to permitting the provision of the Services on the Routes in accordance with the Working Timetable and the making of Ancillary Movements;

(b) HS1 Ltd shall maintain and operate HS1 in accordance with paragraph 2.1 with a view to permitting the provision of the Services on the Routes using the Specified Equipment in accordance with the Working Timetable and the making of Ancillary Movements; and

(c) the parties shall comply with the Systems Code and, where appropriate, shall use the Railway Code Systems in their dealings with each other in connection with matters provided in the Contract.

3.2 Trespass, vandalism and animals

Without prejudice to the other provisions of the Contract, each of the parties shall use all reasonable endeavours (including participating in such consultation and joint action as is reasonable in all the circumstances) to reduce:

(a) trespass;

(b) vandalism; and

(c) intrusions on to HS1 by animals,

in each case as may affect either the provision of the Services or the Routes.

3.3 Safety

In relation to Safety Obligations:

(a) the Train Operator shall comply with any reasonable request by HS1 Ltd in relation to any aspect of the Train Operator's operations which affects or is likely to affect the performance of HS1 Ltd's Safety Obligations; and

(b) HS1 Ltd shall comply with any reasonable request by the Train Operator in relation to any aspect of HS1 Ltd's operations which affects or is likely to affect the performance of the Train Operator's Safety Obligations.

3.4 **Provision of Information**

(a) Without prejudice to paragraph 1 of Section 9 (Confidentiality) each of HS1 Ltd and the Train Operator (the **"Provider"**) shall provide the other (the **"Recipient"**) with such information as the Recipient may reasonably request, to the extent that:

(i) such information is in the possession or control of the Provider; and

(ii) the Recipient requires such information to exercise its rights or perform its obligations under the Contract or for the safe and efficient operation of HS1 (in case of HS1 Ltd) or for the safe and efficient provision of Services (in case of the Train Operator).

(b) The Recipient shall bear the Provider's reasonable costs in complying with this paragraph 3.4 save that information provided in connection with Section 4, Section 7 and Section 8 should be provided at no cost to the Recipient.

4. TRANSITION

4.1 **Effect**

Paragraph 4.2 and 4.3 shall have effect if a Previous Access Agreement is identified in paragraph 6 of Schedule 1 to the Contract.

4.2 **Corresponding Rights**

(a) Any Access Proposal or Rolled Over Access Proposal made under any Previous Access Agreement in relation to a Train Slot in respect of which there is a Corresponding Right shall:

(i) cease to have effect under the Previous Access Agreement as from the Effective Date; and

(ii) be deemed to have effect under the Contract as from the Effective Date.

(b) Any Train Slot which is the subject of an Access Proposal or a Rolled Over Access Proposal referred to in paragraph 4.2(a) shall for all purposes be treated as if it had been established in and under the Contract and not such Previous Access Agreement.

(c) Any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made which:

(i) were made in accordance with and under the Previous Access Agreement in relation to the Engineering Access Statement or the Timetable Planning Rules, Vehicle Change, Network Change or train regulation; and

(ii) relate to a right under the Previous Access Agreement which is the subject of a Corresponding Right,

shall:

(A) cease to have effect under the Previous Access Agreement as from the Effective Date; and

(B) be deemed to have effect under the Contract as from the Effective Date.

4.3 **Definitions**

In this paragraph 4:

"Corresponding Right" means any right of a party under a Previous Access Agreement which:

(a) relates to the permission of the Train Operator to use the Routes; and

(b) relates to a period after the Effective Date.

SECTION 4 – COMPENSATION FOR RESTRICTIONS OF USE

1. DEFINITIONS

1.1 **Defined terms**

In this Section 4, unless the context otherwise requires, the following expressions shall have the following meanings:

"Competent Authority Restriction of Use" means a Restriction of Use (other than one which constitutes an Extended Disruption under and for the purposes of Condition H7 of Part H of the HS1 Network Code):

(a) as a result of any Change of Law or any Direction of any Competent Authority other than ORR; or

(b) pursuant to an agreement between HS1 Ltd and any Competent Authority, to the extent only that the Restriction of Use could otherwise have been required pursuant to a Direction of that Competent Authority;

"Competent Authority Rate" means the amount payable by HS1 Ltd to the Train Operator in respect of a Competent Authority Restriction of Use as calculated in accordance with paragraph 7;

"Corresponding Day" means, in respect of any Day (the "**First Day**"):

(a) a Day which is contained in the same Timetable Period as the First Day and on which the Services scheduled in the First Working Timetable applicable to that Timetable Period are the same as would have been scheduled on the First Day but for Restrictions of Use reflected in the First Working Timetable for the First Day; or

(b) if no Day is found under paragraph (a), then a Day during the equivalent Timetable Period for that time of year in the year immediately preceding the Timetable Period which includes the First Day and on which the Services scheduled in the First Working Timetable applicable to that Timetable Period are the same as would have been scheduled on the First Day but for Restrictions of Use reflected in the First Working Timetable for the First Day; or

(c) if no Day is found under paragraph (a) or (b) above, such other Day as the parties may agree or as may be determined in accordance with paragraph 6;

"Corresponding Day Timetable" means, in relation to a Corresponding Day, the First Working Timetable applicable to the relevant Timetable Period or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 6;

"Direct Costs"	means the aggregate demonstrable amount of: (a) bus and taxi hire costs; (b) publicity costs; (c) train planning and diagramming costs; and (d) other costs directly related to the organisation and management of the Train Operator's response to a Restriction of Use, reasonably incurred by the Train Operator as a result of a Restriction of Use, adjusted by: (i) adding any increase in costs which results from increases in train mileage; and (ii) deducting any decrease in costs which results from decreases in train mileage; but only to the extent that the Train Operator has used reasonable endeavours to mitigate such costs and excluding any loss of profit, loss of revenue and consequential losses;
"HS1 Restriction of Use"	means any Restriction of Use other than an Operator Restriction of Use or a Competent Authority Restriction of Use;
"Operator Restriction of Use"	means a Restriction of Use of the type referred to in paragraph 2.3;
"Part G Restriction of Use"	means a HS1 Restriction of Use to implement a Network Change;
"Possessions Allowance"	means: (a) 12 x 8 hours Saturday to Sunday planned disruptive possessions in a Timetable Year on the route between St Pancras International and Temple Mills Boundary (provided that if there is a demand for paths on the North London Line this requirement will increase to 20 x 8 hours planned disruptive possessions in a Timetable Year on the route between St Pancras International and Temple Mills Boundary); (b) one overnight double line possession of 12 hours per Timetable Year; and (c) two double line possessions of up to 20 minutes per day on Saturdays and Sundays;
"Recovery Allowance"	means an allowance for the Recovery Time;
"Relevant Costs"	means, in respect of any Competent Authority Restriction of Use, all costs, expenses and losses (including loss of profit, loss of revenue and consequential losses) incurred by HS1 Ltd and/or any train operator using HS1(including the Train

Operator) as a consequence of the taking of that Competent Authority Restriction of Use (but without double counting);

"Restriction of Use" means, in respect of any Day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Timetable Planning Rules relevant to that Day notified to each Timetable Participant on or before D-22) which results in:

(a) a difference between the Applicable Timetable on that Day as compared with the First Working Timetable in respect of that Day; and/or

(b) a difference between the First Working Timetable applicable to that Day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;

"Restriction of Use Day" means a Day on which a HS1 Restriction of Use is taken or deemed to be taken; and

"Week" means a period commencing at 00:00:00 hours on any Saturday and ending at 23:59:59 hours on the next following Friday.

1.2 **Interpretation**

A Restriction of Use shall be deemed to be taken if and to the extent it results in any difference between timetables of the type referred to in the definition of "Restriction of Use". For these purposes, a difference between timetables shall be deemed to be due to a Restriction of Use where the difference was initially the direct result of the Restriction of Use being notified, whether or not the Restriction of Use was subsequently cancelled in whole or in part.

1.3 **Suspension Notices**

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Section 6 and not of this Section 4. A Restriction of Use shall only be treated as a Restriction of Use to the extent that it involves a Restriction of Use of all or any part of the Routes which is not covered by the restriction under that Suspension Notice.

2. APPLICATION OF THIS PART

2.1 **Entry into effect**

This Section 4 shall apply in respect of Restrictions of Use.

2.2 **Applicable Engineering Access Statement and the HS1 Network Code**

The provisions of this Section 4 shall be without prejudice to:

(a) HS1 Ltd's right to take Restrictions of Use under or pursuant to the Applicable Engineering Access Statement;

(b) the establishment of any amended Working Timetable under Part H of the HS1 Network Code; and

(c) any rights pursuant to the HS1 Network Code that the Train Operator may have to challenge any decision of HS1 Ltd.

2.3 **Operator Restriction of Use**

HS1 Ltd shall not be obliged to make any payments to the Train Operator for any one or more Restrictions of Use to the extent:

(a) required as a result of any damage to HS1 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 the Contract; and

(ii) HS1 Ltd demonstrates, is in excess of fair wear and tear arising from use of HS1 by the Train Operator; or

(b) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of HS1);

(c) required in connection with a Network Change proposed by the Train Operator under Condition G3; or

(d) that the Restriction of Use is within the Possessions Allowance.

2.4 **HS1 Ltd payments**

Subject to paragraph 2.3, HS1 Ltd shall make payments to the Train Operator (in accordance with the procedure in paragraph 8) in respect of Restrictions of Use calculated on the following basis:

(a) for each HS1 Restriction of Use, in accordance with paragraph 3; and

(b) for each Competent Authority Restriction of Use, in accordance with paragraph 7.

2.5 **Part G Restriction of Use**

A Part G Restriction of Use shall be subject to compensation in accordance with both this Section 4 and Part G of the HS1 Network Code. The application of this Section 4 shall be without prejudice to the application of Part G, save that in calculating the compensation to be paid to the Train Operator under Part G for the implementation of the relevant Network Change, any payment made or to be made by HS1 Ltd to the Train Operator under this Section 4 in respect of the Part G Restriction of Use shall be taken into account for the purposes of Condition G2.3 as a benefit to be obtained by the Train Operator as a result of the relevant Network Change and accordingly be deducted from (and thereby reduce) the amount of compensation otherwise payable by HS1 Ltd to the Train Operator under Part G in respect of that Part G Restriction of Use.

3. COMPENSATION FOR HS1 RESTRICTIONS OF USE

Subject to paragraph 9, HS1 Ltd shall, in respect of each HS1 Restriction of Use, pay to the Train Operator the Direct Costs incurred by the Train Operator as a consequence of such HS1 Restriction of Use.

4. ASSET MAINTENANCE PLAN

4.1 HS1 Ltd shall provide a copy of the Asset Maintenance Plan to the Train Operator within 10 Working Days of the Effective Date and shall provide copies of any material changes proposed to the Asset Maintenance Plan to the Train Operator, identifying where these may result in requirements for Restrictions of Use outside the Possessions Allowance.

4.2 The Train Operator shall be entitled to review and comment on the Asset Maintenance Plan and on any proposed material changes to the Asset Maintenance Plan submitted by HS1 Ltd. HS1 Ltd shall give reasonable consideration to any such comments, in particular where

they relate to possible requirements for a Restriction of Use outside the Possessions Allowance and shall notify the Train Operator of its response to such comments as soon as reasonably practicable.

5. SECTION 8 APPLICATION

If and to the extent that a HS1 Restriction of Use is not reflected in the Applicable Timetable for the Restriction of Use Day, the amount of compensation (if any) shall be calculated in accordance with Section 8 (to the exclusion of any compensation under Section 4).

6. RESTRICTION OF USE DAY AND CORRESPONDING DAY

(a) If, for the purpose of identifying a Corresponding Day, no Day is found under paragraph (a) or (b) of the definition "Corresponding Day" and the parties have failed to reach agreement on the Corresponding Day by the date falling 8 Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved by submission to the Disputes Resolution Procedure.

(b) The relevant Forum's remit shall be that it shall:

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

(ii) identify the Day in either any version of the Working Timetable or any First Working Timetable notified to the Train Operator on or before D-22 in either case which has been produced in accordance with the HS1 Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the First Day (as that term is used in the definition of Corresponding Day) but for Restrictions of Use reflected in the First Working Timetable for the First Day.

7. COMPETENT AUTHORITY RATE

7.1 Calculations

The Competent Authority Rate shall be calculated as follows:

(a) where any compensation paid to HS1 Ltd in relation to a Competent Authority Restriction of Use is sufficient to cover the Relevant Costs of all train operators using HS1and of HS1 Ltd, the Relevant Costs of the Train Operator in relation to the Competent Authority Restriction of Use; and

(b) where such compensation is not so sufficient, such proportion of that compensation as the Train Operator's Relevant Costs bears to the sum of HS1 Ltd's Relevant Costs and the Relevant Costs of all train operators using HS1in respect of that Competent Authority Restriction of Use.

7.2 Negotiation of compensation with Competent Authority

HS1 Ltd shall use all reasonable endeavours to negotiate with the relevant Competent Authority a level of compensation in respect of the Competent Authority Restriction of Use which is sufficient to ensure that the Train Operator receives compensation for all of its Relevant Costs. HS1 Ltd shall from time to time consult with the Train Operator and keep the Train Operator informed in reasonable detail of the progress of such negotiations.

7.3 Notification of Train Operator's Relevant Costs

(a) Within 28 days of the end of each Period in which a Competent Authority Restriction of Use is taken, the Train Operator shall supply to HS1 Ltd:

(i) details of its Relevant Costs; and

(ii) reasonable details of any of its Relevant Costs which are not fully determined.

(b) Save to the extent that the Train Operator supplies details of its Relevant Costs under paragraph 7.3(a), such costs shall not be regarded as Relevant Costs.

(c) Within 10 days of determination of any Relevant Costs which are supplied under paragraph 7.3(a)(ii) as not fully determined, the Train Operator shall serve a supplemental notice on HS1 Ltd, including final details of such Relevant Costs.

7.4 **Notification of HS1 Ltd's Relevant Costs**

(a) Within 28 days of receipt of information under paragraph 7.3(a), HS1 Ltd shall supply to the Train Operator:

(i) details of its Relevant Costs; and

(ii) reasonable details of any of its Relevant Costs which are not fully determined.

(b) Save to the extent that HS1 Ltd supplies details of its Relevant Costs under paragraph 7.4(a), such costs shall not be regarded as Relevant Costs.

(c) Within 10 days of determination of any Relevant Costs details of which are supplied under paragraph 7.4(a)(ii) as not fully determined, HS1 Ltd shall serve a supplemental notice on the Train Operator, including final details of such Relevant Costs.

7.5 **Compensation received by HS1 Ltd**

HS1 Ltd shall inform the Train Operator of compensation received in respect of each Competent Authority Restriction of Use within 7 days of receipt of the compensation. HS1 Ltd shall pay the compensation into a segregated account and retain it in such an account until distributed in accordance with paragraph 8.

8. PAYMENT PROCEDURES

8.1 **HS1 Restrictions of Use**

(a) Within 10 Working Days after the end of each Period, HS1 Ltd shall provide to the Train Operator a statement ("Possessions Statement") showing:

(i) all HS1 Restrictions of Use taken during that Period; and

(ii) all Competent Authority Restrictions of Use taken during that Period,

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

(b) Within 20 Working Days of the receipt of the Possessions Statement, the Train Operator shall notify HS1 Ltd of any compensation payable to the Train Operator by HS1 Ltd in respect of the HS1 Restrictions of Use identified in the Possessions Statement together with the details of the full amount of Direct Costs incurred by the Train Operator in respect of such Restrictions of Use.

(c) The aggregate liabilities of HS1 Ltd and the Train Operator, in respect of any and all compensation for which either is liable to the other under this Section 4 in respect of each Period shall, to the extent that such compensation is not under dispute, be set off against each other and the balance (if any) shall be payable by HS1 Ltd or the Train Operator, as the case may be, within 20 Working Days after

the receipt by HS1 Ltd of the Train Operator's notice in accordance with paragraph 8.1(b).

8.2 **Competent Authority Restrictions of Use**

(a) Where all Relevant Costs have been finally determined under paragraph 7 in respect of a Competent Authority Restriction of Use for which compensation has been received by HS1 Ltd, HS1 Ltd shall:

(i) forward to the Train Operator a calculation of such sums as are due to the Train Operator in respect of that Restriction of Use; and

(ii) pay to the Train Operator any compensation due in accordance with paragraph 7 in respect of that Restriction of Use:

(A) plus any interest accrued and calculated in accordance with paragraph 3.2 of Part 4 of Section 7; and

(B) less any interim payments already made in respect of that Restriction of Use under paragraph 8.2(c),

within 20 Working Days after receipt of such compensation or 20 Working Days after final determination of all Relevant Costs, whichever is the later.

(b) Where HS1 Ltd has received compensation in respect of a Competent Authority Restriction of Use for which the Relevant Costs have not been fully determined within 20 Working Days of receipt of the compensation, HS1 Ltd shall within 20 Working Days of receipt of the compensation forward to the Train Operator a statement of:

(i) all Relevant Costs which have been fully determined;

(ii) all Relevant Costs of which HS1 Ltd is aware and which have not been fully determined;

(iii) interim payments already made under paragraph 8.2(c) in respect of that Competent Authority Restriction of Use; and

(iv) its proposals for making an interim payment in respect of that compensation.

(c) Within 20 Working Days after serving the statement under paragraph 8.2(b), HS1 Ltd shall make an interim payment to the Train Operator in accordance with its proposals.

8.3 **Disputes**

Within 10 Working Days of receipt of a statement under paragraphs 7.3, 7.4, 8.1 or 8.2, the relevant party shall notify the other party of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the relevant party shall be deemed to have agreed the contents of the statement.

8.4 **Dispute resolution**

The procedure for resolving disputes notified under paragraph 8.3 shall be as follows:

(a) within 5 Working Days of service of any notice under paragraph 8.3, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;

(b) if, within 5 Working Days of that meeting (the "first meeting"), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within 5 Working Days) prepare a written summary

of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;

(c) within 20 Working Days of the first meeting, the senior officers shall meet with a view to resolving all disputes; and

(d) if no resolution results within 10 Working Days of that meeting, either party may require that the matter be resolved by the submission to the Dispute Resolutions Procedure.

8.5 **Payments in the event of a dispute**

Where any amount under paragraphs 8.1 or 8.2 is in dispute:

(a) the undisputed amount shall be paid in accordance with paragraphs 8.1 or 8.2 as the case may be;

(b) the disputed amount shall be paid within 20 Working Days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and

(c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

9. CAP ON COMPENSATION

The compensation payable by HS1 Ltd to the Train Operator in respect of any Restriction of Use (excluding any Competent Authority Restriction of Use or any Part G Restriction of Use) in any Relevant Year shall not exceed 1.0 % of the Aggregate IRC/OMRC in respect of that Relevant Year.

SECTION 5 – LIABILITY

1. LIABILITY

1.1 **Train Operator indemnity**

Subject to paragraph 2 and the other provisions of the Contract, the Train Operator shall indemnify HS1 Ltd against all Relevant Losses resulting from:

(a) a failure by the Train Operator to comply with its Safety Obligations;

(b) any Environmental Damage arising directly from the acts or omissions of the Train Operator or the proper taking by HS1 Ltd under Part E of the HS1 Network Code of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator;

(c) any damage to HS1 arising directly from the Train Operator's wilful default, negligence or failure to comply with its obligations under the Contract; and

(d) a breach by the Train Operator of the Contract.

1.2 **HS1 Ltd indemnity**

Subject to paragraph 2 and the other provisions of the Contract, HS1 Ltd shall indemnify the Train Operator against all Relevant Losses resulting from:

(a) a failure by HS1 Ltd to comply with its Safety Obligations;

(b) any Environmental Damage to HS1 arising directly from any acts or omissions of HS1 Ltd;

(c) any damage to the Specified Equipment or other vehicles or things brought onto HS1 in accordance with the permission to use granted by the Contract arising directly from HS1 Ltd's wilful default, negligence or failure to comply with its obligations under the Contract; and

(d) a breach by HS1 Ltd of the Contract.

2. RESTRICTIONS ON CLAIMS

2.1 **Notification and mitigation**

A party wishing to claim under any indemnity provided for in the Contract:

(a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and

(b) where practicable given the circumstances, consult with the other party as to the ways in which the circumstances giving rise to that claim and any damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders or out of pocket expenses connected with that claim may be prevented, defended, mitigated or restricted and shall take all reasonable steps to prevent, mitigate, defend and restrict any and all of the same and any Relevant Losses connected with that claim; but

(c) shall not be required to exercise any specific remedy available to it under the Contract.

2.2 **Restrictions on claims by HS1 Ltd**

Any claim by HS1 Ltd against the Train Operator for indemnity for Relevant Losses:

(a) shall exclude any Relevant Losses to the extent that they result from a cancellation of or a delay in commencement to a Restriction of Use save where such delay or cancellation is attributable to the Train Operator;

(b) shall exclude payments to any person (other than the Train Operator) under or in accordance with the provisions of any access agreement with such person other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under the Contract for such payments for damage to property, in relation to any incident, shall be limited to the maximum amount for which the Train Operator would be liable for such damage in accordance with the CTRL Claims Allocation and Handling Agreement; and

(c) shall:

(i) include Relevant Losses only to the extent that these constitute amounts which HS1 Ltd would not have incurred as network owner and operator but for the relevant breach; and

(ii) give credit for any savings to HS1 Ltd which result or are likely to result from the incurring of such amounts.

2.3 **Restrictions on claims by the Train Operator**

(a) Any claim by the Train Operator against HS1 Ltd for indemnity for Relevant Losses:

(i) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains; and

(ii) shall:

(A) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and

(B) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

(b) The rights set out in Sections 4 and 8 and Part G of the HS1 Network Code represent the Train Operator's sole entitlement to any compensation in respect of any damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out-of-pocket expenses arising from or caused by any restriction of use of all or any part of the Routes or any delay, or cancellations to trains (together "Losses"). The Train Operator undertakes to HS1 Ltd not to seek to recover any Losses by making any claim or commencing any action or proceedings whatsoever against or otherwise seeking payment in respect of any Losses from the Operator or HS1 Ltd otherwise than pursuant to Sections 4 and 8 or Part G of the HS1 Network Code.

2.4 **Restriction on claims by both parties**

Any claim for indemnity for Relevant Losses shall exclude Relevant Losses which:

(a) do not arise naturally from the breach; and

(b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:

(i) at the time of the making of the Contract; or

(ii) where the breach relates to a modification or amendment to the Contract, at the time of the making of such modification or amendment,

as the probable result of the breach.

2.5 **CTRL Claims Allocation and Handling Agreement**

(a) Clauses 15 and 16 of the CTRL Claims Allocation and Handling Agreement provide that claims between parties to it are limited to specified amounts unless the parties expressly contract otherwise.

(b) Except as otherwise expressly provided in the Contract, Clauses 15 and 16 of the CTRL Claims Allocation and Handling Agreement shall not apply as between the parties to the Contract if and to the extent that the giving of any right or remedy as provided for under the Contract would be prevented or restricted by Clauses 15 and 16 of the CTRL Claims Allocation and Handling Agreement.

(c) Nothing in the Contract shall affect the application as between the parties of the provisions of the CTRL Claims Allocation and Handling Agreement which relate to liability for small claims equal to or below the Threshold (as defined in that agreement).

3. LIMITATION ON LIABILITY

3.1 This paragraph 3 shall have effect so as to limit the liability of the parties to one another, but:

(a) does not limit any liability arising under Sections 4, 7 or 8;

(b) shall not apply to the extent that a Party is insured in respect of the Relevant Loss and such Relevant Loss is recoverable from such insurance;

(c) in relation to a failure to perform an obligation under the HS1 Network Code, only to the extent (including as to time and conditions) that the HS1 Network Code so provides; and

(d) subject to paragraph 5.3(c) of Section 9.

3.2 **Application**

The limitations on liability contained in paragraphs 3.3 to 3.9 apply in the circumstances set out in paragraph 3.1.

3.3 **Limitation on HS1 Ltd's liability**

In relation to any claim in respect of any Liability made by the Train Operator:

(a) HS1 Ltd shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Relevant Year to the extent that its liability for such claims exceeds the Liability Cap for such Relevant Year; and

(b) to the extent that its liability for such claims exceeds the Liability Cap for such Relevant Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and HS1 Ltd shall have no further liability for it.

3.4 **Limitation on Train Operator's liability**

In relation to any claim in respect of any Liability made by HS1 Ltd:

(a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Relevant Year to the extent that its liability for such claims exceeds the Liability Cap for such Relevant Year; and

(b) to the extent its liability for such claims exceeds the Liability Cap for such Relevant Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Train Operator shall have no further liability for it.

3.5 **Disapplication of limitation**

To the extent that any Relevant Losses:

(a) result from a conscious and intentional breach by a party; or

(b) are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with its Safety Obligations,

such Relevant Losses:

(i) shall not be subject to the limitation of liability in this Section 5; and

(ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Relevant Year for the purposes of the limitations of liability in this Section 5.

3.6 **Exclusion of legal and other costs**

The limits on the parties' liabilities provided for in paragraph 3 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

3.7 **Exclusion of certain Relevant Losses**

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of the Contract.

3.8 **Continuing breaches**

Nothing in this Section 5 shall prevent a party making a new claim in respect of a continuing breach of contract which:

(a) is a continuing breach of contract which continues for more than 12 months; or

(b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3.3(b) or 3.4(b).

3.9 **Final determination of claims**

For the purpose of this Section 5, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

3.10 **Notification of Aggregate IRC/OMRC & Aggregate DI Costs**

As soon as reasonably practicable in advance of each Relevant Year, HS1 Ltd shall notify the Train Operator of the Aggregate IRC/OMRC and the Aggregate DI Costs for that Relevant Year.

4. INSURANCE

4.1 **Insurance Cover**

(a) The Train Operator shall, at its own cost, take out and maintain in force, or procure the taking out and maintenance in force of the following insurance:

(i) if the Train Operator is authorised to be the operator of trains for the provision of the Services by a Railway Undertaking Licence such

insurances as are required by the passenger statement of national regulatory provisions associated with such licence;

(ii) if the Train Operator is exempt from the requirement to be authorised by a Railway Undertaking Licence to be the operator of trains for the provision of the Services, such insurances as are required by the passenger statement of national regulatory provisions associated with a Railway Undertaking Licence as described in limb (a) of the definition of Railway Undertaking Licence as if the Train Operator is required to be so authorised to be the operator of trains for the provision of the Services.

4.2 If requested by HS1 Ltd, the Train Operator shall provide suitable evidence to HS1 Ltd to demonstrate that such insurance policy or insurance policies are in full force and effect.

4.3 **HS1 Ltd Insurance**

HS1 Ltd shall effect and maintain such insurances as it is required to take out and maintain under the terms and conditions of the Concession Agreement. If requested by the Train Operator, HS1 Ltd shall provide suitable evidence to the Train Operator to demonstrate that such insurance policy or insurance policies are in full force and effect.

5. FORCE MAJEURE EVENTS

5.1 **Meaning of Force Majeure Event**

In this paragraph 5:

"Affected Party" means, in relation to a Force Majeure Event, the party claiming relief under this paragraph 5 by virtue of that Force Majeure Event, and "Non-affected Party" shall be construed accordingly;

"Force Majeure Event" means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

(a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;

(b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;

(c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);

(d) nuclear, chemical or biological contamination;

(e) pressure waves caused by devices travelling at supersonic speeds;

(f) discovery of fossils, antiquities or unexploded bombs; and

(g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

"Force Majeure Notice" means a notice given or to be given by the Affected Party to the other party stating that a Force Majeure Event has occurred;

"Force Majeure Report" means a report given or to be given by the Affected Party to the other party following the giving of a Force Majeure Notice;

"Relevant Force Majeure Event" means a Force Majeure Event in relation to which an Affected Party is claiming relief under this paragraph 5; and

"Relevant Obligation" means an obligation under the Contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under this paragraph 5.

5.2 **Nature and extent of relief for Force Majeure**

Force Majeure relief under this paragraph 5:

(a) extinguishes:

(i) the obligation of the Affected Party to perform a Relevant Obligation to the extent that it is prevented from doing so by reason of the Relevant Force Majeure Event; and

(ii) the obligation of the Affected Party to indemnify the other party under paragraph 1.1(d) or 1.2(d), as appropriate, in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but

(b) is not available in respect of:

(i) any obligation to pay money under Sections 4, 7 and 8; or

(ii) any other obligation to do or refrain from doing any other thing provided for in the Contract; and

(c) is only available in relation to a failure to perform an obligation under the HS1 Network Code to the extent (including as to time and conditions) that the HS1 Network Code so provides.

5.3 **Entitlement to Force Majeure relief**

An Affected Party is entitled to Force Majeure relief if and to the extent that:

(a) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;

(b) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):

(i) to avoid the occurrence of the Force Majeure Event; and

(ii) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and

(c) except in the case of paragraph (g) of the definition of Force Majeure Event, none of the Affected Party, its officers, employees or agents caused the Force Majeure Event.

5.4 **Procedure for claiming relief**

Without prejudice to paragraph 5.3, an Affected Party is only entitled to claim Force Majeure relief under this paragraph 5 if it complies with the obligations to give Force Majeure Notices, Force Majeure Reports and provide other information under paragraph 5.5 and to perform its obligations under paragraph 5.6.

5.5 **Force Majeure Notices and Reports**

(a) *Force Majeure Notice*

In relation to any Relevant Force Majeure Event:

(i) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event

qualifies for relief under this paragraph 5 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and

(ii) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

(b) *Force Majeure Report*

Following the giving of a Force Majeure Notice:

(i) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within 7 days of service of the Force Majeure Notice; and

(ii) the Force Majeure Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the Force Majeure Notice and containing such information as may reasonably be required by the Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the Affected Party's performance of the Relevant Obligations.

(c) *Other information*

The Affected Party shall promptly give the Non-affected Party all other information concerning the Relevant Force Majeure Event and the steps which could reasonably be taken, and which the Affected Party proposes to take, to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects as may reasonably be requested by the Non affected Party from time to time.

5.6 **Mitigation**

The Affected Party shall, promptly upon becoming aware of the occurrence of a Force Majeure Event in respect of which it intends to claim relief, use all reasonable endeavours to:

(a) minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations; and

(b) minimise the duration of such Force Majeure Event,

and shall keep the Non-affected Party fully informed of the actions which it has taken or proposes to take under this paragraph 5.6.

5.7 **Duration of relief for Force Majeure**

The right of an Affected Party to relief under paragraph 5.2 shall cease on the earlier of:

(a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and

(b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under paragraph 5.6.

SECTION 6 – EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1. EVENTS OF DEFAULT

1.1 Train Operator Events of Default

The following are Train Operator Events of Default:

(a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services by a Railway Undertaking Licence unless it is exempt from the requirement to be so authorised;

(b) an Insolvency Event occurs in relation to the Train Operator;

(c)

(i) any breach by the Train Operator of the Contract, its Safety Obligations or any of the Collateral Agreements; or

(ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance, HS1 Ltd reasonably considers constitutes a threat to the safe operation of any part of HS1;

(d) any amount due from the Train Operator remains unpaid for more than 28 Working Days after its due date except where liability to pay any such sum is being contested by the Train Operator in good faith and with timely recourse to appropriate means of redress;

(e) any breach of the Contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to HS1 Ltd;

(f) any breach of the Contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators; and

(g) where the Train Operator provides services pursuant to a Franchise Agreement, termination of the Franchise Agreement unless the Train Operator and the Secretary of State shall have entered into another franchise agreement on or before the date of such termination.

1.2 Notification

The Train Operator shall notify HS1 Ltd promptly on becoming aware of the occurrence of a Train Operator Event of Default.

1.3 HS1 Ltd Events of Default

The following are HS1 Ltd Events of Default:

(a) the Concession Agreement is terminated;

(b) an Insolvency Event occurs in relation to HS1 Ltd;

(c)

(i) any breach by HS1 Ltd of the Contract, its Safety Obligations or any of the Collateral Agreements; or

(ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements;

(d) any amount due from HS1 Ltd to the Train Operator remains unpaid for more than 28 Working Days after its due date except where liability to pay any such sum shall be contested by HS1 Ltd in good faith and with timely recourse to appropriate means of redress; and

(e) any breach of the Contract or any material breach of any of the Collateral Agreements by HS1 Ltd which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

1.4 **Notification**

HS1 Ltd shall notify the Train Operator promptly on becoming aware of the occurrence of a HS1 Ltd Event of Default.

2. SUSPENSION

2.1 **Right to suspend**

(a) HS1 Ltd may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.

(b) The Train Operator may serve a Suspension Notice where a HS1 Ltd Event of Default has occurred and is continuing.

2.2 **Contents of Suspension Notice**

A Suspension Notice shall specify:

(a) the nature of the relevant Event of Default;

(b) the date and time at which suspension is to take effect;

(c) in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Routes or any parts of them or any other part of HS1;

(d) in the case of a Suspension Notice served on HS1 Ltd, details of any necessary suspension of the Services; and

(e) whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:

(i) the steps reasonably required to remedy the Event of Default; and

(ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amount due, 7 days shall be a reasonable grace period).

2.3 **Effect of Suspension Notice served by HS1 Ltd**

Where HS1 Ltd has served a Suspension Notice on the Train Operator:

(a) the Train Operator shall comply with any reasonable restrictions imposed on it by the Suspension Notice;

(b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from HS1 Ltd to the Train Operator under paragraph 2.5(d);

(c) service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Track Charges; and

(d) service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5 to the Contract) for the purposes of Part D of the HS1 Network Code.

2.4 **Effect of a Suspension Notice served by the Train Operator**

Where the Train Operator has served a Suspension Notice on HS1 Ltd:

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

(b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to HS1 Ltd under paragraph 2.5(d); and

(c) the service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5 to the Contract) for the purposes of Part D of the HS1 Network Code.

2.5 **Suspension to be proportionate to breach**

(a) A Suspension Notice served under paragraph 2.1(a) in respect of any of the Train Operator Events of Default shall be proportionate to the breach and, so far as reasonably practicable, apply only to the:

(i) railway vehicles;

(ii) Services (and the Ancillary Movements);

(iii) Routes (including the Diversionary Routes, if any); and

(iv) categories of train movements or railway vehicles,

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

(b) A Suspension Notice served under paragraph 2.1(b) in respect of any of the HS1 Ltd Events of Default shall be proportionate to the breach and, so far as reasonably practicable, apply only to the:

(i) railway vehicles;

(ii) Services (and the Ancillary Movements);

(iii) Routes (including the Diversionary Routes, if any); and

(iv) categories of train movements or railway vehicles,

(or (as the case may be) part or parts of them) to which the relevant HS1 Ltd Event of Default relates.

(c) The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall:

(i) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and

(ii) keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.

(d) Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5(c) (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.

3. TERMINATION

3.1 HS1 Ltd's right to terminate

HS1 Ltd may serve a Termination Notice on the Train Operator with a copy of such Termination Notice to the ORR:

(a) where the Train Operator fails to comply with any material restriction in a Suspension Notice;

(b) where the Train Operator fails to comply with its obligations under paragraph 2.5(c);

(c) where the Train Operator Event of Default specified in paragraph 1.1(a) has occurred and is continuing;

(d) where the Train Operator Event of Default specified in a Suspension Notice served by HS1 Ltd is not capable of being remedied and three months have elapsed from the service of that Suspension Notice; or

(e) where the Concession Agreement has been terminated by the Secretary of State (and the Secretary of State has not entered into another concession agreement with HS1 Ltd), the Train Operator has not terminated the Contract and the Secretary of State has not served the notice referred to in paragraph 5.2(b).

3.2 Train Operator's right to terminate

Subject to paragraph 5, the Train Operator may serve a Termination Notice on HS1 Ltd with a copy of such Termination Notice to the ORR:

(a) where HS1 Ltd fails to comply with its obligations under paragraph 2.5(c); or

(b) where the HS1 Ltd Event of Default specified in a Suspension Notice served by the Train Operator is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

3.3 Contents of Termination Notice

A Termination Notice shall specify:

(a) the nature of the relevant Event of Default;

(b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and

(c) whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the relevant Event of Default is capable of remedy:

(i) the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and

(ii) a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of the Train Operator to pay Track Charges or other amounts due, 7 days is a reasonable grace period).

3.4 **Effect of Termination Notice**

Where HS1 Ltd or the Train Operator has served a Termination Notice on the other:

(a) the service of the Termination Notice shall not affect the parties' continuing obligations under the Contract up to the date of termination, which date shall be determined in accordance with paragraph 3.4(c);

(b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and

(c) subject to paragraph 5, the Contract shall terminate on the date and time specified in the Termination Notice for the Contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified).

4. CONSEQUENCE OF TERMINATION

4.1 **Directions regarding location of Specified Equipment**

Immediately before, upon or following termination or expiry of the Contract, the Train Operator shall comply or procure compliance with all reasonable directions given by HS1 Ltd concerning the location of the Specified Equipment.

4.2 **Failure to comply with directions**

If the Train Operator fails to comply with any directions given under paragraph 4.1, HS1 Ltd shall be entitled to remove from HS1 any Specified Equipment Stabled or left on HS1 or to instruct a third party to do so and any reasonable costs incurred by HS1 Ltd in taking such steps shall be paid promptly by the Train Operator.

4.3 **Evidence of costs**

HS1 Ltd shall provide such evidence of such costs as are referred to in paragraph 4.2 as the Train Operator shall reasonably request.

5. NOVATION OF THE CONTRACT ON TERMINATION OF THE CONCESSION AGREEMENT

5.1 If the Train Operator proposes the termination of the Contract as a consequence of the termination of the Concession Agreement, it shall in advance of doing so, serve a notice to that effect on the Secretary of State at the address set out in paragraph 3 of Schedule 1 to the Contract.

5.2 Within 10 Working Days of the receipt of the notice referred to in paragraph 5.1, the Secretary of State shall be entitled to serve a notice on the Train Operator and HS1 Ltd either:

(a) requiring that the Contract should continue with HS1 Ltd, on the basis that a new concession agreement has been entered into with HS1 Ltd in respect of HS1; or

(b) requesting HS1 Ltd to novate all its rights and obligations under the Contract to the Secretary of State or to a person nominated by the Secretary of State as a substitute operator of HS1.

5.3 If the Secretary of State serves the notice referred to in paragraph 5.2(a), the Contract shall continue with HS1 Ltd from the date of such notice and any Termination Notice served by the Train Operator shall be revoked.

5.4 If the Secretary of State serves the notice referred to in paragraph 5.2(b), the parties agree to execute such documentation as the Secretary of State may request in order to novate HS1 Ltd's rights and obligations under the Contract to the Secretary of State, or to the nominated substitute operator of HS1, within 10 Working Days of the Secretary of State's notice under paragraph 5.2 and on any such novation any Termination Notice served by the Train Operator shall be revoked. Any such documentation shall take effect only when it has been approved by the ORR. Accordingly, as soon as reasonably practicable after any such documentation is agreed in accordance with this paragraph 5.4, the parties shall use all reasonable endeavours to ensure that the ORR is furnished with such documentation and sufficient information and evidence as it shall require to determine whether or not to approve the documentation.

5.5 If the Secretary of State fails to serve the notice referred to in paragraph 5.3 or 5.4 (as the case may be) or if the Secretary of State serves a notice under paragraph 5.2(b) but the novation does not take effect, the Contract shall terminate in accordance with its terms

5.6 In respect of a novation pursuant to paragraph 5.4,

(a) the party whose rights and obligations are being novated shall not be released from any accrued but unperformed obligation, the consequences of any breach of the Contract which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the Contract prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

(b) neither the Secretary of State nor his nominee shall be obliged, in connection with the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in paragraph 5.6(a).

SECTION 7 – TRACK CHARGES

PART 1: INTERPRETATION

1. DEFINITIONS

In this Section 7, the following expressions shall have the following meanings:

"AC System"	means the alternating current system of electricity traction supply on HS1;
"Additional IRC"	has the same meaning as the term "Additional Investment Recovery Charge" as set out in paragraph 11.1.2 of Section 3 of Schedule 10 of the Concession Agreement;
"Additional Permitted Charges"	means the charges specified in paragraph 2 of Part 4 of this Section 7;
"Advance Period"	means any of the following periods: (a) the first three Periods in a Relevant Year; (b) the three Periods comprising the fourth, fifth and sixth Periods in any Relevant Year; (c) the three Periods comprising the seventh, eighth and ninth Periods in any Relevant Year; and (d) the final four Periods in any Relevant Year;
"Aggregate Underpinned Amount"	means the aggregate of the Underpinning Payments received by HS1 Ltd for a Relevant Year;
"AV Underpinned Amount"	means, in Relevant Year t, that part of the Aggregate Underpinned Amount which corresponds to the amount of Avoidable Long-Term Costs which a train operator would have paid HS1 Ltd in accordance with these Terms if it had operated the Shortfall Domestic Services in Relevant Year t;
"Avoidable Long-Term Costs"	means those elements of OMRC which are the avoidable long-term costs related to the long-term operational phase of the High Speed 1 project which are recoverable pursuant to paragraph 3 of Schedule 3 of the Railways Regulations (other than such costs which comprise Pass Through Costs);
"Best Practice"	means in respect of the Operator the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably be expected from a skilled and experienced operator engaged in the operation, maintenance, renewal and replacement of high speed railway infrastructure;
"Capacity Reservation Charge"	means the charges to be paid by the Train Operator to HS1 Ltd with regard to the Reserved Capacity Right as calculated in accordance with paragraph 6.1 of Part 2 of this Section 7;

"Capacity Reservation Rebate"	means, in respect of any Period, the aggregate of the Individual Capacity Rebate in that Period as calculated in accordance with paragraph 6.2 of Part 2 of this Section 7;
"Chargeable Journey Time"	means the chargeable journey time specified in column E of Part 2 of Schedule 4 to the Contract;
"Common Long-Term Costs"	means those elements of the OMRC which are the common long-term costs related to the long-term operational phase of the High Speed 1 project which are recoverable pursuant to paragraph 3 of Schedule 3 to the Railways Regulations (other than such costs which comprise Pass Through Costs);
"Common Long-Term Underpinned Amount"	means, in Relevant Year t, that part of the Aggregate Underpinned Amount which corresponds to the amount of Common Long-Term Costs which a train operator would have paid HS1 Ltd in accordance with these Terms if it had operated the Shortfall Domestic Services in Relevant Year t;
"Control Period"	means the period from 1 April 2020 to 31 March 2025 and thereafter each subsequent period of five successive Relevant Years or as otherwise reset by the ORR as part of an Interim Review provided that such reset period cannot exceed five successive Relevant Years;
"Costs"	has the meaning given to it in the HS1 Access Dispute Resolution Rules;
"CRC Activation Event"	means the occurrence of any one of the following: (a) a train operator which does not operate Trains on the HS1 Network as at 1 April 2020 starts to operate Trains on the HS1 Network after that date provided that the replacement of a franchise passenger train operator with a successor franchise passenger train operator shall not be taken into account in determining whether this requirement is satisfied (b) HS1 Ltd reasonably considers that the levying of the Capacity Reservation Charge would assist with the achievement of one or more of the criteria set out in sections D4.6(b)(i)-(x) of the HS1 Network Code; or (c) the capacity on the HS1 Network allocated to train operators (including the Train Operator) as a whole exceeds 80%.
"CRC Activation Notice"	means a written notice which may be issued by HS1 Ltd to the Train Operator setting out, in reasonable detail, a description of the CRC Activation Event that has occurred and which (if HS1 Ltd elects to issue such a notice) is issued by HS1 Ltd by no later than 90 days following the occurrence of such CRC Activation Event;

"CRC Suspension Event"	means the occurrence of any one of the following: (a) a train operator which operates Trains on the HS1 Network as at 1 April 2020 ceases to operate Trains on the HS1 Network after that date provided that the replacement of a franchise passenger train operator with a successor franchise passenger train operator shall not be taken into account in determining whether this requirement is satisfied; (b) HS1 Ltd reasonably considers that the levying of the Capacity Reservation Charge would no longer assist with the achievement of one or more of the criteria set out in sections D4.6(b)(i)-(x) of the HS1 Network Code; or (c) the capacity on the HS1 Network allocated to train operators (including the Train Operator) as a whole is equal to or less than 80%.
"CRC Suspension Notice"	means a written notice issued by HS1 Ltd to the Train Operator setting out, in reasonable detail, a description of the CRC Suspension Event that has occurred and which is issued by HS1 Ltd by no later than 90 days following the occurrence of such CRC Suspension Event;
"Depot or Stabling Meter(s)"	means a meter(s) or other device(s) or technology which measures the actual consumption of traction electricity by railway vehicles operated by or on behalf of the Train Operator within the boundary of any light maintenance depot or stabling area;
"DI Costs"	those elements of the OMRC which are directly incurred as a result of operating train services on HS1 (other than such costs which comprise the Other Services Charge or Pass Through Costs);
"Energy Supplier"	means any supplier of electricity to HS1 Ltd;
"Final Determination"	has the meaning given to that term in the Concession Agreement;
"Five Year Asset Management Statement"	has the meaning given to that term in the Concession Agreement;
"HS1 Co's General Duty"	has the meaning set out in paragraph 1.1 of Schedule 10 of the Concession Agreement;
"Individual Capacity Rebate"	has the meaning given to it in paragraph 6.2 of Part 2 of this Section 7;

"IRC"	means the investment recovery charge imposed by HS1 Ltd under the Contract;
"List of Consumption Rates"	means the list of Modelled Regenerative Braking Rates and modelled consumption rates for Traction Electricity published by HS1 Ltd from time to time;
"List of Tariffs"	means the list of tariffs for Traction Electricity published by HS1 Ltd from time to time;
"Metered Train *me*"	means a train of a particular type which HS1 Ltd has confirmed in accordance with paragraph 4.3 of Part 2 of this Section 7 as having On-Train Metering for the purposes of determining the Traction Electricity Charge;
"Modelled Regenerative Braking Rate"	means the calibrated modelled rate (in kWh per Train Kilometre) by which a railway vehicle of a particular Train Service Category generates electricity from a Regenerative Braking System;
"Non-Journey"	has the meaning given to it in the Traction Electricity Annex;
"O&M Price"	means the amount agreed or determined under the Operator Agreement to be payable by HS1 Ltd to the Operator in respect of the operation and maintenance of HS1 in any Relevant Year (indexed in accordance with the Operator Agreement);
"OMRC"	means the charges imposed by HS1 Ltd under the Contract with regard to the operations, maintenance and renewals costs comprising the DI Costs, the Avoidable Long-Term Costs, the Common Long-Term Costs and the Pass Through Costs;
"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
"Operator Agreement"	means the operator agreement between HS1 Ltd and NR(HS) dated 27 June 2002 as amended and restated on 17 May 2017 and as amended from time to time;
"Operator Mark Up"	means such percentage mark-up on costs which an economic and efficient operator acting in accordance with Best Practice would charge, as agreed by HS1 Ltd and the Operator as part of the relevant Periodic Review and, in default of agreement, as determined by the disputes resolution procedure under the Operator Agreement;
"Other Services Charge"	means the charge calculated pursuant to paragraph 8 to Part 2 to this Section 7;

"Outperformance Share" means an amount equal to the O&M Price after deduction of

(i) all costs and expenses (whether direct or indirect and including accruals and provisions in respect of such costs and expenses) incurred by the Operator in performing its obligations or exercising its rights under the Operator Agreement including all overhead costs and expenses and costs and expenses relating to external advice and assistance and/or incurred in connection with the guarantee issued by Network Rail Infrastructure Limited in favour of HS1 Ltd in relation to the payment and performance obligations of the Operator under the Operator Agreement and any financing obtained by the Operator;

(ii) an amount equal to the higher of the Operator Mark Up percentage or 10% of all such costs and expenses;

(iii) an amount equal to any increase in the O&M Price as a result of any re-opener events and/or additional services in accordance with the terms of the Operator Agreement;

(iv) an amount equal to all sums paid by the Operator to HS1 Ltd under or in connection with the Operator Agreement (excluding any payment made by the Operator to HS1 Ltd in respect of the outperformance share under the Operator Agreement);

(v) an amount equal to all deductions made by HS1 Ltd from payments made or to be made to the Operator (including by way of withholding or set-off); and

(vi) an amount equal to all payments made by the Operator to any third party in respect of any claim, fine, penalty or other liability in relation to any matter arising out of or in connection with the Operator Agreement;

"Pass Through Costs" means those costs arising with respect to operations, maintenance, renewal and replacement which the ORR determines from time to time (any such determination to take effect at the commencement of the next Control Period) are suitable for inclusion in the OMRC adjustment mechanism set out in the Concession Agreement and which:

(1) at the Effective Date include:

(a) rates;

(b) insurance;

(c) non-traction energy costs;

(d) any sums payable by HS1 Ltd in connection with the provision of dispute resolution services in respect of HS1 (other than the Costs); and

(e) operations, maintenance, renewal and replacement costs of the EdF assets (as defined in the Concession Agreement); and

(2) from 1 April 2020 include any costs incurred by HS1 Ltd in connection with the market testing of some or all of the services provided by the Operator under the Operator Agreement;

"PTC Underpinned Amount" means, in Relevant Year t, that part of the Aggregate Underpinned Amount which corresponds to the amount of Pass Through Costs which a train operator would have paid HS1 Ltd in accordance with these Terms if it had operated the Shortfall Domestic Services in Relevant Year t;

"Qualifying Train Operator" has the meaning given to it in paragraph 12.2 of Part 2 of this Section 7;

"Regenerative Braking System" means a system fitted to a railway vehicle that is used to generate electricity from the braking of such railway vehicle;

"Reserved Capacity Rights" means, in respect of the Train Operator, any Firm Right which has not been scheduled in the First Working Timetable for the applicable Timetable Period, other than any Firm Right:

(a) which could not be scheduled in the First Working Timetable for the applicable Timetable Period due to a Restriction of Use;

(b) which was exercised by the Train Operator in accordance with the Contract but which was not scheduled in the First Working Timetable for the applicable Timetable Period through no fault of the Train Operator; or

(c) which is subject to a Suspension Notice served by the Train Operator;

"Review Date" means the date on which a review of the OMRC is completed by HS1 Ltd in accordance with Part 3 of this Section 7;

"Review Event" means:

(a) a Principal Change Date occurring prior to 1 April 2020 where:

(i) any anticipated timetabled train movements on HS1 in respect of the Timetable Year beginning on such Principal Change Date (as reflected in the Working Timetable which takes effect on such Principal Change Date and as if the Services set out in that Working Timetable were to be operated until the next Principal Change Date) is at least 4% more or less than the actual number of timetabled train movements on HS1 during the 12 months commencing on the immediately preceding Review Date (or, in respect of the first Review Event, the Commencement Date); or

(ii) any train operator's anticipated timetabled train movements on HS1 in respect of the Timetable Year beginning on such Principal Change Date (as reflected in the Working Timetable which takes effect on such Principal Change Date and as if the Services set out in that Working Timetable were to be operated until the next Principal Change Date) is at least 4% more or less than such train operator's actual timetabled train movements on HS1 during the 12 months commencing on the immediately preceding Review Date (or, in respect of the first Review Event, the Commencement Date),

provided that where the period in question is less than 12 months, the number of train movements shall be expressed on an annualised basis; or

(aa) a Principal Change Date on or after 1 April 2020 where:

(i) the anticipated timetabled train movements on HS1 in respect of the Timetable Year beginning on such Principal Change Date (as reflected in the Working Timetable which takes effect on such Principal Change Date and as if the train movements set out in that Working Timetable were to be operated until the next Principal Change Date) is at least 4% more or less than:

(A) in respect of the first Review Event, the number of timetabled train movements forecast to operate on HS1 in such Timetable Year as set out in the relevant Five Year Asset Management Statement, or if different, the relevant Final Determination made by the ORR; or

(B) in respect of each subsequent Review Event, the actual number of timetabled train movements on HS1 during the 12 months commencing on the immediately preceding Review Date; or

(ii) the anticipated timetabled passenger train movements on HS1 to be operated by a train operator or the Train Operator in respect of the Timetable Year beginning on such Principal Change Date (as reflected in the Working Timetable which takes effect on such Principal Change Date and as if the train movements set out in that Working Timetable were to be operated until the next Principal Change Date) is at least 4% more or less than:

(A) in respect of the first Review Event, the number of passenger train movements

forecast to operate on HS1 by that train operator or the Train Operator (as applicable) in such Timetable Year as set out in the relevant Five Year Asset Management Statement, or if different, the relevant Final Determination made by the ORR; or

(B) in respect of each subsequent Review Event, the actual number of timetabled passenger train movements on HS1 during the 12 months commencing on the immediately preceding Review Date,

provided that where the period in question is less than 12 months, the number of train movements shall be expressed on an annualised basis; or

(b) the Principal Change Date in December 2021 and each Principal Change Date occurring in each subsequent year prior to 1 April 2025.

"Service Group" means a collection of Services contained within the Service Group specified in column A of Part 2 of Schedule 4 to the Contract;

"Shortfall Domestic Services" means the shortfall in domestic railway passenger services determined in accordance with the undertaking given by the Secretary of State to HS1 Ltd to underpin the domestic passenger railway services on HS1;

"Specified Upgrade" has the meaning set out in paragraph 1.1 of Schedule 10 of the Concession Agreement;

"Spot Services" means each passenger railway service scheduled to be operated by the Train Operator pursuant to a Train Operator Variation and which are not Timetabled Passenger Trains save for any which cannot be operated by virtue of a Restriction of Use;

"Timetabled Passenger Train" means each passenger rail service scheduled to be operated by the Train Operator as specified in the First Working Timetable applicable to that Timetable Period of the relevant Timetable Year save for any which cannot be operated by virtue of a Restriction of Use;

"TOC Outperformance Share" means an aggregate amount of 30% of the Outperformance Share for the Relevant Year;

"Traction Electricity" means the electricity consumed by the Train Operator in providing the Services (including the Ancillary Movements and Non-Journeys);

"Traction Electricity Annex"	means the Annex to these Terms;
"Traction Electricity Charge"	means the charges to be paid by the Train Operator for the Traction Electricity in accordance with paragraph 4.1 of Part 2 of this Section 7;
"Traction Electricity Charge Adjustment"	means the adjustment to the Traction Electricity Charge as determined by HS1 Ltd in accordance with paragraph 4.8 of Part 2 of this Section 7;
"Traction Electricity Consumption Charge"	means the charges to be paid by the Train Operator for the Traction Electricity consumed by railway vehicles operated by or on behalf of the Train Operator as calculated in accordance with paragraph 4.2 of Part 2 of this Section 7;
"Traction Electricity Residual Charge"	means the charges to be paid by the Train Operator for its share of the difference between the amount paid by HS1 Ltd for traction electricity and the amount otherwise chargeable by HS1 Ltd in respect of Traction Electricity consumed by railway vehicles operated by or on behalf of all train operators (including the Train Operator), as calculated in accordance with paragraph 4.7 of Part 2 of this Section 7;
"Train Kilometre"	means, in relation to a train, or a portion of a train, a kilometre travelled by that train or that portion of a train, on HS1;
"Train Service Category"	means, in relation to a railway vehicle, the train type, train length and service type of such railway vehicle, as set out in the List of Consumption Rates;
"Underpinning Payments"	means any amount received by HS1 Ltd from the Secretary of State as domestic underpinning payments in lieu of the operation of the Shortfall Domestic Services; and
"Vehicle Category"	means each different type of vehicle used to provide the Services as specified in column B of Part 2 of Schedule 4 to the Contract.

PART 2: TRACK CHARGES

1. PRINCIPAL FORMULA

The Train Operator shall pay to HS1 Ltd Track Charges in respect of each Period p in accordance with the following formula:

$$T_p = IRC_p + OMRC_p + E_p + CRC_p - CRR_p + CT_p + OSC_p$$

where:

T_p	means the Track Charges in respect of Period p;
IRC_p	means the IRC in respect of Period p, calculated in accordance with the provisions of paragraph 2.1 and charged in advance of the commencement of each Advance Period;

$OMRC_p$ means the OMRC in respect of Period p, calculated in accordance with the provisions of paragraph 3 and charged in advance of the commencement of each Advance Period;

E_p means the Traction Electricity Charge in respect of Period p, calculated in accordance with paragraph 4.1 and charged in arrears following the end of a Period;

CRC_p means the Capacity Reservation Charge in respect of Period p, calculated in accordance with paragraphs 6.1 and 6.3, and charged in advance of the commencement of each Advance Period;

CRR_p means the Capacity Reservation Rebate in respect of Period p, calculated in accordance with paragraphs 6.2 and 6.3 and charged in arrears following the end of a Period;

CT_p means the Congestion Tariff in respect of Period p, calculated in accordance with paragraph 7 and charged in arrears following the end of a Period; and

OSC_p means the Other Services Charge in respect of Period p, calculated in accordance with the provisions of paragraph 8 and charged in arrears following the end of a Period.

2. INVESTMENT RECOVERY CHARGE

2.1 Calculation of the IRC

Subject to paragraph 2.3, the IRC in Period p shall be derived from the following formula:

$IRC_p = \sum AIRCPT_{SGP} \times NTT_{SGVP}$

where:

IRCp means the IRC in Period p;

$AIRCPT_{SGP}$ means, in respect of each Service Group, the Adjusted IRC Per Train in that Service Group in Period p as calculated below:

$AIRCPT_{SGP} = IRCPT_{SG} \times D_{SG} \times I_m \times CJT_{SG}$

where:

$IRCPT_{SG}$ means, in respect of each Service Group, the IRC Per Train Per Minute in the Service Group, being the figure specified as such in column C of Part 2 of Schedule 4 to the Contract;

D_{SG} means, in respect of each Service Group, the Discount Factor in respect of each Passenger Train in that Service Group as specified as such in column D of Part 2 of Schedule 4 to the Contract;

I_m means the indexation factor for IRC for the most recent Indexation Review Date as determined in accordance with paragraph 2.2; and

CJT_{SG} means in respect of each Service Group, the Chargeable Journey Time of the train in that Service Group, as specified in column E of Part 2 of Schedule 4 to the Contract;

NTT_{SGVP} means, in respect of each Service Group, the number of Timetabled Passenger Trains and Spot Services in that Service Group in Period p; and

$\sum$ means the summation across each Service Group.

2.2 **Indexation Factor for IRC**

The indexation value for IRC shall be derived on each Indexation Review Date from the following formula:

$$I_m = (I_{m-1} \times (b \div a))$$

where:

"I_{m-1}" means the value of I_m applicable immediately before the relevant Indexation Review Date, the first such value of I_m being 1; and

"a" means the value of RPI for the Index Observation Month that is 6 months prior to that used in the calculation of "b" (save in the case of the first Indexation Review Date when it shall be the value of RPI for the Index Observation Month immediately preceding the month in which the Concession Agreement is entered into);

"b" means the value of RPI for the Index Observation Month immediately preceding the relevant Indexation Review Date;

"Index Observation Months" shall be February and August each year; and

"Indexation Review Date" shall be the date six months (6) immediately following the month in which the Concession Agreement is entered into and every six months (6) thereafter.

2.3 **Additional IRC**

(a) HS1 Ltd shall levy and the Train Operators shall pay such Additional IRC (and any related indexation of the Additional IRC) as may be approved by the ORR from time to time and reflected in Column J of the table in Part 2 of Schedule 4 of the Contract.

(b) Following the approval of any Additional IRC by the ORR, the parties shall promptly enter into an amendment to the Contract to reflect:

(i) the approved Additional IRC in Column J of the table in Part 2 of Schedule 4; and

(ii) any related indexation of the Additional IRC in Part 2 of Schedule 4 of the Contract.

(c) In the event that the ORR approves any Additional IRC and, following such approval:

(i) either:

(1) there is a change in the scope of works of the relevant Specified Upgrade; and/or

(2) the actual costs arising from the completion and implementation of the relevant Specified Upgrade are greater than the total Additional IRC approved by the ORR as being recoverable by HS1 Ltd from the Train Operator,

and the ORR has approved any increase in costs as being consistent with HS1 Co's General Duty; or

(ii) the actual costs arising from the completion and implementation of the relevant Specified Upgrade are less than the total Additional IRC approved by the ORR as being recoverable by HS1 Ltd from the Train Operator,

HS1 Ltd shall adjust the Additional IRC to be levied on the Train Operator to reflect the actual costs arising from the completion and implementation of the relevant Specified Upgrade. The Parties shall promptly enter into an amendment to the Contract to incorporate the adjusted Additional IRC in Column J of the table in Part 2 of Schedule 4 of the Contract.

(d) In the event that the ORR approves any Additional IRC and, following such approval, a new train operator subsequently commences passenger rail services on HS1, HS1 Ltd shall adjust the Additional IRC to reflect the number of extra Timetabled Passenger Trains and Spot Services attributable to the new train operator. The parties shall promptly enter into an amendment to the Contract to incorporate the adjusted Additional IRC in Column J of the table in Part 2 of Schedule 4 of the Contract.

3. OMRC

3.1 Calculation of the OMRC

The OMRC in Period p (being the basic charge for the minimum access package as provided in Schedule 2 of the Railways Regulations) shall be derived from the following formula:

$$OMRC_p = \sum AOMRCPT_{SGVP} \times NTT_{SGVP}$$

where:

$OMRC_p$ means the OMRC in Period p;

$AOMRCPT_{SGVP}$ means, in respect of each Service Group and Vehicle Category, the Adjusted OMRC Per Train in that Service Group and in respect of that Vehicle Category in Period p calculated as follows:

$$AOMRCPT_{SGVP} = ((OMRCA_{SGV} + OMRCB_{SGV}) \times OI_p + OMRCC_{SGV}) \times CJT_{SGV}$$

where:

$OMRCA_{SGV}$ means the sum of $OMRCA1_{SGV}$ and $OMRCA2_{SGV}$;

$OMRCA1_{SGV}$ means, in respect of each Service Group and Vehicle Category, the DI Costs expressed as a figure per train per kilometre in that Service Group and in respect of that Vehicle Category, being the figure specified as such in column F of Part 2 of Schedule 4 to the Contract as the same may be varied pursuant to Part 3;

$OMRCA2_{SGV}$ means, in respect of each Service Group and Vehicle Category, the Avoidable Long-Term Costs expressed as a figure per train per minute in that Service Group and in respect of that Vehicle Category, being the figure specified as such in column G of Part 2 of Schedule 4 to the Contract as the same may be varied pursuant to Part 3;

$OMRCB_{SGV}$ means, in respect of each Service Group, the Common Long-Term Costs expressed as figure per train per minute in that Service Group and in respect of that Vehicle Category, being the figure specified as such in column H of Part 2 of Schedule 4 to the Contract as the same may be varied pursuant to Part 3;

$OMRCC_{SGV}$ means, in respect of each Service Group, the Pass Through Costs expressed as a figure per train per minute in that Service Group and in respect of that Vehicle Category, being the figure specified as such in column I of Part 2 of Schedule 4 to the Contract as the same shall be updated annually by HS1 Ltd pursuant to paragraph 3.4 and may be varied pursuant to Part 3;

OI_P means the indexation factor for OMRC in respect of each Period p as determined in accordance with paragraph 3.2;

CJT_{SGV} means in respect of each Service Group and Vehicle Category, the Chargeable Journey Time of the train in that Service Group and in respect of that Vehicle Category, as specified in column E of Part 2 of Schedule 4 to the Contract;

NTT_{SGVP} means, in respect of each Service Group and Vehicle Category, the number of Timetabled Passenger Trains and Spot Services in that Service Group and in respect of that Vehicle Category in Period p; and

$\sum$ means the summation across each Service Group and each Vehicle Category.

3.2 **Indexation Factor for OMRC**

(a) The indexation factor for OMRC in respect of each Period p shall be derived from the following formula:

$$OI_p = (RPI_t \div RPI_0) \times OI_t$$

where:

OI_P means the indexation factor for OMRC in respect of Period p;

RPI_t means, in respect of:

(a) the Base Year, the RPI published or determined with respect to February 2020; or

(b) Relevant Year t, the RPI published or determined with respect to February in Relevant Year t-1;

RPI_0 means, in respect of:

(a) the Base Year, the RPI published or determined with respect to February 2018; or

(b) Relevant Year t, the RPI published or determined with respect to February in Relevant Year t-2;

OI_t means, in respect of the Base Year, 1, and in respect of each subsequent Relevant Year, the value of OI_p determined during the final Period of the Base Year or previous Relevant Year; and

Base Year means the Relevant Year commencing 1 April 2020.

(b) If any value of RPI determined pursuant to this paragraph 3.2 (the "First Value") is lower than any such value previously determined (the "Second Value"), the First Value shall be deemed to be equal to the Second Value until the First Value exceeds the Second Value.

3.3 **Access Charges and Network Change**

HS1 Ltd shall levy and the Train Operator shall pay any change in the OMRC as may be agreed or determined pursuant to a Network Change proposed by HS1 Ltd under Part G of the HS1 Network Code. Any such change in OMRC shall take effect only when it has been approved by the ORR.

3.4 **Revision of OMRCCSGV**

(a) HS1 Ltd may review the $OMRCC_{SGV}$ prior to the beginning of each Relevant Year based on the anticipated value of the Pass Through Costs for such Relevant Year.

(b) Promptly following the review of $OMRCC_{SGV}$ but no later than 60 days prior to the beginning of the Relevant Year, HS1 Ltd shall serve a notice on the Train Operator specifying the value of $OMRCC_{SGV}$ with reasonable explanation and supporting evidence for the revised figure of $OMRCC_{SGV}$. On the date falling the day on which such notice period expires, the Contract shall be deemed to be amended by replacing the existing value of $OMRCC_{SGV}$ set out in column I of Part 2 of Schedule 4 to the Contract with such revised value of $OMRCC_{SGV}$, unless, within 28 days of receipt of such notice, the Train Operator objects on reasonable grounds as to the manner in which the anticipated value of the Pass Through Costs have been allocated amongst all train operators in determining the revised value of $OMRCC_{SGV}$, by giving written notice of such objection to HS1 Ltd.

(c) A notice of objection served by the Train Operator in accordance with paragraph 3.4(b) shall describe in reasonable detail the grounds for the Train Operator's objection and shall set out the revised value of $OMRCC_{SGV}$ which the Train Operator considers represents the correct allocation of the anticipated value of the Pass Through Costs.

(d) HS1 Ltd shall within 28 days of receipt of a notice of objection notify the Train Operator in writing as to whether it accepts the revised value of $OMRCC_{SGV}$ proposed by the Train Operator. If HS1 Ltd accepts the Train Operator's proposal, then at the beginning of the Relevant Year the Contract shall be deemed to be amended by replacing the existing value of $OMRCC_{SGV}$ set out in column I of Part 2 of Schedule 4 to the Contract with the revised value of $OMRCC_{SGV}$ proposed by the Train Operator. If HS1 Ltd does not accept the Train Operator's proposal, either party may refer the matter to the determined in accordance with the Dispute Resolution Procedure.

4. TRACTION ELECTRICITY CHARGE

4.1 Subject to paragraph 5, for the purposes of paragraph 1, the term E_p means an amount in respect of the Traction Electricity Charge in Period p which shall be calculated in accordance with the following formula:

$$E_p = E_{pc} + E_{pr}$$

where:

E_{pc} means the Traction Electricity Consumption Charge in relevant Period p in respect of all railway vehicles operated by or on behalf of the Train Operator calculated in accordance with paragraph 4.2; and

E_{pr} means the Traction Electricity Residual Charge in relevant Period p in respect of the Train Operator calculated in accordance with paragraph 4.7.

4.2 The Traction Electricity Consumption Charge for all railway vehicles operated by or on behalf of the Train Operator in Period p (E_{pc}) shall be determined in accordance with the following formula:

$$E_{pc} = E_{pmo} + E_{pme} + E_{pmoo}$$

where:

E_{pmo} means the amount of the traction electricity charge in relevant Period p in respect of railway vehicles operated by or on behalf of the Train Operator that use traction electricity modelled consumption data and calculated in accordance with paragraph 4.4;

E_{pme} means the amount of the traction electricity charge in relevant Period p in respect of railway vehicles operated by or on behalf of the Train Operator that use On-Train Meters to measure traction electricity consumption and calculated in accordance with paragraph 4.5; and

E_{pmoo} means the charge payable in respect of traction electricity consumed by railway vehicles operated by or on behalf of the Train Operator that use traction electricity in relation to Non-Journeys that is not captured by On-Train Meters, calculated in accordance with paragraph 4.6.

4.3 The traction electricity charge for all railway vehicles operated by or on behalf of a Train Operator shall be calculated using traction electricity modelled consumption data in accordance with paragraph 4.4 unless and until the requirements in sub-paragraphs (a) and (b) below have been satisfied:

(a) the Train Operator and HS1 Ltd have agreed in writing that On-Train Metering shall apply in respect of such railway vehicles;

(b) HS1 Ltd has given written notice to the Train Operator that:

(i) it considers (acting reasonably) that the On-Train Meters fitted to the railway vehicles operated by the Train Operator comply with paragraph 2.1 of the Traction Electricity Annex;

(ii) the relevant railway vehicles fitted with the On-Train Meters are able to operate safely on HS1;

(iii) the quality of the Metered Data produced by the On-Train Meters fitted on the railway vehicles operated by the Train Operator and recorded as "measured" in accordance with the requirements in the Metering Data Interface Specification is at least seventy point zero per cent (70.0%) (rounded to one decimal place) of the data collected from such On-Train Meters over the period of testing (the "**Data Quality Standard**"), unless the Train Operator has demonstrated to the satisfaction of HS1 Ltd (acting reasonably):

(1) that the low quality of the Metered Data transmitted from the On-Train Meters was due to exceptional circumstances that are temporary in nature; and

(2) the Train Operator has implemented measures to ensure that the quality of the Metered Data transmitted from the On-Train Meters improve so that it would achieve the Data Quality Standard over a period of time equivalent to the testing period.

(iv) the Journey Look Up Tables and, where relevant, the Non-Journey Look-Up Table for the relevant Train Operator have been populated using the Metered Data; and

(v) the Operator has confirmed in writing to HS1 Ltd that the data flow and billing systems tests necessary to enable HS1 Ltd to invoice the Train Operator for traction electricity in accordance with this Contract using Metered Data transmitted from the On-Train Meters fitted to the railway vehicles operated by the Train Operator have been completed successfully.

Calculation of traction electricity charge using modelled consumption data

4.4 The amount of the traction electricity charge in Period p in respect of railway vehicles operated by or on behalf of the Train Operator that use traction electricity modelled consumption data (E_{pmo}) shall be determined in accordance with the following formula:

$$E_{pmo} = \sum (C_i - C_{irb}) \quad x\ EF_{jp}\ x\ UE_{ijp}$$

where:

C_i means the calibrated modelled consumption rate (in kWh per Train Kilometre and excluding transmission losses) for train service category i shown in the List of Consumption Rates;

C_{irb} means:

(1) where the relevant railway vehicle used to operate train service category i has a Regenerative Braking System and a Modelled Regenerative Braking Rate for that railway vehicle and train service category i has been specified in the List of Consumption Rates in accordance with paragraph 5.10, the Modelled Regenerative Braking Rate for that railway vehicle and train service category i as shown in the List of Consumption Rates (save where paragraph 5.15 applies); or

(2) in all other circumstances, zero (0);

EF_{jp} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in relevant Period p during the relevant tariff band j as defined in the List of Tariffs;

UE_{ijp} means the actual volume of usage (in electrified Train Kilometres) of railway vehicles operated by or on behalf of the Train Operator in train service category i in relevant Period p during the relevant tariff band j, pursuant to the Contract or between Ashford West Boundary and Ashford East Boundary;

∑ means the summation across all relevant train service categories i and tariff bands j;

"kWh" means kilowatt hours; and

"train service category" means the relevant train service category i (being the train type, train length and service type as set out in the List of Consumption Rates) for the relevant Service (including any Ancillary Movements).

Calculation of traction electricity charge using metered consumption data

4.5 The amount of the traction electricity charge in Period p in respect of railway vehicles operated by or on behalf of the Train Operator that use On-Train Meters to measure traction electricity consumption (E_{pme}) shall be determined in accordance with the following formula:

$$E_{pme} = \sum \left(\left(CME_{mejp} \; x \; EF_{jp} \right) - \left(RGB_{mejp} \; x \; EF_{jp} \right) \right)$$

where:

∑ means the summation across all relevant Metered Trains *me* (determined in accordance with paragraph 4.3 above) and tariff bands j, as appropriate;

CME_{mejp} means the consumption of electricity (in kWh) by Metered Trains *me* 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 Annex, in relevant Period p during the relevant tariff band j;

EF_{jp} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in relevant Period p during the relevant tariff band j as defined in the List of Tariffs; and

RGB_{mejp} means the electricity (in kWh) generated by braking by Metered Trains *me* 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 Annex, in relevant Period p during the relevant tariff band j.

Calculation of consumption charges for railway vehicles that use traction electricity modelled consumption data in relation to Non-Journeys

4.6 The amount of the traction electricity charge in respect of consumption of traction electricity by railway vehicles operated by or on behalf of the Train Operator in Period p in relation to Non-Journeys (E_{pmoo}) shall be determined in accordance with the following formula:

$$E_{pmoo} = \sum (CT_{vjp} \text{ x } EF_{jp})$$

where:

$\sum$ means the summation across all railway vehicles v operated by or on behalf of the Train Operator that use traction electricity that is not captured by On-Train Meters and tariff bands j, as appropriate;

CT_{vjp} means the consumption of electricity (in kWh) by railway vehicles v operated by or on behalf of the Train Operator that use traction electricity in respect of Non-Journeys that is not captured by On-Train Meters, as measured by Depot or Stabling Meter(s) (or, if such meters are unavailable, as estimated by HS1 Ltd, acting reasonably), in relevant Period p during the relevant tariff band j; and

EF_{jp} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in relevant Period p during the relevant tariff band j as defined in the List of Tariffs.

Calculation of Traction Electricity Residual Charge

4.7 The Traction Electricity Residual Charge in respect of Period p (E_{pr}) payable by the Train Operator shall be determined in accordance with the following formula:

$$E_{pr} = E_{pc}\, x \left(\frac{\left(TAC_p - TPC_p\right)}{TPC_p} \right)$$

where:

E_{pc} has the meaning given in paragraph 4.1 in respect of the relevant Period p;

TAC_p means the total actual cost of traction electricity to HS1 Ltd in respect of the relevant Period p other than electricity charges covered in OMRC or station charges; and

TPC_p means the amount otherwise chargeable by HS1 Ltd to all train operators (including the Train Operator) in respect of traction electricity consumed by railway vehicles operated by or on behalf of them during relevant Period p.

Traction Electricity Charge Adjustment

4.8 Within 90 days after the end of each Relevant Year, HS1 Ltd shall, in respect of each train operator (including the Train Operator), calculate the adjustment to traction electricity charges payable by that train operator necessary to address the corrections identified pursuant to paragraph 7.7 or 7.15 of the Traction Electricity Annex and any other corrections or adjustments which, acting reasonably, HS1 Ltd considers necessary (which shall be a positive figure where payable by a train operator and a negative figure where payable by HS1 Ltd) (the **"Traction Electricity Charge Adjustment"**).

Interim cost reconciliations

4.9 Notwithstanding paragraph 4.8, HS1 Ltd shall be entitled to calculate the Traction Electricity Charge Adjustment on an interim basis during the Relevant Year and HS1 Ltd and the train operators (including the Train Operator) shall make appropriate payments to reflect any such

calculation. Any payments following the end of the Relevant Year shall take account of any such payments made.

Use of estimated values

4.10 Where at the relevant time of calculating:

(a) the Traction Electricity Charge pursuant to paragraph 4.1; or

(b) the Traction Electricity Charge Adjustment pursuant to paragraphs 4.8 or 4.9,

HS1 Ltd has not received all the relevant information necessary to calculate any of the charges referred to in sub-paragraphs (a) or (b) above from the Energy Supplier and/or has received potentially erroneous information from the Energy Supplier, without prejudice to paragraphs 4 to 6 of the Traction Electricity Annex in respect of the missing information addressed by such provision, HS1 Ltd shall be entitled to use its reasonable estimate of the missing and/or corrected information and proceed to calculate (and invoice) the relevant charges on the basis of such estimate provided that:

(i) when the missing and/or corrected information relevant to such calculation is received by HS1 Ltd within 175 days of the end of the Relevant Year, HS1 Ltd shall promptly, and in any event within 180 days after the end of such Relevant Year, conduct a reconciliation using the missing or corrected information to calculate the relevant charge in place of the estimate(s) originally used by HS1 Ltd; and

(ii) if the missing and/or corrected information is provided by the Energy Supplier on a date which is more than 175 days after the end of the Relevant Year, no subsequent reconciliation shall be undertaken by HS1 Ltd in respect of such Relevant Year and the missing and/or corrected information shall be taken into account by HS1 Ltd when determing the Traction Electricity Charge Adjustment for the then current Relevant Year.

4.11 If the reconciliation carried out pursuant to paragraph 4.10 determines that:

(a) an amount is due by HS1 Ltd, HS1 Ltd shall issue a credit note to the Train Operator for such amount; or

(b) an amount is due from the Train Operator to HS1 Ltd, HS1 Ltd shall be entitled to issue an invoice to the Train Operator for such amount (and for these purposes such amount shall be treated in the same manner as the Traction Electricity Charge Adjustment).

5. TRACTION ELECTRICITY ARRANGEMENTS

Procurement of Traction Electricity by the Train Operator

5.1 HS1 Ltd acknowledges and agrees that the Train Operator shall be entitled to procure Traction Electricity itself with the prior written approval of HS1 Ltd. If another train operator proposes to procure traction electricity itself, the Train Operator shall not unreasonably withhold its consent to such proposal.

5.2 The Train Operator acknowledges and agrees that HS1 Ltd's approval pursuant to paragraph 5.1 would be conditional on the Train Operator bearing all expenses, payments, liabilities, costs and losses (including transmission losses) associated with the procurement of Traction Electricity by the Train Operator.

Election to introduce On-Train Metering

5.3 If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle type that the Train Operator operates for the purposes of being invoiced by HS1 Ltd for Traction Electricity, it shall notify HS1 Ltd of its proposal and any required changes to the Contract arising in connection with that proposal.

5.4 Any notice under paragraph 5.3 shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and HS1 Ltd shall respond in writing within 30 days of service of receipt of such notice.

5.5 If the parties agree an amendment to the Contract in connection with the proposal referred to in paragraph 5.3, that amendment shall take effect only when it has been approved by ORR pursuant to the Railways Regulations. 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.

5.6 Any agreed amendment to the Contract in connection with the proposal referred to in paragraph 5.3 which is approved by ORR under the Railways Regulations shall apply with effect from the date approved by the ORR, or if later, the date agreed by the parties.

5.7 If the parties fail to reach agreement on a suitable timescale for the introduction of On-Train Metering within 90 days after service of a notice under paragraph 5.3, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may refer the matter for determination pursuant to the HS1 Access Dispute Resolution Rules.

Modelled Regenerative Braking Rate

5.8 Where a Train Operator wishes for a Modelled Regenerative Braking Rate to be applied to a Train Service Category or wishes that an existing Modelled Regenerative Braking Rate for a Train Service Category is modified, the Train Operator shall give written notice to HS1 Ltd setting out:

(a) each Train Service Category to which it wishes a Modelled Regenerative Braking Rate be applied or modified;

(b) details of the Regenerative Braking System that has been fitted to the railway vehicles that operate the relevant Train Service Category;

(c) the Modelled Regenerative Braking Rate that the Train Operator proposes apply to each Train Service Category (expressed in kWh per Train Kilometre) together with appropriate data and other evidence supporting the calculation of such Modelled Regenerative Braking Rate; and

(d) any other information that it considers HS1 Ltd would require in reviewing its request and determining a Modelled Regenerative Braking Rate for the relevant Train Service Category.

5.9 The Train Operator shall promptly provide any other information which HS1 Ltd (acting reasonably) considers that it requires in connection with considering the Train Operator's request under paragraph 5.8 above.

5.10 Within 90 days of receipt of the notification given by the Train Operator in accordance with paragraph 5.8 above (or such later date as HS1 Ltd and the Train Operator may agree), HS1 Ltd shall determine, acting reasonably, the Modelled Regenerative Braking Rate (if any) that will be applied to each Train Service Category notified pursuant to paragraph 5.8(a). HS1 Ltd shall notify the Train Operator in writing of its decision and, where it determines that a Modelled Regenerative Braking Rate should be applied, the date when the Modelled Regenerative Braking Rate shall start to be applied to the calculation of the Traction Electricity Charge.

5.11 HS1 shall liaise with interested parties including the ORR, NRIL, the Operator and other train operators and take account of any representations and/or information provided by such interested parties in determining a Modelled Regenerative Braking Rate or determining any modification to a Modelled Regenerative Braking Rate,

5.12 HS1 Ltd shall promptly update the List of Consumption Rates to include the Modelled Regenerative Braking Rate notified to the Train Operator pursuant to paragraph 5.10.

5.13 The Train Operator shall:

(a) reimburse all costs and expenses reasonably and properly incurred by HS1 Ltd in determining or modifying any Modelled Regenerative Braking Rate in accordance with this paragraph 5. HS1 Ltd shall issue an invoice for such costs and expenses no later than 60 days from the date it gives notice of the Modelled Regenerative Braking Rate in accordance with paragraph 5.10 and the provisions of Part 4 to this Section 7 shall apply to such invoice;

(b) use reasonable endeavours to ensure that the Regenerative Braking System for each railway vehicle in respect of which a Modelled Regenerative Braking Rate is applied continues to operate effectively, such that the application of the Modelled Regenerative Braking Rate as set out in the List of Consumption Rates continues to be appropriate; and

(c) notify HS1 Ltd no later than five (5) days following the end of a Period of any period of time (of any duration) in the previous Period where the Regenerative Braking System for a railway vehicle used in the operation of a Train Service Category was not fully functional or otherwise operating in accordance with the information provided to HS1 Ltd pursuant to paragraphs 5.8(b) and 5.9 above.

5.14 The Train Operator shall notify HS1 Ltd promptly in writing if, in respect of one or more of its Train Service Categories, it considers that the Modelled Regenerative Braking Rate as set out in the List of Consumption Rates should no longer be applied.

5.15 HS1 Ltd shall be entitled (but not obliged) to cease applying the Modelled Regenerative Braking Rate as set out in the List of Consumption Rates in respect of a Train Service Category:

(a) to give effect to the Train Operator's notification given in accordance with paragraph 5.14 above;

(b) where On-Train Metering has been introduced in respect of the railway vehicles used in the operation of the relevant Train Service Category;

(c) where:

(i) HS1 Ltd has notified the Train Operator that it does not consider that the Modelled Regenerative Braking Rate accurately reflects the amount of electricity generated from the Regenerative Braking System fitted to the railway vehicles used in the operation of the relevant Train Service Category; and

(ii) the Train Operator has failed to demonstrate to the satisfaction of HS1 Ltd (acting reasonably) within 30 days of receipt of such notice that the Modelled Regenerative Braking Rate accurately reflects the amount of electricity generated from the Regenerative Braking System fitted to the railway vehicles used in the operation of the relevant Train Service Category.

6. CAPACITY RESERVATION CHARGE

6.1 Calculation of the Capacity Reservation Charge

(a) Subject to paragraphs 6.1(b) and 6.3 and Part J of the HS1 Network Code, the Capacity Reservation Charge in Period p shall be derived from the following formula:

$CRC_p = \sum 0.25 \times CIRCPT_{RP}$

where:

CRC_p	means the Capacity Reservation Charge in Period p;
$\sum$	means the summation across all Reserved Capacity Right; and
$CIRCPT_{RP}$	means, in respect of each Reserved Capacity Right, the Capacity IRC Per Train in Period p as calculated below:

$CIRCPT_{RP} = IRCPT_{SG} \times I_m \times CJT_{SG}$

where:

$IRCPT_{SG}$	has the meaning given to it in paragraph 2.1;
Im	has the meaning given to it in paragraph 2.2; and
CJT_{SG}	has the meaning given to it in paragraph 2.1.

(b) The Train Operator may surrender some or all of the Reserved Capacity Rights by notice to this effect to HS1 Ltd. Any such notice shall specify the number of the Reserved Capacity Rights to be surrendered and shall take effect at the end of the Timetable Year following the Timetable Year in which the notice is served. When

such notice takes effect the Reserved Capacity Rights referred to in such notice as being surrendered shall cease to be Firm Rights.

6.2 **Calculation of the Capacity Reservation Rebate**

Subject to paragraph 6.3 where a Reserved Capacity Right is utilised by another train operator in Period p, the Train Operator shall be entitled to a rebate (the "Individual Capacity Rebate") of 75% of the lower of:

(a) 0.25 x $CIRCPT_{RP}$ in respect of that Reserved Capacity Right; and

(b) where the other operator is a passenger operator, the amount of the IRC paid by that operator and, where the second operator is a freight operator, 75% of the OMRC paid by that operator.

A Reserved Capacity Right shall only be utilised by another train operator for the purpose of this paragraph 6.2 where the utilised capacity matches the characteristics of the Reserved Capacity Right in all material respects and there is no other unreserved capacity which could have been utilised by that train operator which has materially similar characteristics. Where a Reserved Capacity Right of the Train Operator and another train operator could satisfy these criteria, the rebate shall be split on a fair and equitable basis. The Capacity Reservation Rebate in Period p (being CRRp) shall be the aggregate of the Individual Capacity Rebates during Period p.

6.3 **Activation and Suspension of Capacity Reservation Charge and Capacity Reservation Rebate**

(a) Subject to paragraphs 6.3(b) and (c) for each Period commencing on and from 1 April 2020 the Capacity Reservation Charge and the Capacity Reservation Rebate for such Period shall each be equal to zero.

(b) If a CRC Activation Event occurs HS1 Ltd shall be entitled (but not obliged) to issue a CRC Activation Notice to the Train Operator. Where HS1 Ltd issues a CRC Activation Notice:

(i) paragraph 6.3(a) shall cease to apply; and

(ii) the Capacity Reservation Charge and the Capacity Reservation Rebate shall be determined in accordance with paragraphs 6.1(a) and 6.2 respectively,

in each case from the first Period commencing after the date of such CRC Activation Notice and until such time as a CRC Suspension Notice is subsequently issued by HS1 Ltd.

(c) If a CRC Suspension Event occurs HS1 Ltd shall be entitled (but not obliged) to give a CRC Suspension Notice to the Train Operator. Where HS1 Ltd issues a CRC Suspension Notice the Capacity Reservation Charge and the Capacity Reservation Rebate:

(i) shall cease being determined in accordance with paragraphs 6.1(a) and 6.2; and

(ii) shall be determined in accordance with paragraph 6.3(a),

in each case from the first Period commencing after the date of such CRC Suspension Notice and until such time as a CRC Activation Notice is subsequently issued by HS1 Ltd.

(d) HS1 Ltd shall be entitled to issue any number of CRC Activation Notices and CRC Suspension Notices and paragraph 6.3(b) and (c) shall apply accordingly.

7. CONGESTION TARIFF

The Congestion Tariff in Period p shall be the sum, if any, determined to be payable by the Train Operator in accordance with paragraphs 1(8) and 1(9) of Schedule 3 of the Railways Regulations. Such Congestion Tariff shall not have effect without the approval of the Secretary of State and the ORR.

8. OTHER SERVICES CHARGE

The Other Services Charge in respect of Period p shall be calculated in accordance with Part 1 of Schedule 4 to the Contract.

9. NOT USED

10. WASH UP AMOUNT

10.1 The Wash Up Amount in respect of each Relevant Year t shall be calculated as follows:

$WU_p = (PTCA_t + IRCA_t + AOMRCA1_t + APA_t)$

where:

WU_p means the Wash Up Amount in respect of Period p, charged in arrears following the end of the Relevant Year;

$PTCA_t$ is the proportion of the wash-up of the Pass Through Costs payable by the Train Operator in respect of Relevant Year t, calculated as follows:

$PTCA_t = (WPTC_t \times OP_t)$

where:

$WPTC_t$ is such sum that ensures that HS1 Ltd recovers from all train operators and, where applicable, through Underpinning Payments, the exact amount of the Pass Through Costs for Relevant Year t (taking account of any sums already paid by the train operators in respect of Pass Through Costs and the PTC Underpinned Amount received by HS1 Ltd, in each case in respect of such Relevant Year t) as approved or determined by the ORR pursuant to the Concession Agreement; and

OP_t is the ratio (expressed as decimal) of (i) the aggregate number of train minutes for which the Train Operator's passenger services operated on HS1 in Relevant Year t has to (ii) the aggregate number of train minutes for which all passenger and freight services by all train operators operated on HS1 in Relevant Year t (as adjusted to take into account the aggregate number of train minutes which would have been incurred if the Shortfall Domestic Services in Relevant Year t had actually operated);

$IRCA_t$ is the IRC wash-up for Relevant Year t calculated as follows:

$IRCA_t = \sum AIRCPT_{SGP} \times NNTT_{SGT}$

where:

$AIRCPT_{SGP}$ has the meaning given to it in paragraph 2.1;

$NNTT_{SGT}$ is the number of extra Train Slots in each Service Group in Relevant Year t operated by the Train Operator as a result of Train Operator Variations minus the number of

Scheduled Train Slots in each Service Group which were not operated by the Train Operator due to:

(i) a HS1 Restriction of Use;

(ii) a Competent Authority Restriction of Use;

(iii) as a result of a Suspension Notice served by the Train Operator;

(iv) as a result of the exercise by HS1 Ltd of its rights pursuant to Part J of the HS1 Network Code,

which during such Relevant Year have not already been taken into account in the calculation pursuant to this Section 7; and

$\sum$ is the summation across all Service Groups;

$AOMRCA1_t$ is the wash-up in respect of Relevant Year t of the OMRC comprising the DI Costs, calculated as follows:

$$AOMRCA1_t = \sum OMRCA1_{SGV} \times OI_p \times CJT_{SGV} \times NNTT_{SGVT}$$

where:

$OMRCA1_{SGV}$ has the meaning given to it in paragraph 3.1;

OI_P has the meaning given to it in paragraph 3.1;

CJT_{SGV} has the meaning given to it in paragraph 3.1; and

$NNTT_{SGVT}$ is the number of extra Train Slots in each Service Group and Vehicle Category in Relevant Year t operated by the Train Operator as a result of Train Operator Variations minus the number of Scheduled Train Slots in each Service Group and Vehicle Category which were not operated by the Train Operator due to:

(i) a Restriction of Use;

(ii) as a result of a Suspension Notice served by the Train Operator;

(iii) as a result of the exercise by HS1 Ltd of its rights pursuant to Part J of the HS1 Network Code;

(iv) as a result of any Cancellation which is attributed to HS1 Ltd,

which during such Relevant Year have not already been taken into account in calculation pursuant to this Section 7; and

APA_t means in respect of Relevant Year t, the difference between the values of IRC, OMRCA, OMRCB and Capacity Reservation Charge which would have been payable had those sums been invoiced in arrears (with indexation being applied in accordance with paragraphs 2.2 and 3.2 of Part 2) and the values of the IRC, OMRCA, OMRCB and Capacity Reservation Charge actually paid.

10.2 The Wash Up Amount in respect of each Relevant Year shall be calculated by HS1 Ltd promptly following the end of each Relevant Year. Where the Wash Up Amount in respect of the Relevant Year:

(a) is payable by the Train Operator, the provisions of Part 4 of this Section 7 shall apply; and

(b) is payable by HS1 Ltd, HS1 Ltd shall promptly pay such amount following receipt of an invoice from the Train Operator.

10.3 Notwithstanding paragraph 10.2:

(a) HS1 Ltd shall calculate the Wash Up Amount in respect of each Relevant Quarter in accordance with paragraph 10A; and

(b) HS1 Ltd shall be entitled to calculate the Wash Up Amount on an interim basis during a Relevant Year,

and the parties shall make appropriate payments to reflect any such calculation.

10.4 Any payment following the end of the Relevant Year shall take account of payments made or to be made in relation to Wash Up Amounts in respect of the Relevant Quarters of that Relevant Year or payments made or to be made in respect of Wash Up Amounts calculated on an interim basis in that Relevant Year.

10A. QUARTERLY WASH UP AMOUNT

10A.1 The Wash Up Amount in respect of each Relevant Quarter q shall be calculated as follows:

$WU_q = (IRCA_q + AOMRCA1_q + APA_q)$

where:

WU_q means the Wash Up Amount in respect of each Relevant Quarter q, charged in arrears following the end of the Relevant Quarter;

$IRCA_q$ is the IRC wash-up for Relevant Quarter q calculated as follows:

$IRCA_q = \sum AIRCPT_{SGP} \times NNTT_{SGT}$

where:

$AIRCPT_{SGP}$ has the meaning given to it in paragraph 2.1;

$NNTT_{SGT}$ is the number of extra Train Slots in each Service Group in Relevant Quarter q operated by the Train Operator as a result of Train Operator Variations minus the number of Scheduled Train Slots in each Service Group which were not operated by the Train Operator due to:

(i) a HS1 Restriction of Use;

(ii) a Competent Authority Restriction of Use;

(iii) as a result of a Suspension Notice served by the Train Operator;

(iv) as a result of the exercise by HS1 Ltd of its rights pursuant to Part J of the HS1 Network Code,

which during such Relevant Quarter have not already been taken into account in the calculation pursuant to this Section 7; and

$\sum$ is the summation across all Service Groups;

$AOMRCA1_q$ is the wash-up in respect of Relevant Quarter q of the OMRC comprising the DI Costs, calculated as follows:

$$AOMRCA1_q = \sum OMRCA1_{SGV} \times OI_p \times CJT_{SGV} \times NNTT_{SGVT}$$

where:

$OMRCA1_{SGV}$ has the meaning given to it in paragraph 3.1;

OI_P has the meaning given to it in paragraph 3.1;

CJT_{SGV} has the meaning given to it in paragraph 3.1; and

$NNTT_{SGVT}$ is the number of extra Train Slots in each Service Group and Vehicle Category in Relevant Quarter q operated by the Train Operator as a result of Train Operator Variations minus the number of Scheduled Train Slots in each Service Group and Vehicle Category which were not operated by the Train Operator due to:

(i) a Restriction of Use;

(ii) as a result of a Suspension Notice served by the Train Operator;

(iii) as a result of the exercise by HS1 Ltd of its rights pursuant to Part J of the HS1 Network Code;

(iv) as a result of any Cancellation which is attributed to HS1 Ltd,

which during such Relevant Quarter have not already been taken into account in calculation pursuant to this Section 7; and

APA_q means in respect of Relevant Quarter q, the difference between the values of IRC, OMRCA, OMRCB and Capacity Reservation Charge which would have been payable had those sums been invoiced in arrears (with indexation being applied in accordance with paragraphs 2.2 and 3.2 of Part 2) and the values of the IRC, OMRCA, OMRCB and Capacity Reservation Charge actually paid.

10A.2 The Wash Up Amount in respect of each Relevant Quarter shall be calculated by HS1 Ltd promptly following the end of each Relevant Quarter. Where the Wash Up Amount in respect of the Relevant Quarter:

(a) is payable by the Train Operator, the provisions of Part 4 of this Section 7 shall apply; and

(b) is payable by HS1 Ltd, HS1 Ltd shall promptly pay such amount following receipt of an invoice from the Train Operator.

10A.3 Notwithstanding paragraph 10A.2, HS1 Ltd shall be entitled to calculate the Wash Up Amount on an interim basis during a Relevant Quarter and the parties shall make appropriate payments to reflect any such calculation. Any payments following the end of the Relevant Quarter shall take account of any such payments made.

10A.4 To the extent HS1 Ltd calculates the Wash Up Amount on an interim basis during a Relevant Year in accordance with paragraph 10.3(b) for a period longer than a Relevant Quarter, then

any payments made in respect of any Wash Up Amounts calculated on an interim basis shall take into account any payments made in respect of the Relevant Quarters during such period.

11. NOT USED

12. OUTPERFORMANCE SHARING

12.1 Subject to:

(a) any amendments to this Contract following an Interim Review by the ORR, including any resetting of a Control Period;

(b) any amendments to the terms relating to the Outperformance Share under the Operator Agreement following 1 April 2025; or

(c) the entry into a replacement operator agreement by HS1 Ltd with a replacement operator or the replacement of NR(HS) at any time as the Operator,

this paragraph 12 shall apply in respect of the third, fourth and fifth Relevant Years in the Control Period commencing on 1 April 2025 only.

12.2 Any TOC Outperformance Share arising in relation to a Relevant Year shall only be payable to those Train Operators who are a party to a Framework Track Access Agreement at any time during that Relevant Year (including new Train Operators introduced on HS1 at any time during a Relevant Year who are a party to a Framework Track Access Agreement) (each a "Qualifying Train Operator").

12.3 Subject to:

(a) receipt of notification from the Operator of the Outperformance Share (if any) for the Relevant Year; and

(b) any disagreement between HS1 Ltd and the Operator in relation to the Outperformance Share,

in accordance with the Operator Agreement, HS1 Ltd shall notify each Qualifying Train Operator within 110 Working Days following the end of each Relevant Year of the proportion of the TOC Outperformance Share (if any) payable to the Qualifying Train Operator, as calculated in accordance with paragraph 12.4.

12.4 The amount payable to each Qualifying Train Operator in respect of the TOC Outperformance Share shall be calculated as follows:

$$QTOC\ OS = TOC\ OS \times (OMRC_{QTOC} / OMRC_{TOTAL})$$

where :

QTOC OS	means the Qualifying Train Operator's share of the TOC Outperformance Share in respect of the Relevant Year;
TOC OS	means the total TOC Outperformance Share in respect of the Relevant Year;
$OMRC_{QTOC}$	means the OMRC paid or payable by the Qualifying Train Operator in respect of the Relevant Year; and
$OMRC_{TOTAL}$	means the total OMRC paid or payable by all Qualifying Train Operators in respect of the Relevant Year.

12.5 Within 30 Working Days following the date of receipt by HS1 Ltd of the relevant proportion of the Outperformance Share from the Operator, HS1 Ltd shall pay to each Qualifying Train

Operator by way of a lump sum its relevant proportion of the TOC Outperformance Share in respect of the Relevant Year, as calculated in accordance with paragraph 12.4.

12.6 Any amounts paid by HS1 Ltd to a Qualifying Train Operator in accordance with this paragraph 12 shall have no effect on, or adjustment to, the total amount of OMRC payable by that Qualifying Train Operator in respect of the Relevant Year.

PART 3: REVIEW

1. DEFINITIONS

"access review" means a Periodic Review or Interim Review as the case may be;

"Interim Review" means an interim review that may be carried out by the ORR in the circumstances specified in paragraph 3 of Part 3 of this Section 7 pursuant to and in accordance with the Concession Agreement;

"Review Provisions" means:

(a) the value of $OMRCA1_{SGV}$;

(b) the Avoidable Long-Term Costs;

(c) the Common Long-Term Costs;

(d) the Pass Through Costs;

(e) Section 4 (other than the cap on liability set out in paragraph 9 of section 4);

(f) paragraph 3 of Part 2 of Section 7;

(g) paragraph 6 of Part 2 of Section 7;

(h) paragraph 10 of Part 2 of Section 7;

(i) paragraph 10A of Part 2 of Section 7;

(j) not used;

(k) paragraph 7 of Part 3 of Section 7; and

(l) Section 8 (other than the Performance Cap),

and the relevant figures set out in Schedule 4 to the Contract to the extent that such figures are affected by the review of any of the above provisions, together with any necessary consequential changes, including to paragraph 1 of Part 1 of Section 7, paragraph 1 of Part 2 of Section 7 and Part 4 of Section 7.

2. PERIODIC REVIEW

Subject to paragraphs 3 and 4, the ORR may carry out a Periodic Review of the Review Provisions during each Control Period such that amendments to this Contract specified by the ORR in a notice issued pursuant to paragraph 5.2 to give effect to the conclusions of such a Periodic Review come into operation on and from the expiry of that Control Period or such later date as may be specified in that Periodic Review.

3. INTERIM REVIEWS

Subject to paragraph 4, the ORR may carry out an Interim Review of the Review Provisions such that amendments to this Contract specified by the ORR in a notice issued pursuant to paragraph 5.2 to give effect to the conclusions of such an Interim Review come into operation on and from the conclusion of the Interim Review or such later date as may be specified in that Interim Review at any time where it considers that:

(a) due to circumstances outside HS1 Ltd's control, there has been a material and significant change to the circumstances on the basis of which the current OMRC was approved or determined; and/or

(b) there has been or is a Change in Circumstances that has satisfied the condition in Clause 10.2.3.2 of the Concession Agreement and HS1 Ltd is obliged to pay HS1 Ltd's Share (as defined in the Concession Agreement) in accordance with Clause 10.2.15 of the Concession Agreement,

such that the level of OMRC for the current Control Period is materially insufficient to enable HS1 Ltd to comply with HS1 Ltd's general duty which is specified in paragraph 3 of Schedule 10 of the Concession Agreement.

4. PROTECTED PROVISIONS

The ORR may not as part of an access review:

(a) determine that changes must be made to the cap on liability specified in the Contract;

(b) determine that changes must be made to the cap on compensation specified in paragraph 9 of Section 4;

(c) determine that changes must be made to the investment recovery charge specified in paragraph 2 of Section 7 or an Additional IRC referred to in paragraph 2.3 of Section 7;

(d) determine that an increase must be made to the level of the performance cap in section 8 above 3% of the Aggregate IRC/OMRC;

(e) determine that changes must be made to paragraphs 1 to 4 of this Part 3; or

(f) determine any matter not referred to within the definition of Review Provisions.

5. IMPLEMENTATION OF AN ACCESS REVIEW

5.1 The ORR shall not be entitled to implement an access review unless it has:

(a) in the case of a Periodic Review first consulted the parties, and any other interested persons, on:

(i) its process for conducting that periodic review in accordance with paragraph 7.4 of Schedule 10 to the Concession Agreement;

(ii) any draft decision pursuant to paragraph 8.4 of Schedule 10 of the Concession Agreement;

(iii) any determination pursuant to paragraph 8.10.3 of Schedule 10 of the Concession Agreement (as necessary); and

(iv) its draft conclusions including the details of any proposed changes to the Review Provisions,

and has taken into account any objections or representations that the parties have made to it (and not withdrawn) during such period as it has specified for such purpose.

(b) in the case of an Interim Review it has first consulted the parties and any other interested persons:

(i) following the receipt of any notice of material change under paragraph 10 of the Concession Agreement;

(ii) on its draft conclusions including the details of any proposed changes to the Review Provisions,

and has taken into account any objections or representations that the parties have made to it (and not withdrawn) during such period as it has specified for such purpose.

5.2 Pursuant to Schedule 10 of the Concession Agreement an access review shall be implemented and have effect by ORR giving a notice to the Parties:

(a) stating its conclusions on the access review and the reasons why it reached those conclusions;

(b) specifying the changes made to the Review Provisions; and

(c) stating, in relation to each of the relevant changes, the date on which it comes into operation.

6. PROVISION OF REVISED TEXTS

As soon as reasonably practicable following the issue of a notice pursuant to paragraph 5.2, HS1 Ltd shall provide to the Train Operator and to the ORR a revised copy of the Contract incorporating any changes made as a consequence of the access review.

7. CONSEQUENTIAL EFFECTS

7.1 Review Event

(a) Promptly following the occurrence of a Review Event, HS1 Ltd shall serve a notice on the Train Operator specifying the value of $OMRCA2_{SGV}$ (which shall be determined in accordance with paragraph 7.2). From the date of the Review Event, the Contract shall be deemed to be amended by replacing the existing value of $OMRCA2_{SGV}$ set out in Column G in Schedule 4 to the Contract with such revised value.

(b) Promptly following the occurrence of a Review Event, HS1 Ltd shall serve a notice on the Train Operator specifying the value of $OMRCB_{SGV}$ (which shall be determined in accordance with paragraph 7.3). From the date of the Review Event, the Contract shall be deemed to be amended by replacing the existing value of $OMRCB_{SGV}$ set out in Column H in Schedule 4 to the Contract with such revised value.

7.2 Reapportionment of Avoidable Long Term Costs

Following an access review or a Review Event, the value of $OMRCA2_{SGV}$ shall be determined by apportioning:

(a) the Avoidable Long-Term Costs which comprise overhead costs between international and domestic passenger train operators on the basis of expected train minutes spent on HS1 (ignoring stopping time at stations); and

(b) the Avoidable Long-Term Costs which do not comprise overhead costs between international and domestic passenger train operators on the basis of expected train minutes spent on that part of HS1 which is utilised by both domestic and international trains (ignoring stopping time at stations),

provided that in apportioning the Avoidable Long-Term Costs, HS1 Ltd shall take into account the AV Underpinned Amount that HS1 Ltd has received or will receive from the Secretary of State in respect of the relevant period in lieu of the operation of the Shortfall Domestic Services.

7.3 **Reapportionment of Common Long-Term Costs**

Following an access review or a Review Event, the value of $OMRCB_{SGV}$ shall be determined by apportioning:

(a) the Common Long-Term Costs which comprise overhead costs between international and domestic passenger train operators on the basis of expected train minutes spent on HS1 (ignoring stopping time at stations); and

(b) the Common Long-Term Costs which do not comprise overhead costs between international and domestic passenger train operators on the basis of expected train minutes spent on that part of HS1 which is utilised by both domestic and international trains (ignoring stopping time at stations),

in a manner which ensures that HS1 Ltd recovers the Common Long-Term Costs from all train operators and, where applicable, through the Underpinning Payments and assessed by reference to the First Working Timetable in respect of the next Timetable Period, provided that in apportioning the Common Long-Term Costs, HS1 Ltd shall take into account the Common Long-Term Underpinned Amount that HS1 Ltd has received or will receive from the Secretary of State in respect of the relevant period in lieu of the operation of the Shortfall Domestic Services.

PART 4: PAYMENTS

1. PAYMENT OF ACCESS CHARGES

1.1 **Contents of invoice – periodic payments**

HS1 Ltd shall:

(a) within 30 days of receiving the relevant invoice from the Energy Supplier, issue an invoice to the Train Operator in respect of the Traction Electricity Charge in respect of such Period (provided that HS1 Ltd shall be entitled to issue an invoice at an earlier date on the basis set out in paragraph 4.10 of Part 2 of this Section 7); and

(b) within 20 Working Days of the end of each Period, issue an invoice to the Train Operator in respect of:

(i) the Capacity Reservation Rebate (if any) in respect of such Period;

(ii) the Congestion Tariff (if any) in respect of such Period; and

(iii) the Other Services Charge in respect of such Period,

in each case, together with a detailed statement describing the derivation of each such sum and separate itemisation of the charges and information referred to in such invoice, including, in relation to invoices in respect of the Traction Electricity Charge, a statement describing the calculation of any Traction Electricity Residual Charge payable by the Train Operator.

1.1A Contents of invoice – Traction Electricity Charge Adjustment and Wash Up Amount

HS1 Ltd shall issue an invoice to the Train Operator within 30 Working Days of the end of the Period in which HS1 Ltd calculates the Traction Electricity Charge Adjustment and the Wash Up Amount in respect of:

(a) the Traction Electricity Charge Adjustment (if any) in respect of the previous Relevant Year; and/ or

(b) the Wash Up Amount in respect of the previous Relevant Quarter, Relevant Year or any interim period, as the case may be,

together with a detailed statement describing the derivation of each sum and separate itemisation of the charges and information referred to in such invoice.

1.2 **Contents of invoice – advance payments**

HS1 Ltd shall issue an invoice to the Train Operator 20 Working Days in advance of the commencement of each Advance Period in respect of:

(a) the IRC payable in respect of such Advance Period;

(b) the OMRC payable in respect of such Advance Period; and

(c) the Capacity Reservation Charge payable in respect of such Advance Period,

together with a detailed statement describing the derivation of each such sum and separate itemisation of the charges and information referred to in such invoice.

1.3 **Payment of access charges**

The Train Operator shall pay or procure the payment to HS1 Ltd of all sums invoiced pursuant to paragraphs 1.1, 1.1A and 1.2 and paragraph 5.13(a) of Part 2 to this Section 7 within 15 Working Days of the invoice date.

1.4 **Disputed amounts repayment and interest rate**

(a) Where a party wishes to contest any invoice issued to it under this Section 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 1.4(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.

2. ADDITIONAL PERMITTED CHARGES

Either party shall be required to pay to the other (in accordance with the Contract) any Additional Permitted Charges comprising:

(a) amounts payable to or by HS1 Ltd as are specified in, or calculated in accordance with, Section 4;

(b) such amounts payable to or by HS1 Ltd as are specified in, or calculated in accordance with, Section 8; and

(c) such amounts payable to or by HS1 Ltd pursuant to any provision of the HS1 Network Code.

3. PAYMENTS, INTEREST AND VAT

3.1 Payment

(a) All sums due or payable by either party under the Contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in the Contract or in the HS1 Network Code.

(b) All invoices issued under this Section 7, or statements of amounts payable under Sections 4 or 8 or the HS1 Network Code, shall be delivered by hand at, or sent by prepaid first class post to, the address for service for the recipient specified in Schedule 1 to the Contract and shall be deemed to have been received by the addressee in accordance with paragraph 5.4 of Section 9.

(c) Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and the party making the supply will issue a VAT invoice for that amount to the payer.

(d) All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

3.2 Interest

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under the Contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with paragraph 3.1(b) or paragraph 3.1(c).

3.3 VAT

(a) Where any taxable supply for VAT purposes is made under or in connection with the Contract by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

(b) Where under the Contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

(c) Where under the Contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

SECTION 8 – PERFORMANCE REGIME

PART 1: GENERAL PROVISIONS

1. INTERPRETATION

1.1 **Definitions**

In this Section 8 and its Appendices, unless the context otherwise requires:

"Benchmarked Values" means the figures set out in columns B to I (inclusive) of Schedule 6 to the Contract;

"Cancelled Train" means:

(a) in relation to a Train scheduled in the Applicable Timetable, failure of the Train to set down or pick up passengers at a station in accordance with the Applicable Timetable; or

(b) in relation to a Train scheduled in the Applicable Timetable to leave HS1, failure of the Train to cross the Channel Tunnel Boundary or the NR Boundary as specified in the Applicable Timetable;

"Cancellation Minutes" means, in relation to a Cancelled Train, the number of Cancellation Minutes specified in column F of the table at Schedule 6 to the Contract for Trains of its Traffic Type;

"Channel Tunnel Boundary" means the point on HS1 at which trains:

(a) travelling from France begin to be controlled by the HS1 signalling system (such part being block section marker "AF 362"); or

(b) travelling towards France cease to be so controlled (such point being block section marker "AF 366");

"HS1 Ltd Excluded Incidents" means any one or more:

(a) incidents resulting in the late presentation of a Train onto HS1 from either the Channel Tunnel Boundary or the NR Boundary and recorded as Minutes Delay at the first Recording Point triggered by that Train after it crosses onto HS1 from the Channel Tunnel Boundary or the NR Boundary except where the Minutes Delay and/or Cancelled Trains are a direct result of an incident for which HS1 Ltd is allocated responsibility in accordance with paragraph 4.2; and

(b) third party incidents occurring off HS1 including fires and gas leaks originating off HS1;

"Material Change" means:

(a) a significant physical modification to the Network resulting in a material change in the performance and reliability of HS1 unless, in the case of a review notice

served by HS1 Ltd, the same was caused by a failure of HS1 Ltd to maintain HS1 in accordance with the Contract; or

(b) a physical modification to HS1 due to an inherent defect in the construction of the Network unless, in the case of a review notice served by HS1 Ltd, the same was caused by a failure of HS1 Ltd to maintain it in accordance with the Contract; or

(c) an increase or decrease of not less than 4% in the number of timetabled train movements on HS1 in any Timetable Year (as reflected in the Working Timetable which takes effect on the Principal Change Date and as if the Services set out in that Working Timetable were to be operated until the next Principal Change Date); or

(d) a significant change in the performance and reliability of the Train Operator's rolling stock unless, in the case of a review notice served by the Train Operator, the same was caused by the Train Operator's failure to maintain the same; or

(e) a change or anticipated change in the performance regime applicable to any other train operator in relation to its operating on HS1 or the entering into of a track access agreement with a train operator the effect of which is, in either case, material in the context of the operation or effect of any performance regime which applies to HS1;

"Minutes Delay" means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;

"NR Boundary" means the point on HS1 at which trains:

(a) travelling from the NR Network begin to be controlled by the HS1 signalling system; or

(b) travelling towards the NR Network cease to be so controlled;

"Performance Cap" means in respect of a Relevant Year, 3% of the Aggregate IRC/OMRC in respect of that Relevant Year, subject to a minimum of £500,000 (Indexed);

"Performance Improvement Plan" has the meaning given to it in the HS1 Network Code;

"Performance Monitoring System" means the system operated by HS1 Ltd for monitoring train performance as described in Condition B1 of HS1 Network Code;

"Performance Sum" means any payment to be made by either party to the other pursuant to Part 2;

"Planned Incident"	means an incident to the extent that: (a) it was a Restriction of Use notified in accordance with the Applicable Engineering Access Statement by HS1 Ltd to the Train Operator; or (b) there is Recovery Time in respect of that incident;
"Recording Point"	means a point at which HS1 Ltd records Trains using the Performance Monitoring System;
"Restriction of Use"	has the meaning ascribed to it in Section 4;
"TOC Excluded Incidents"	means any one or more: (a) incidents resulting in late presentation of a Train onto HS1 from either the Channel Tunnel Boundary or the NR Boundary and recorded as Minutes Delay at the first Recording Point triggered by that Train after it crosses onto HS1 from the Channel Tunnel Boundary or the NR Boundary; and (b) third party incidents occurring off HS1 including fires and gas leaks originating off HS1;
"TOC on TOC Cancellation Minutes"	means the Cancellation Minutes allocated to a train operator pursuant to paragraph 4.4(a);
"TOC on TOC Minutes Delay"	means the Minutes Delay allocated to a train operator pursuant to paragraph 4.4(a);
"TOC on TOC Receipt Benchmark"	means, in relation to a train operator, the average delay per train expressed in minutes specified in column I of the table at Schedule 6 to the track access contract of that train operator; and
"Traffic Type"	means in relation to a Train, the traffic type specified in column A of Schedule 6 to the Contract.

1.2 **Interpretation**

For the purposes of this Section 8:

(a) events in respect of a Train shall be treated as occurring on the Day on which the Train is scheduled in the Applicable Timetable to depart from the first point at which it is to pick up passengers;

(b) save as otherwise provided, each final calculation of minutes shall be accurate to three decimal places; and

(c) reference to Schedule 6 to the Contract is, at the date of the Contract, reference to Schedule 6 to the Contract and, thereafter, to Schedule 6 to the Contract as the same may be amended pursuant to paragraph 9.

1.3 **Suspension Notices**

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of paragraph 2 of Section 6 and not of this Section 8. Accordingly, for the purposes of this Section 8:

(a) neither HS1 Ltd nor the Train Operator shall be allocated any responsibility for those effects; and

(b) those effects shall not be regarded as causing any Minutes Delay or Cancelled Trains.

2. CALCULATION OF MINUTES DELAY AND CANCELLATION MINUTES

2.1 Minutes Delay

The Minutes Delay in respect of a Train when it triggers a Recording Point shall be equal to:

(a) in respect of the first Recording Point triggered by that Train on any Day (and, where the Train has subsequently left HS1 (save where it is routed via Ashford International), in respect of the first Recording Point which it triggers each time it crosses back onto HS1 on that Day), the number of minutes (rounded down to the nearest whole minute) by which the time at which that Train triggers the Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and

(b) in respect of any other Recording Point, the lesser of:

(i) the number of Minutes Delay in respect of that Recording Point calculated in accordance with paragraph 2.1(a) (as if that Recording Point were the first Recording Point triggered by that Train); and

(ii) the greater of $((A_1 – A_2) +B)$ and zero

where:

A_1 is the number of minutes between the time at which the Train triggers the Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a Recording Point (rounded down to the nearest whole minute);

A_2 is the relevant time lapse scheduled in the Applicable Timetable between those same two Recording Points; and

B is any Recovery Time between those Recording Points incorporated in the Applicable Timetable;

provided that any Minutes Delay which arise from a single incident or a series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero.

2.2 Cancellation Minutes

In relation to a Train which is a Cancelled Train, the number of Cancellation Minutes applicable to trains of its Traffic Type shall apply.

2.3 Cancellation Minutes and Minutes Delay

Notwithstanding paragraph 2.1, where a Train is a Cancelled Train, the Minutes Delay for each Recording Point on the leg of its journey which is the subject of that cancellation shall be deemed to be zero.

3. RECORDING OF PERFORMANCE INFORMATION

3.1 Recording of Minutes Delay and Cancelled Trains

Without prejudice to its obligations under Part B of the HS1 Network Code, HS1 Ltd shall use the Performance Monitoring System to record for each Day in respect of each Train scheduled in the Applicable Timetable:

(a) each Cancelled Train and the incident(s) causing such Cancelled Train where the incident can be identified;

(b) the time at which the Train triggers each Recording Point;

(c) the Minutes Delay for that Train at each Recording Point; and

(d) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:

(i) the incident(s) causing each minute of any delay included in Minutes Delay; and

(ii) those Minutes Delay for which HS1 Ltd is unable to identify a cause.

The provisions of this Section 8 which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code.

3.2 **Recording of allocated responsibility for Minutes Delay and Cancelled Trains**

HS1 Ltd shall for each Day and for each Train scheduled in the Applicable Timetable record separately in the Performance Monitoring System those Minutes Delay and Cancelled Trains caused by incidents:

(a) for which HS1 Ltd is allocated responsibility in accordance with paragraph 4.2;

(b) for which the Train Operator is allocated responsibility in accordance with paragraphs 4.3 and 4.4(b);

(c) for which another train operator is allocated responsibility in accordance with paragraph 4.4(a);

(d) for which neither party is allocated responsibility, in accordance with paragraph 4.5;

(e) for which no cause can be identified; and

(f) which are Planned Incidents.

3.3 **Failed Recording Points**

Without prejudice to its obligations under Part B of the HS1 Network Code, HS1 Ltd shall use all reasonable endeavours:

(a) to restore as soon as reasonably practicable any failed Recording Point; and

(b) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Section 8.

3.4 **Provision of information by Train Operator**

The Train Operator shall record and shall continue to record such information as HS1 Ltd may reasonably require and which it is reasonable to expect the Train Operator to have or procure in connection with any Minutes Delay and Cancellation Minutes that may arise and shall provide such information to HS1 Ltd promptly after such information first becomes available to the Train Operator.

3.5 **Notification**

HS1 Ltd shall promptly notify the Train Operator upon HS1 Ltd becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraphs 3.1 and 3.2. Any such notification shall be in sufficient detail to enable the Train

Operator to institute the recording of such information in connection with the Trains for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. The Train Operator shall institute such recording as soon as it is reasonably able following receipt of the notification from HS1 Ltd and will use all reasonable endeavours to provide HS1 Ltd with the resulting information no later than 1700 hours two Working Days following the Day on which it was recorded.

4. ALLOCATION OF RESPONSIBILITY FOR MINUTES DELAY AND CANCELLED TRAINS

4.1 Assessment of incidents causing Minutes Delay and Cancelled Trains

(a) In assessing the cause of any Minutes Delay or Cancelled Train, there shall be taken into account all incidents contributing thereto including:

(i) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and

(ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running.

(b) The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident.

(c) HS1 Ltd shall identify:

(i) in respect of each incident recorded under paragraph 3.1(d)(i) as causing Minutes Delay, the extent to which that incident caused each of the Minutes Delay; and

(ii) in respect of each incident recorded under paragraph 3.1(a), the extent to which that incident caused the Cancelled Train.

(d) So far as HS1 Ltd is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Trains is to be allocated to HS1 Ltd, to the Train Operator or to another train operator in accordance with the following provisions of this paragraph 4.

4.2 HS1 Ltd responsibility incidents

Responsibility for Minutes Delay and Cancelled Trains on a Day caused by incidents for which HS1 Ltd is allocated responsibility pursuant to this paragraph 4.2 shall be allocated to HS1 Ltd. Unless and to the extent otherwise agreed, HS1 Ltd shall be allocated responsibility for an incident which causes a Train operated by the Train Operator to be subject to Minutes Delay or a Cancelled Train (other than a Planned Incident) if that incident is caused wholly or mainly:

(a) by breach by HS1 Ltd of any of its obligations under the Contract; or

(b) (whether or not HS1 Ltd is at fault) by circumstances within the control of HS1 Ltd in its capacity as the infrastructure manager of HS1; or

(c) (whether or not HS1 Ltd is at fault) by any act, omission or circumstance originating from or affecting HS1 (including its operation), but excluding any incident caused wholly or mainly by rolling stock on HS1 for which any train operator (including the Train Operator) would be allocated responsibility if it were the Train Operator operating that rolling stock under this Contract.

4.3 **Train Operator responsibility incidents**

Responsibility for Minutes Delay and Cancelled Trains on a Day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 4.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident which causes a Train operated by a train operator other than the Train Operator to be subject to Minutes Delay or a Cancelled Train (other than a Planned Incident) if that incident is caused wholly or mainly:

(a) by breach by the Train Operator of any of its obligations under the Contract; or

(b) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of Trains; or

(c) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance originating in connection with or at any station (other than in connection with signalling under the control of HS1 Ltd at that station or physical works undertaken by HS1 Ltd at that station), any light maintenance depot or any network other than HS1.

4.4 **TOC on TOC Minutes Delay and TOC on TOC Cancellations**

(a) Where a Train operated by the Train Operator is subject to Minutes Delay or is a Cancelled Train on a Day for which another train operator would be allocated responsibility if it were the Train Operator operating that rolling stock under this Contract, then responsibility for those Minutes Delay and the Cancellation Minutes in respect of that Cancelled Train shall be allocated to that train operator and not HS1 Ltd.

(b) Where a train operated by another train operator is subject to Minutes Delay or is a Cancelled Train on a Day for which the Train Operator is allocated responsibility under this Contract, then responsibility for those Minutes Delay and the Cancellation Minutes in respect of that Cancelled Train shall be allocated to the Train Operator and not HS1 Ltd.

4.5 **Other incidents**

Neither party shall be allocated responsibility for:

(a) any incident caused by an act, omission or circumstance originating in connection with or at a station which:

(i) is an act, omission or circumstance which affects HS1, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and

(ii) prevents the access of passengers through the station to or from the Train;

(b) any identified incident in respect of which HS1 Ltd and the Train Operator are equally responsible and for which neither HS1 Ltd nor the Train Operator is allocated responsibility under paragraph 4;

(c) Minutes Delay or Cancelled Trains on any Day caused by incidents for which no cause can be identified (as recorded under paragraph 3.2(d)); or

(d) any delays or cancellations which are experienced by a Train which is being tested.

5. STATEMENT OF ALLOCATED RESPONSIBILITY

5.1 Initial statement

(a) For each Day, HS1 Ltd shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day the allocation of responsibility for incidents made by HS1 Ltd under paragraph 4; and

(b) a summary showing:

(i) the aggregate Minutes Delay and Cancelled Trains recorded under each category set out in paragraph 3.2; and

(ii) a list of the Minutes Delay and Cancelled Trains (in each case broken down by incident) recorded as the responsibility of:

(1) HS1 Ltd;

(2) the Train Operator;

(3) any other train operator (with each individual train operator separately identified); or

(4) none of the above.

5.2 Further statements

If HS1 Ltd has reasonable grounds to believe that any further incident was the responsibility of the Train Operator, HS1 Ltd or any other train operator but was not shown as such in the information made available in accordance with paragraph 5.1, then HS1 Ltd may, within 7 days after the last Minutes Delay or Cancelled Train caused by that incident, issue a notice in accordance with paragraph 10 revising the information and/or allocations of responsibility made available under paragraph 5.1.

5.3 Adjustment statements

If Condition B3.3 (adjustment to prior results) applies in respect of all or part of a Period, then HS1 Ltd shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period and, subject to paragraph 7.2, an adjusting payment shall be payable within 28 days of HS1 Ltd's statement.

5.4 Disputes about statements of allocated responsibility

(a) Except to the extent that it has, within two Working Days of receipt, notified HS1 Ltd in accordance with paragraph 10 that it disputes the contents of a statement under paragraphs 5.1, 5.2 or 5.3, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.

(b) The parties shall attempt to resolve disputes notified in accordance with paragraph 5.4(a) as follows:

(i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and

(ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.

(c) Negotiations under paragraph 5.4(b)(ii) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 5.4(a) occurred.

(d) Where the Train Operator disputes any attribution which relates to TOC on TOC Minutes Delay or TOC on TOC Cancellation Minutes, HS1 Ltd shall use reasonable endeavours to procure that such other affected train operator cooperates in the resolution of such dispute. Where a train operator disputes any attribution which is relevant for the purpose of this Contract, the Train Operator shall cooperate with HS1 Ltd and that train operator in the resolution of that dispute.

6. NOTIFICATION OF PERFORMANCE SUMS

6.1 Notification

Within 14 days after the end of each Period, HS1 Ltd shall provide the Train Operator with a statement for that Period showing:

(a) any Performance Sums for which HS1 Ltd or the Train Operator is liable, together with such supporting information as the Train Operator may reasonably require; and

(b) any matter referred to in paragraph 5.1 which the Train Operator has disputed in accordance with paragraph 5.4(a) and which is still in dispute.

6.2 Disputes

Within 14 days after receipt by the Train Operator of a statement required under paragraph 6.1, the Train Operator shall notify HS1 Ltd of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 5. Such disputes shall be resolved in accordance with the procedure in paragraph 11. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.

7. PAYMENT PROCEDURES

7.1 Payments and set-off

(a) In respect of each Period, the liabilities of the Train Operator and of HS1 Ltd for any Performance Sums shall be set off against each other, and subject to paragraph 7.2, the balance shall be payable by HS1 Ltd or the Train Operator, as the case may be, within 35 days after the end of the Period to which the payment relates.

(b) Subject to paragraph 7.2, and save as otherwise provided, all other sums payable under Section 8 shall be paid within 35 days after the end of the Period to which such payment relates.

7.2 Payments in the event of dispute

Where any sum which is payable under this paragraph 7 is in dispute:

(a) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 7.1;

(b) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid or set off (as the case may be) within 35 days after the end of the Period in which the dispute is resolved or determined; and

(c) from the date at which such balance would but for the dispute have been due to be paid or set off, the disputed balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate.

8. NOT USED

9. BENCHMARKING AND REVIEW

9.1 Schedule 6 of the Contract contains the Benchmarked Values. The Benchmarked Values may be recalibrated in accordance with the terms of this paragraph 9.

9.2 Following a Material Change, either party shall be entitled to require that the Benchmarked Values are recalibrated in accordance with this paragraph 9 by serving a Proposal for Change pursuant to Part C of HS1 Network Code, the purpose of which is to determine what changes, if any, should be made to Schedule 6 to the Contract as a consequence of such Material Change having regard to the fact that the caps on liability are not subject to review.

9.3 It is acknowledged that any recalibration of the Benchmarked Values in relation to one track access contract may affect other train operators under other track access contracts and that those affects and the consequent changes required in relation to those other contracts may all require to be taken into account as part of any such process. The parties agree that if a Proposal for Change is served under another track access contract which incorporates these Terms (or substantially similar terms) that they will comply with Part C in respect of such Proposal for Change and to any amendment to Schedule 6 as a consequence of such Proposal for Change.

9.4 Following the Benchmarked Values being revised in accordance with Part C:

(a) Schedule 6 to the Contract shall be deemed to have been amended to reflect such revised values from the date established in accordance with the Part C process for the change to take effect;

(b) the calculations of the Performance Payments previously undertaken pursuant to this Section 8 shall be repeated using the revised Benchmarked Values in substitution for the original Benchmarked Values with effect from the first Period to commence on or after the date on which the changes to the Contract take effect, HS1 shall notify the Train Operator within 35 days after the end of the Period in which Schedule 6 is amended of the amount of any payment required from either party to the other to take account of the repeated calculations and the provisions of paragraphs 6, 7 and 11 shall apply mutatis mutandis in relation to the payment and /or dispute of those amounts.

9.5 Without prejudice to the other provisions of this paragraph 9, following the entering into of a track access agreement between HS1 Ltd and a train operator, which is deemed to be a Material Change for the purposes of paragraph (e) of the definition of Material Change in paragraph 1.1 of Part 1 of this Section 8, either party shall be entitled to require that the Benchmarked Values are recalibrated in accordance with this paragraph 9 by serving a Proposal for Change pursuant to Part C of HS1 Network Code at any time following the end of the period of 12 months from the commencement of train services by the relevant train operator.

10. NOTICES

All notices under this Section 8 shall be given in accordance with paragraph 5.4 of Section 9.

11. DISPUTES

If any dispute is notified under paragraph 6.2 it shall be resolved according to the following procedure:

(a) within seven days of service of the relevant notice, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;

(b) if, for any reason, within seven days of the meeting referred to in paragraph 11(a), the parties are still unable to agree any disputed aspects, each party shall within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officers of each party;

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

(d) if no resolution results before the expiry of 14 days following that meeting, then either party may require that the matter be resolved in accordance with the Disputes Resolution Procedure.

PART 1A: N-1 ENERGY SAVING INITIATIVE

1. DEFINITIONS

1.1 Without prejudice to paragraph 1 of Part 1 to this Section 8, in this Part 1A unless the context otherwise requires:

"Good Industry Practice"	means, in relation to UKPNS, the exercise of that degree of skill diligence, prudence and foresight and that degree and level of maintenance, reinstatement, repair and replacement which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;
"N-1 Asset"	means a fast-acting reactive compensation device used for regulating voltage, power factor, harmonics and stabilising the traction power supply system, namely the static var compensator equipment (but excluding all super grid transformers) located: (a) at each of the electricity substations at Singlewell; (b) at the electricity substation at Choats Road, Barking; and (c) at the load balancer installation at Sellindge;
"N-1 Event"	means the interruption of traction power supplies on all or part of High Speed 1 as a result of UKPNS being unable to distribute electricity as a direct consequence of a N-1 Asset having been de-energised through the operation of the N-1 Scheme;
"N-1 Scheme"	means the energy saving scheme agreed between the Secretary of State, HS1 Ltd, UKPNS and others whereby, during the term of the initiative, UKPNS will undertake a cycle of de-energising and switching the N-1 Assets located at one of the electricity substations or the load balancer installation from hot stand-by to cold stand-by (while the other N-1 Assets continue to be energised and operate in hot stand-by) for a certain period, and on the expiry of such period re-energising such N-1 Asset and switching it to operate in hot stand-by while a different N-1 Asset is de-energised and switched to cold stand-by for the subsequent period;
"Scheme End Date"	means the date the N-1 Scheme terminates or expires as notified by HS1 Ltd to the Train Operator in accordance with paragraph 2.2;
"Scheme Period"	means the period commencing on the Scheme Start Date and ending on the Scheme End Date;
"Scheme Start Date"	means the commencement date of the N-1 Scheme, being the date notified by HS1 Ltd to the Train Operator; and
"UKPNS"	means UK Power Networks Services (Contracting) Limited.

2. TERM

2.1 The provisions of paragraph 3 to this Part 1A shall have effect from the Scheme Start Date and shall continue in full force and effect until the Scheme End Date.

2.2 Without prejudice to paragraph 2.1, HS1 Ltd shall notify the Train Operator of the date on which the provisions of paragraph 3 to this Part 1A shall cease to apply as soon as reasonably practicable, and in any event within five (5) Working Days, following the expiry or termination of the N-1 Scheme.

2.3 The cessation of paragraph 3 to this Part 1A pursuant to paragraph 2.1 shall be without prejudice to:

(a) the operation of paragraphs 3.7 and 3.8 in relation to the occurrence of an N-1 Event which occurs prior to the Scheme End Date; and

(b) any accrued rights of HS1 Ltd to recover any costs and expenses as described in paragraph 3.9 below.

3. N-1 SCHEME

Period of operation

3.1 The Parties acknowledge and agree that the N-1 Scheme commenced on the Scheme Start Date.

3.2 If a passenger train operator (including the Train Operator) wishes the N-1 Scheme to end, it may give written notice to HS1 Ltd proposing termination of the N-1 Scheme and setting out its reasons for such termination.

3.3 No later than ten (10) Working Days following receipt by HS1 Ltd of a notice given pursuant to paragraph 3.2, HS1 Ltd shall notify the Train Operator and all other affected passenger train operators in writing of:

(a) the proposal to terminate the N-1 Scheme and the reasons given for such proposed termination; and

(b) a final date for the Train Operator and all other affected passenger train operators to notify HS1 Ltd as to whether the relevant train operator supports the termination of the N-1 Scheme, such date being no later than fifteen (15) Working Days from the date of the notice issued by HS1 Ltd to affected passenger train operators.

3.4 If a train operator (including the Train Operator) does not respond to HS1 Ltd by the final date referred to in paragraph 3.3(b), it shall be treated as having agreed to the termination of the N-1 Scheme.

3.5 Within ten (10) Working Days of the final date referred to in paragraph 3.3(b) having elapsed, HS1 Ltd shall notify the Train Operator and all other affected passenger train operators as to whether there was unanimous agreement for the N-1 Scheme to terminate. If:

(a) there is not unanimous agreement between the passenger train operators (including the Train Operator) for the N-1 Scheme to terminate, the N-1 Scheme shall continue to operate and the train operator which served the notice pursuant to paragraph 3.2 shall not be permitted to issue a further notice for ninety (90) days; or

(b) there is unanimous agreement between passenger train operators (including the Train Operator) for the N-1 Scheme to terminate, HS1 Ltd shall procure that the N-1 Scheme is terminated with effect from the earliest date reasonably practicable.

3.6 The Parties acknowledge that the arrangements in paragraphs 3.1 to 3.5 shall not prejudice the right of HS1 Ltd to terminate the N-1 Scheme at any time.

Consequences of the occurrence of an N-1 Event

3.7 Where an N-1 Event occurs during the Scheme Period:

(a) HS1 Ltd shall, in accordance with paragraph 3.2 of Part 1 of this Section 8, record in the Performance Monitoring System those Minutes Delay and Cancelled Trains caused by the N-1 Event and such Cancelled Trains and Minutes Delay shall be treated as having been caused by an incident described in paragraph 3.2(d) of Part 1 of this Section 8;

(b) notwithstanding paragraph 4.2 to Part 1 of this Section 8, neither HS1 Ltd nor a train operator (including the Train Operator) shall be allocated responsibility for the occurrence of the applicable N-1 Event and paragraph 4.5 to Part 1 of this Section 8 shall be deemed to apply in such circumstances;

(c) without prejudice to paragraph 3.7(b) above, no Cancelled Trains, Cancellation Minutes or Minutes Delay which arise in connection with the applicable N-1 Event shall be allocated to HS1 Ltd or a train operator (including the Train Operator) or otherwise included in the calculation of any Performance Sum pursuant to Part 2 of this Section 8;

(d) HS1 Ltd shall include any Minutes Delay and Cancelled Trains arising in connection with such N-1 Event in the summary prepared by HS1 Ltd in accordance with paragraph 5.1 to Part 1 to this Section 8 on the basis that neither HS1 Ltd nor a train operator (including the Train Operator) shall be allocated responsibility for such Minutes Delay and Cancelled Trains.

3.8 Where and to the extent an N-1 Event occurs during the Scheme Period and it has been agreed or determined under the agreement between, amongst others, HS1 Ltd and UKPNS in relation to the N-1 Scheme (the "**N-1 Agreement**") that there has been a failure by UKPNS to re-energise the relevant N-1 Asset as soon as reasonably practicable in accordance with Good Industry Practice:

(a) the arrangements set out in paragraphs 3.7(a) to 3.7(d) shall cease to apply to the N-1 Event which resulted in such failure from the time of the failure by UKPNS (as determined under the N-1 Agreement) until the relevant N-1 Asset is re-energised; and

(b) where and to the extent, pursuant to paragraph 3.8(a), the provisions of paragraph 3.7(a) to 3.7(d) cease to apply the other provisions of this Section 8 shall apply to such N-1 Event in accordance with their terms.

Reimbursement of costs

3.9 The Parties acknowledge and agree that to the extent that the costs incurred by HS1 Ltd in connection with the development, implementation or operation of the N-1 Scheme ("**N-1 Costs**") are not treated as Pass Through Costs, paragraphs 3.10 to 3.14 shall apply.

3.10 The Train Operator shall pay HS1 Ltd a share of the N-1 Costs reasonably and properly incurred by HS1 Ltd in connection with the development, implementation, or operation of the N-1 Scheme in a Relevant Year y as determined in accordance with paragraph 3.11 (such share the "**TOC Contribution**").

3.11 The TOC Contribution ("**TOCC**") for the Train Operator in any Relevant Year y shall be determined as follows:

$$TOCC_y = A\ x\ \left(\frac{B}{C}\right)$$

where:

$TOCC_y$	is the TOC Contribution payable by the Train Operator to HS1 Ltd in Relevant Year y;
A	is the total N-1 Costs for the Relevant Year y;
B	is the aggregate of the Traction Electricity Charge paid or payable by the Train Operator in Relevant Year y, as determined by aggregating the values of E_p, calculated in accordance with paragraph 4.1 of part 2 to Section 7, for all Periods in Relevant Year y for that Train Operator, as adjusted by the Traction Electricity Charge Adjustment for the Relevant Year y;
C	is the total actual cost of traction electricity to HS1 Ltd for Relevant Year y, as determined by aggregating the values of TAC_p, calculated in accordance with paragraph 4.7 of part 2 to Section 7, for all Periods in Relevant Year y;

3.12 HS1 Ltd shall issue, within 120 days of the end of each Relevant Year during the Scheme Period (including the Relevant Year in which the Scheme Start Date occurs and the Relevant Year in which the Scheme End Date occurs), an invoice to the Train Operator in respect of the TOC Contribution payable by the Train Operator for the applicable Relevant Year, together with a detailed statement describing the derivation of the amount of the TOC Contribution shown on the invoice.

3.13 The Train Operator shall pay, or procure the payment to HS1 Ltd, of all sums invoiced pursuant to paragraph 3.12 within fifteen (15) Working Days of the invoice date.

3.14 The provisions of paragraph 1.4 (*Disputed amounts, repayment and interest rate)* and paragraph 3 (*Payments, Interest and VAT*) of Part 4 to Section 7 shall apply to this paragraph 3 provided that for the purposes of paragraph 1.4(a) and paragraph 3.1(b) references to "Section 7" shall be read as "Section 7 or Section 8".

PART 2: CALCULATION OF THE PERFORMANCE SUMS

For the purposes of this Part 2 of Section 8 of these Terms only, where at any time any sum is stated to be 'Indexed' then at such time, the said sum shall be multiplied by I, where:

$$I = RPI_t \div RPI_0$$

where:

RPI_t means the RPI published or determined with respect to February in Relevant Year t-1; and

RPI_0 means the RPI published or determined with respect to February 2018 provided that where a value of RPI published or determined with respect to any February is lower than the value of RPI published or determined with respect to any previous February in or after 2018, RPI shall remain at the higher value.

1. HS1 LTD PERFORMANCE SUMS

1.1 Subject to paragraphs 1.2 and 1.3, the HS1 Ltd Performance Sum ("**HSPS**") for each Period shall be payable by HS1 Ltd to the Train Operator and shall be calculated according to the following formula:

$$HSPS = HSP1 \times PR \times T$$

where:

HSP1 is HS1 Ltd's performance in respect of the Period calculated in accordance with the following formula:

$$HSP1 = \frac{(HSMD + HSCM)}{T} - HSPPT$$

where:

HSMD is the aggregate for all Recording Points of the Minutes Delay in respect of the Period allocated to HS1 Ltd in accordance with paragraph 4 of Part 1, excluding those Minutes Delay which arise from HS1 Ltd Excluded Incidents;

HSCM is the aggregate of the Cancellation Minutes arising from each Cancelled Train as specified in column F of Schedule 6 to the Contract in respect of the Period allocated to HS1 Ltd in accordance with paragraph 4 of Part 1, excluding those Cancellation Minutes which arise from HS1 Ltd Excluded Incidents;

HSPPT is the HS1 Ltd Poor Performance Threshold specified in column B of the table at Schedule 6 to the Contract;

PR is the payment rate specified in column C of the table at Schedule 6 to the Contract (Indexed) for the relevant Traffic Type; and

T is the aggregate number of Trains operated or due to be operated by the Train Operator in that Period calculated in accordance with the following formula:

$$T = T_{OP} + T_{SB}$$

where:

T_{OP} is the aggregate number of Trains to be operated by the Train Operator in that Period as Scheduled in the Applicable Timetable; and

T_{SB} is the aggregate number of Trains operated by the Train Operator in that Period by virtue of Train Operator Variations and which do not appear in the Applicable Timetable.

1.2 Where HSP1 is negative it shall be deemed to be zero.

1.3 The HS1 Ltd Performance Sum shall not exceed the lower of:

(a) in respect of any Relevant Year, the Performance Cap in respect of that Relevant Year;

(b) in respect of the first Advance Period in any Relevant Year, 25% of the Performance Cap in respect of that Relevant Year;

(c) in respect of the second Advance Period in any Relevant Year, 50% of the Performance Cap in respect of that Relevant Year less the aggregate of any HS1 Ltd Performance Sum already paid by HS1 Ltd to the Train Operator in respect of the Relevant Year; and

(d) in respect of the third Advance Period in any Relevant Year, 75% of the Performance Cap in respect of that Relevant Year less the aggregate of any HS1 Ltd Performance Sum already paid by HS1 Ltd to the Train Operator in respect of the Relevant Year.

2. HS1 LTD PERFORMANCE BONUS

2.1 Subject to paragraphs 2.2 and 2.3, the HS1 Ltd Performance Bonus ("**HSPB**") for each Period shall be payable by the Train Operator to HS1 Ltd and shall be calculated according to the following formula:

HSPB = HSP2 x BPR x T

where:

HSP2 is HS1 Ltd's performance in respect of the Period calculated in accordance with the following formula:

$$HSP2 = HSGPT - \frac{(HSTMD + HSTCM)}{T}$$

where:

HSGPT is the HS1 Ltd Good Performance Threshold specified in column D of the table at Schedule 6 to the Contract;

HSTMD is the aggregate for all Recording Points of the Minutes Delay in respect of the Period allocated to HS1 Ltd in accordance with paragraph 4 of Part 1 together with any TOC on TOC Minutes Delay, excluding in either case those Minutes Delay which arise from HS1 Ltd Excluded Incidents;

HSTCM is the aggregate of the Cancellation Minutes arising from each Cancelled Train as specified in column F of Schedule 6 to the Contract in respect of the Period allocated to HS1 Ltd in accordance with paragraph 4 of Part 1 together with any TOC on TOC Cancellation Minutes, excluding in either case those Cancellation Minutes which arise from HS1 Ltd Excluded Incidents;

BPR is the bonus payment rate specified in column E of the table at Schedule 6 to the Contract (Indexed) for the relevant Traffic Type; and

T has the meaning given to it in paragraph 1.1.

2.2 Where HSPB is negative it shall be deemed to be zero.

2.3 The HS1 Ltd Performance Bonus shall not exceed the lower of:

(a) in respect of any Relevant Year, 10% of the Performance Cap in respect of that Relevant Year;

(b) in respect of the first Advance Period in any Relevant Year, 2.5% of the Performance Cap in respect of the Relevant Year;

(c) in respect of the second Advance Period in any Relevant Year, 5% of the Performance Cap in respect of that Relevant Year less the aggregate of any HS1 Ltd Performance Bonus already paid by the Train Operator to HS1 Ltd in respect of the Relevant Year; and

(d) in respect of the third Advance Period in any Relevant Year 7.5% of the Performance Cap in respect of that Relevant Year less the aggregate of any HS1 Ltd Performance Bonus already paid by the Train Operator to HS1 Ltd in respect of the Relevant Year.

2.4 No HS1 Ltd Performance Bonus shall be payable in respect of any Period where the HS1 Ltd Performance Sum either does or would but for the operation of paragraph 1.3, exceed one thirteenth of the Performance Cap in respect of the Relevant Year.

3. TRAIN OPERATOR PERFORMANCE SUMS

3.1 Subject to paragraphs 3.2 and 3.3 and paragraph 4, the Train Operator Performance Sum ("**TOPS**") for each Period shall be payable by the Train Operator to HS1 Ltd and shall be calculated according to the following formula:

$TOPS = \sum(TOP \times TOPR)$

where:

TOP is in respect of each affected train operator, the Train Operator's performance in respect of the Period calculated in accordance with the following formula:

$TOP = TOMD + TOCM$

where:

TOMD is the aggregate for all Recording Points of the Minutes Delay in respect of the Period experienced by the relevant affected train operator and allocated to the Train Operator in accordance with paragraph 4 of Part 1 excluding those Minutes Delay which arise from Train Operator Excluded Incidents;

TOCM is the aggregate of the Cancellation Minutes arising from each Cancelled Train as specified in column F of Schedule 6 to the Contract in respect of the Period experienced by the relevant affected train operator and allocated to the Train Operator in accordance with paragraph 4 of Part 1 excluding those Cancellation Minutes which arise from Train Operator Excluded Incidents; and

Σ means the summation across all affected train operators; and

TOPR means, in respect of each affected train operator, the payment rate per Delay Minute or Cancellation Minute applicable to the traffic type for that train operator and set out in Schedule 6 of that affected train operator's track access contract.

3.2 For the purpose of paragraph 3.1, any Delay Minutes or Cancellation Minutes attributed to the Train Operator which relate to delays or cancellations experienced by an affected train operator shall be ignored in respect of any Period if the performance experienced by that train operator in that Period calculated in accordance with the following formula ("TOCPP") is better (that is a smaller number than) than the TOC on TOC Receipt Benchmark of the affected train operator:

$$TOCPP = \frac{HSTMD + HSTCM}{TA}$$

where:

HSTMD in respect of that affected train operator under its track access contract, is the aggregate for all Recording Points of the Minutes Delay in respect of the Period allocated to HS1 Ltd in accordance with paragraph 4 of Part 1 together with any TOC on TOC Minutes Delay, excluding in either case those Minutes Delay which arise from HS1 Ltd Excluded Incidents;

HSTCM in respect of that affected train operator under its track access contract, is the aggregate of the Cancellation Minutes arising from each Cancelled Train as specified in column F of Schedule 6 to that contract in respect of the Period allocated to HS1 Ltd in accordance with paragraph 4 of Part 1 together with any TOC on TOC Cancellation Minutes, excluding in either case those Cancellation Minutes which arise from HS1 Ltd Excluded Incidents; and

TA is the aggregate number of Trains operated or due to be operated by the affected train operator in that Period calculated in accordance with the following formula:

$$TA = TA_{OP} + TA_{SB}$$

where:

TA_{OP} is the aggregate number of Trains to be operated by the affected train operator in that Period as Scheduled in the Applicable Timetable; and

TA_{SB} is the aggregate number of Trains operated by the affected train operator in that Period by virtue of Train Operator Variations and which do not appear in the Applicable Timetable.

3.3 The Train Operator Performance Sum shall not exceed the lower of:

(a) in respect of any Relevant Year, the Performance Cap in respect of that Relevant Year;

(b) in respect of the first Advance Period in any Relevant Year, 25% of the Performance Cap in respect of that Relevant Year;

(c) in respect of the second Advance Period in any Relevant Year, 50% of the Performance Cap in respect of that Relevant Year less the aggregate of any Train Operator Performance Sum already paid by the Train Operator to HS1 Ltd in respect of the Relevant Year; and

(d) in respect of the third Advance Period in any Relevant Year, 75% of the Performance Cap in respect of that Relevant Year less the aggregate of any Train Operator Performance Sum already paid by the Train Operator to HS1 Ltd in respect of the Relevant Year.

3.4 HS1 Ltd shall provide the Train Operator with evidence to support the calculations carried out in accordance with this paragraph 3.

4. TRAIN OPERATOR PERFORMANCE RECEIPT

4.1 In respect of each Period, HS1 Ltd shall, as soon as reasonably practicable, account to the Train Operator for the Train Operator Performance Sums which it receives pursuant to the equivalent paragraph 3 of the track access contracts of the train operators (other than the Train Operator) operating on HS1 on the following basis:

(a) where all delays and cancellations which gave rise to the Delay Minutes and Cancellation Minutes (excluding those which arise from Train Operator Excluded Incidents) which are attributed to any relevant train operator (other than the Train Operator) were experienced by the Train Operator, HS1 Ltd shall account to the Train Operator for the Train Operator Performance Sum paid by that relevant train operator; and

(b) where the delays and cancellations which gave rise to the Delay Minutes and Cancellation Minutes (excluding those which arise from Train Operator Excluded Incidents) which are attributed to any relevant train operator (other than the Train Operator) were experienced by the Train Operator and one or more other train operators, HS1 Ltd shall account to the Train Operator for a sum equal to:

$$\sum \frac{(TOPS \times A)}{B}$$

where:

∑ is the summation in respect of all relevant train operators;

TOPS is the aggregate Train Operator Performance Sum received by HS1 Ltd in respect of the Period from the relevant train operator (other than the Train Operator);

A is calculated as follows:

$A = TDMCM \times OPR$

where:

TDMCM is the sum of the Delay Minutes and Cancellation Minutes (excluding those which arise from Train Operator Excluded Incidents) which are attributed to the relevant train operator (other than the Train Operator) under its track access contract which were experienced by the Train Operator in such Period; and

OPR is the payment rate (Indexed) specified in column C of the table at Schedule 6 to the Contract for the relevant traffic type; and

B is, in respect of all train operators (including the Train Operator), the sum of the values of A for all such train operators,

provided that in calculating the values of A and B, Delay Minutes and Cancellation Minutes shall be ignored where they were not taken into account in the calculation of TOPS by virtue of the equivalent of paragraph 3.2 of the relevant track access contract and the operation of any Performance Cap shall be ignored; and

provided further that the aggregate amount which HS1 Ltd shall be liable to account to all train operators under this paragraph 4 and its equivalents in other track access contracts in respect of any Period shall not exceed the Train Operator

Performance Sum received by HS1 Ltd in respect of that Period under all those contracts.

4.2 HS1 shall include details of the calculations and amounts payable under this paragraph 4 in the notifications made under paragraph 6 of Part 1 and shall act responsibly with a view to securing payment to it by each train operator of the Train Operator Performance Sums which it owes.

5. PERFORMANCE IMPROVEMENT PLANS

5.1 If:

(a) in 3 out of any 13 consecutive Periods the HS1 Ltd Performance Sum either does or would, but for the operation of paragraph 1.3, exceed one thirteenth of the Performance Cap in respect of the Relevant Year; or

(b) in 8 out of any 13 consecutive Periods the value of HSP1 referred to in paragraph 1 is between the HS1 Ltd Poor Performance Threshold and the HS1 Ltd Performance Benchmark referred to in column H of Schedule 6 to the Contract,

the remedial provisions of Part L of HS1 Network Code shall apply in respect of HS1 Ltd's performance.

5.2 If:

(a) in 3 out of any 13 consecutive Periods the Train Operator Performance Sum either does or would, but for the operation of paragraph 3.3, exceed one thirteenth of the Performance Cap in respect of the Relevant Year, or

(b) in 8 out of any 13 consecutive Periods the total delay caused to other train operators by the Train Operator exceeds the Train Operator Performance Benchmark referred to in column G of Schedule 6 to the Contract; or

the remedial provisions of Part L of HS1 Network Code shall apply in respect of the Train Operator's performance.

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SECTION 9 – MISCELLANEOUS

1. CONFIDENTIALITY

1.1 Confidential Information

(a) *General obligation*

Except as permitted by paragraph 1.2, HS1 Ltd and the Train Operator shall hold all Confidential Information confidential during and after the continuance of the Contract and shall not divulge any Confidential Information in any way to any third party without the prior written approval of the other party.

(b) *HS1 Ltd - Affiliates*

Except as permitted by paragraph 1.2, HS1 Ltd shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

(c) *Train Operator - Affiliates*

Except as permitted by paragraph 1.2, the Train Operator shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

1.2 Entitlement to divulge

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

(a) to the Secretary of State;

(b) to the ORR;

(c) to the Operator;

(d) to any Affiliate of either party;

(e) any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under the Contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;

(f) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;

(g) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurances upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;

(h) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;

(i) to the extent required by the Act, any licence held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;

(j) to the extent that it has become available to the public other than as a result of a breach of confidence;

(k) under the order of any court or tribunal of competent jurisdiction;

(l) in the case of the Train Operator, to any manager or potential manager of its business, upon obtaining an undertaking of strict confidentiality from such manager or potential manager;

(m) in the case of HS1 Ltd, to any other infrastructure manager with regard to any access related issue affecting both such infrastructure manager and HS1 Ltd;

(n) in the case of HS1 Ltd, any prospective buyer of HS1 Ltd (or its business), or any equity investor in HS1 Ltd and any of their respective lenders and advisers;

(o) in the case of HS1 Ltd, any potential transferee or assignee of the Concession Agreement and/or a potential nominated undertaker of HS1 (other than HS1 Ltd) under section 34 of the CTRL Act and any of their respective lenders and advisers;

(p) in the case of HS1 Ltd, to any potential Operator and any of its respective lenders and advisers; or

(q) in the case of HS1 Ltd, on the website of HS1 Ltd subject to the redaction of any commercially sensitive information or in connection with any consultation process.

1.3 **Return of Confidential Information**

Each of HS1 Ltd and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

(a) is made on or within two months after the Expiry Date or, if the Contract lapses or is terminated earlier, is made within two months after the date on which the Contract lapses or is terminated;

(b) is reasonable; and

(c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

1.4 **Retention or destruction of Confidential Information**

If HS1 Ltd or the Train Operator, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in paragraph 1.3, it may destroy or retain such Confidential Information.

1.5 **Ownership of Confidential Information**

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

1.6 **HS1 Network Code and Section 8**

Nothing in this paragraph 1 restricts the right of HS1 Ltd to disclose information to which this paragraph 1 applies to the extent that it is permitted or required so to do under the HS1 Network Code or Section 8.

2. ASSIGNMENT AND NOVATION

2.1 Subject to paragraphs 2.2 and 2.3, neither party may assign, transfer, novate, mortgage, charge, declare itself a trustee for a third party, dispose of any of its rights and/or obligations

or create any encumbrance or other security interest over the whole or any part of its rights and/or obligations under the Contract without the prior written consent of the other party.

2.2 HS1 Ltd may at any time and from time to time without obtaining the consent of the Train Operator assign, mortgage, charge, declare itself a trustee for a third party, dispose of any of its rights and/or obligations or create any encumbrance or other security interest over the whole or any part of its rights and benefits under the Contract to a Permitted Transferee.

2.3 Subject to the approval of the ORR to any new framework agreement, the Train Operator (and any assignee of all or part of the Train Operator's rights under the Contract):

(a) consents to the transfer or novation of the rights and obligations of HS1 Ltd under the Contract to a Permitted Transferee in any circumstances where HS1 Ltd requests the Train Operator to participate in such a novation; and

(b) shall execute such contracts and do such things as HS1 Ltd may reasonably request to give effect to the transfer or novation.

3. DISPUTE RESOLUTION

3.1 Resolution in accordance with Conditions

Subject to paragraph 3.2 and save as otherwise provided in the Contract, any dispute or claim arising out of or in connection with the Contract shall be resolved in accordance with Part I of the HS1 Network Code.

3.2 Disputes Resolution Agreement

Without prejudice to the provisions of clause 7.1(B) of the Disputes Resolution Agreement ("**DRA**") but subject to paragraph 3.1, the parties shall not be required to enquire pursuant to the DRA as to whether the Secretary of State has an interest in the matter in dispute and the matter in dispute shall be referred directly to the appropriate Forum without the said enquiry.

3.3 Unpaid sums

If either party fails to pay:

(a) any invoice issued to it under the Contract in respect of Track Charges in accordance with the provisions of Section 7; or

(b) any sum which has fallen due in accordance with the provisions of Sections 4, 5 or 8 or the HS1 Network Code,

then:

(i) the amount invoiced or sum due, as referred to in paragraph 3.3(a) or 3.3(b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any Track Charges or other sum due);

(ii) such debt shall be recoverable by any means available under the laws of England and Wales; and

(iii) the disputes resolution procedure in paragraph 3.1 and 3.2 shall not apply to proceedings commenced under this paragraph 3.3.

4. RAILWAYS REGULATIONS

4.1 The parties agree:

(a) to comply with law; and

(b) to waive any breach of the Contract by the other which arises from it acting in a manner contemplated by the Railways Regulations but only to the extent that such party could not act in a manner which would not breach the Contract or the Railways Regulations.

5. MISCELLANEOUS

5.1 Non waiver

(a) *No waiver*

No waiver by either party of any failure by the other to perform any obligation under the Contract shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

(b) *Failure or delay in exercising a right or remedy*

The failure to exercise or delay in exercising a right or remedy under the Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under the Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

5.2 Amendment

(a) Subject to paragraph 5.2(b), no amendment of any provision of the Contract shall be effective unless such amendment is in writing and signed by or on behalf of the parties and the amendment has been approved by the ORR.

(b) Paragraph 5.2(a) shall not apply to the following types of amendment:

(i) an amendment made in accordance with paragraph 5.4(b);

(ii) an amendment effected in accordance with any of the Schedules to the Contract;

(iii) an amendment effected in accordance with the HS1 Network Code; and

(iv) an amendment to the Terms in accordance with paragraph 5.2(c).

(c) These Terms may be amended in the circumstances described in paragraph 5.2(d) in the same manner as the HS1 Network Code, and Part C of the HS1 Network Code shall apply to such amendments to the Terms mutatis mutandis.

(d) The circumstances referred to in paragraph 5.2(c) are:

(i) such amendment is required pursuant to the terms of Regulation 21(5) of the Railways Regulations, provided that no such amendment is contrary to any Legal Requirement or impacts negatively on the interests of the Secretary of State or on his rights and obligations under the Contract or the Concession Agreement;

(ii) any provision of the Contract has been declared unlawful by the ORR or any provision of the Contract needs to be amended to render such provision or the Contract lawful;

(iii) if as a consequence of a Change in Circumstances the Concession Agreement is amended and HS1 Ltd determines (acting reasonably) that in order to comply with the Concession Agreement (as amended) it is necessary to amend the Contract; and/or

(iv) to reflect any change in law, the Network Statement or the HS1 Network Code since the Effective Date.

(e) HS1 Ltd shall produce and send to the Train Operator and to the ORR a conformed copy of the Contract within 28 days of the making of any amendment or modification to it.

5.3 **Entire contract and exclusive remedies**

(a) *Entire contract*

Subject to paragraph 5.3(c):

(i) the Contract contains the entire agreement between the parties in relation to the subject matter of the Contract;

(ii) each party acknowledges that it has not been induced to enter into the Contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in the Contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and

(iii) neither party shall have any right to rescind or terminate the Contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in the Contract.

(b) *Exclusive remedies*

Subject to paragraph 5.3(c) and except as expressly provided in the Contract:

(i) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of the Contract; and

(ii) the remedies provided for in the Contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

(c) *Fraud, death and personal injury*

Nothing in the Contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

(i) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind the Contract, in respect of any statement made fraudulently by the other party before the execution of the Contract;

(ii) any right which either party may have in respect of fraudulent concealment by the other party;

(iii) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

(iv) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

5.4 **Notices**

(a) *Giving of notices*

Any notice to be given under the Contract:

(i) shall be in writing; and

(ii) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post or recorded delivery to, the relevant postal address set out in Schedule 1 to the Contract.

(b) *Right to modify communication details*

A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 1 to the Contract by giving notice of such modification:

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

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

(c) *Deemed receipt*

A notice shall be deemed to have been given and received:

(i) if sent by hand or recorded delivery, at the time of delivery; and

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

(d) *Copies*

If Schedule 1 to the Contract specifies any person to whom copies of notices shall also be sent:

(i) the party giving a notice in the manner required by this paragraph 5.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1 to the Contract, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under this paragraph 5.4; and

(ii) such copy notice shall be sent immediately after the original notice.

5.5 **Counterparts**

The Contract may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into the Contract by signing either of such counterparts.

5.6 **Survival**

Those provisions of the Contract which by their nature or implication are required to survive expiry or termination of the Contract (including the provisions of Section 5 (*Liability*), paragraph 4 of Section 6 (*Consequence of Termination*), paragraph 3 of Part 4 of Section 7 (*Payments, Interest and VAT*) and this Section 9 (*Miscellaneous*)), shall so survive and continue in full force and effect, together with any other provisions of the Contract necessary to give effect to such provisions.

5.7 **Contracts (Rights of Third Parties) Act 1999**

(a) *Application to third parties*

Save as provided in this paragraph 5.7 or as expressly provided elsewhere in the Contract, no person who is not a party to the Contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) *Application to the Office of Rail and Road*

ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under the Contract.

(c) *Application to the Secretary of State*

The Secretary of State and ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce paragraph 5 of Section 6.

(d) *Application to other train operators*

Other train operators shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce Section 8.

5.8 **Invalidity**

If any provision of the Contract shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any rule of law, such provision or part shall to that extent be deemed not to form part of the Contract but the legality, validity and enforceability of the remainder of the Contract shall not be affected.

6. GOVERNING LAW

The Contract and any non-contractual obligation connected with it shall be governed by and construed in accordance with the laws of England and Wales.

TRACTION ELECTRICITY ANNEX

1. DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise defined in this Traction Electricity Annex or the context requires otherwise, words and expressions used in this Traction Electricity Annex shall have the meanings, constructions and interpretation ascribed to them in the relevant Contract.

1.2 In this Traction Electricity Annex, unless the context otherwise requires:

"**Consumption Data**" means data in respect of the amount of electricity consumed (in kWh);

"**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;

"**Electricity Data**" means Consumption Data and (where relevant) Regenerative Braking Data;

"**EMU Length**" means the number of individual vehicles in the electric multiple unit;

"**GPS Data**" means data in respect of geographical location;

"**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;

"**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, 1.2, 1.3 and 1.4 respectively in Appendix 1;

"**Look-Up Tables**" means the Journey Look-Up Tables and the Non-Journey Look-Up Table;

"**Metered Charges**" means the amounts E_{pme} which are calculated using metered consumption data in accordance with Section 7 of the Terms;

"**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 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 HS1 Ltd that it intends to amend its Track Access Agreement or Framework Track Access Agreement to calculate its Traction Electricity Charge based (either wholly or partly) on metered consumption data from the date on which HS1 Ltd has confirmed that the Traction Electricity Charge shall be calculated based on metered consumption data in accordance with paragraph 4.3 of Part 2 to Section 7 of the Terms;

"**Metering Audit**" means the exercise by HS1 Ltd, the Metered Train Operator or any other train operator of any of the rights set out in paragraph 7.2(A), 7.10(A) or 7.19 respectively, as the case may be;

"**Metering Data Interface Specification**" means the document which specifies, in accordance with any applicable standards, the manner and format in which Metered Data is to be provided (as amended from time to time);

"**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;

"On-Train Metering Commencement Date" means the date from which Metered Data is first used to calculate all or part of a Metered Train Operator's Traction Electricity Charge;

"**Regenerative Braking Data**" means data in respect of the amount of electricity (in kWh) generated by braking; and

"**Train Service Code**" means the train service code, service group code or route for the relevant services as set out in the applicable List of Consumption Rates.

2. **ON-TRAIN METERING - GENERAL**

2.1 The Metered Train Operator shall ensure that its On-Train Meters comply with:

(A) all relevant and current industry standards, (to the extent that such standards are applicable to the Metered Train Operator) including:

(1) European standard BS EN 50463-2:2017 (Railway applications: energy measurement on board trains – energy measuring) (and any modifications to or replacement of such standard);

(2) the Rolling Stock – Locomotive and Passenger (LOC and PAS) National Technical Specification Notice (and any modifications to or replacement of such National Technical Specification Notice); and

(3) Railway Group Standard GM/RT2132 (on-board energy metering for billing purposes) (and any modifications to or replacement of such standard); and

(B) all applicable HS1 Standards.

2.2 The Metered Train Operator shall collect Metered Data from all of its On-Train Meters and shall provide such data to HS1 Ltd in accordance with the Metering Data Interface Specification (or as otherwise agreed between that Metered Train Operator and HS1 Ltd), 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, HS1 Ltd 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 HS1 Ltd 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.

2.5 The Metered Train Operator shall use reasonable endeavours to notify HS1 Ltd as soon as reasonably practicable of any changes to information relating to its vehicles (including but not limited to vehicle IDs) which HS1 Ltd requires for the purposes of calculating that part of the Traction Electricity Charge based on Metered Data (or Infill Values).

2.6 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 that have been agreed by HS1 Ltd and that Metered Train Operator pursuant to paragraph 4.3 to Part 2 to Section 7 of the Terms.

3. LOOK-UP TABLES

Journeys

3.1 HS1 Ltd 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, 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 locomotive-hauled passenger journeys, in relation to each Journey for a particular Train Service Code, Specified Equipment 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 HS1 Ltd'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 HS1 Ltd and the Metered Train Operator shall seek to 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 HS1 Ltd shall determine (acting reasonably) the values to be included in the Journey Look-Up Table for that Period.

Non-Journeys

3.4 HS1 Ltd 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 for particular Specified Equipment, 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 HS1 Ltd'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 HS1 Ltd 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 HS1 Ltd shall determine (acting reasonably) the values to be included in the Non-Journey Look-Up Table for that Period.

General

3.7 HS1 Ltd 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 HS1 Ltd'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 List of Consumption Rates.

3.10 In addition to any other rights of the Metered Train Operator, whether contained in its Contract or otherwise, copies of the Metered Train Operator's current Look-Up Tables shall be made available by HS1 Ltd 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.

4.2 If, in respect of a Journey, Metered Data in respect of Electricity Data is not provided by the Metered Train Operator to HS1 Ltd 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.

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 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 is not provided by the Metered Train Operator to HS1 Ltd 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. METERING AUDITS

HS1 Ltd Metering Audit

7.1 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 HS1 Ltd 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.

7.2 In addition to any other rights of HS1 Ltd, including without limitation any rights set out in this Traction Electricity Annex or in any other provisions of the relevant Track Access Agreement or Framework Track Access Agreement and subject to paragraph 7.8, HS1 Ltd may, at HS1 Ltd's cost and expense upon giving not less than 5 (five) Working Days prior notice to the Metered 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 Metered Train Operator and any of its agents, contractors, sub-contractors and consultants; and

(C) inspect and/or test any On-Train Meters,

as HS1 Ltd may reasonably require to verify the accuracy of the data supplied to it by the Metered Train Operator pursuant to this Traction Electricity Annex, provided always that a Metering Audit may only be undertaken in relation to the Relevant Year in which it is requested or the Relevant Year preceding such request. Where the Metered Train Operator is party to more than one Track Access Agreement and/or Framework Track Access Agreement, HS1 Ltd 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.

7.3 The Metered Train Operator shall, at HS1 Ltd's cost and expense (subject to paragraph 7.8), procure that its agents, contractors, sub-contractors and consultants shall provide such access to HS1 Ltd as is reasonably necessary for the purposes of the Metering Audit.

7.4 If, following a Metering Audit carried out by HS1 Ltd, any data is found by HS1 Ltd to be materially inaccurate, HS1 Ltd shall notify the Metered 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 Metered Train Operator.

7.5 The Metered Train Operator shall be entitled, within 14 days following receipt of notice from HS1 Ltd pursuant to paragraph 7.4, to notify HS1 Ltd in writing that it objects to the findings of HS1 Ltd's Metering Audit. Any such notice shall specify in reasonable detail the reasons for such objection (and 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 HS1 Ltd's Metering Audit shall be deemed to be accepted by the Metered Train Operator and shall be final and binding on the parties.

7.6 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 HS1 Access Dispute Resolution Rules, and where the dispute is allocated in accordance with the HS1 Access Dispute Resolution Rules to arbitration under Chapter F of the HS1 Access Dispute Resolution Rules:

(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) 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 7.6(B).

7.7 Any consequential financial adjustment which is required to be made to any amounts paid or payable by any Metered Train Operator pursuant to paragraph 7.4 or 7.6 shall be made through the adjustment carried out in accordance with paragraph 4.8 of Part 2 to Section 7 of the Terms in respect of the Relevant Year in which such amounts were paid or payable.

7.8 Where, as a result of a Metering Audit carried out by HS1 Ltd, any data supplied by the Metered Train Operator to HS1 Ltd pursuant to this Traction Electricity Annex is shown to be inaccurate in any material respect, the Metered Train Operator shall bear the reasonable costs of the Metering Audit.

Metered Train Operator Metering Audit

7.9 HS1 Ltd 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 this Traction Electricity Annex.

7.10 In addition to any other rights of the Metered Train Operator, including without limitation any rights set out in this Traction Electricity Annex or in any other provisions of the relevant Track Access Agreement or Framework Track Access Agreement and subject to paragraph 7.16, 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 HS1 Ltd, 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 HS1 Ltd and any of its agents, contractors, sub-contractors and consultants; and

(C) inspect and/or test any model or other application used by HS1 Ltd in the calculation of the Metered Charges,

as the Metered Train Operator may reasonably require to verify the accuracy of the Metered Charges, provided always that a Metering Audit may only be undertaken in relation to the Relevant Year in which it is requested or the Relevant Year preceding such request. Where the Metered Train Operator is party to more than one Track Access Agreement and/or Framework Track Access Agreement, 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.

7.11 HS1 Ltd shall, at the Metered Train Operator's cost and expense (subject to paragraph 7.16), 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.

7.12 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 HS1 Ltd 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.

7.13 HS1 Ltd shall be entitled within 14 days following receipt by HS1 Ltd of notice from the Metered Train Operator pursuant to paragraph 7.12, 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 HS1 Ltd 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 HS1 Ltd and shall be final and binding on the parties.

7.14 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 HS1 Access Dispute Resolution Rules and where the dispute is allocated in accordance with the HS1 Access Dispute Resolution Rules to arbitration under Chapter F of the HS1 Access Dispute Resolution Rules:

(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 7.14(B).

7.15 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 7.12 or 7.14 shall be made through the adjustment carried out in accordance with paragraph 4.8 of Part 2 to Section 7 of the Terms in respect of the Relevant Year in which such amounts were paid or payable.

7.16 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, HS1 Ltd shall bear the reasonable costs of the Metering Audit and the Metered Train Operator shall issue an invoice to HS1 Ltd in the amount of those costs.

Additional Metering Audits by HS1 Ltd or the Metered Train Operator

7.17 Neither HS1 Ltd 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, provided always that a Metering Audit may only be undertaken in relation to the Relevant Year in which it is requested or the Relevant Year preceding such request.

7.18 If ORR consents to either party carrying out more than one Metering Audit in any Relevant Year, any such additional audit shall be carried out by either HS1 Ltd in accordance with the procedure set out in paragraphs 7.2 to 7.8 (inclusive) or by the Metered Train Operator in accordance with the procedure set out in paragraphs 7.9 to 7.16 (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 7.18.

Metering Audit requests by third party train operators

7.19 Any train operator may submit a request to ORR for a Metering Audit to be carried out in respect of any Metered Train Operator as appropriate, provided always that a Metering Audit may only be undertaken in relation to the Relevant Year in which it is requested or the Relevant Year preceding such request. Such request shall be in writing and shall specify the reasons why the train operator considers that a Metering Audit is necessary.

7.20 If ORR consents to such request such Metering Audit shall be carried out by HS1 Ltd on behalf of such train operator in accordance with the procedure set out in paragraphs 7.2 to 7.7 (inclusive), with such provisions being deemed to apply with such changes as are necessary in order to give effect to this paragraph 7.20.

7.21 Where, as a result of a Metering Audit carried out pursuant to paragraph 7.20, any data supplied by the Metered Train Operator to HS1 Ltd pursuant to this Traction Electricity Annex

is shown to be inaccurate in any material respect, the Metered Train Operator who was the subject of the audit shall bear the reasonable costs of the Metering Audit, 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

7.22 Any Metering Audit (including the resolution of any dispute arising out of such audit in accordance with paragraph 7.6 or 7.14, 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 is not resolved within such time the findings of such Metering Audit shall be final and binding on the parties.

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**
			High Speed 1	AC System						

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**
			High Speed 1	AC System						

Table 1.3: Journey Look-Up Table for 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
			High Speed 1	AC System					

Table 1.4: Journey Look-Up Table for 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
			High Speed 1	AC System					

2. **NON-JOURNEY LOOK-UP TABLE**

***Table 2.1: Non-Journey Look-Up* Table**

1.	3.	3.	4.	5.
Train Operator	**Specified Equipment**	**Geographic Area**	**Electricity Type (AC/DC)**	**Consumption rate (kWh/5 minute interval)**
		H eed 1	AC Syste	

[redacted]

Signature:

Email:

Signature:

Email:

[redacted]

Sew

Paul Barlow

MB

CB