

**Proposed contractual provisions to implement  
ORR's draft conclusions on the structure of  
charges and Schedule 8 performance regime for  
charter operators – Network Rail's response**

**25 October 2013**



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# EXECUTIVE SUMMARY

The purpose of this document is to set out Network Rail's response to the Office of Rail Regulation's (ORR's) September 2013 consultation on implementing its draft conclusions on the structure of charges and Schedule 8 performance regime for charter operators in Control Period 5 (CP5).

We welcome the opportunity to respond to this consultation and do not consider any part of our response to be confidential. Because of the contractual nature of the industry, it is important that ORR's Final Determination on the structure of charges and performance regime for charter operators in CP5 is accurately transposed into charter Track Access Contracts.

Where appropriate, this submission draws on our 4 September 2013 response to ORR's July 2013 consultation on implementing the 2013 Period Review (PR13). In some instances we summarise or refer to our 4 September 2013 consultation response rather than reproduce the text in its entirety. However, in Annexes [1](#) and [2](#) of this document we have marked-up all the changes that we consider necessary to Schedules 7 and 8 of the charter Track Access Contract<sup>1</sup>.

Consistent with our 4 September 2013 response, the majority of our proposed changes are relatively minor relating to detailed drafting points. We have, however, deleted a significant amount of the new text proposed by ORR in relation to charging charter operators for traction electricity in CP5. This reflects our proposed 'simplified' approach to charging charter operators for traction electricity, which we set out in detail in our 10 October 2013 letter to ORR and charter operators<sup>2</sup>. In addition, we set out Schedule 8 Incident Caps and associated Access Charge Supplements (ACSS), consistent with our discussions with ORR.

We do not comment on the proposed contractual drafting in relation to the Capacity Charge in this document. Instead, we will respond, in detail, on this issue in response to ORR's 30 September 2013 consultation on implementing the Capacity Charge in CP5.

As stated above, it is important that ORR's Final Determination in relation to charter operators is accurately reflected in Track Access Contracts. This response is publically available and we encourage operators and other interested parties to review our position on each area carefully, particularly in relation to Track Access Contracts.

We will continue to work closely with ORR and the industry with regard to finalising the CP5 track access charge price lists, due to be published on 20 December 2013, and CP5 implementation more generally. We would also, of course, be happy to discuss any aspect of this response with ORR or train operators in more detail.

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<sup>1</sup> With the exception of changes to the provisions relating to the Capacity Charge.

<sup>2</sup> Available at: <http://www.networkrail.co.uk/publications/delivery-plans/control-period-5/periodic-review-2013/pr13-closed-consultations/reviced-proposal-for-EC4T.pdf>

# 1. INTRODUCTION

- 1.1 The purpose of this document is to set out Network Rail's response to ORR's September 2013 consultation on implementing its draft conclusions on the structure of charges and Schedule 8 performance regime for charter operators in CP5. We welcome the opportunity to respond to this consultation and do not consider any part of our response to be confidential.

## Background

- 1.2 In May 2013 we issued a consultation letter in relation to the structure of charges and performance regime for charter operators in CP5, before concluding to ORR in August 2013. ORR issued its Draft Determination in relation to the structure of charges and the performance regime for charter operators in CP5 in August 2013. We responded to this document in September 2013. In September 2013 we also responded to ORR's PR13 implementation consultation which focussed on the contractual changes required to implement ORR's Final Determination in the Track Access Contracts of franchised passenger, open access and freight operators.
- 1.3 In addition, in our August 2013 conclusions to ORR, we stated that we would consider further traction electricity (EC4T) charges and 'light locomotive' charges for charter operators. In particular, the potential complexity and administration associated with billing these charges. Following careful consideration, on 10 October 2013 we wrote to ORR and operators setting out our proposed approach for CP5 in relation to these charges<sup>3</sup>. In summary, we confirmed our conclusions to ORR in relation to levying a Variable Usage Charge (VUC) on light locomotive movements and proposed a 'simplified' approach to charging charter operators for EC4T.

## Structure of this response

- 1.4 There is a considerable amount of documentation attached to ORR's consultation, including mark-ups of Schedules 7 and 8 of the charter Track Access Contract.
- 1.5 In the main body of this document we respond to the areas set out in the covering letter accompanying ORR's consultation. We also highlight any issues that we have identified with respect to ORR's proposed mark-ups of Schedules 7 and 8. Annexes [1](#) and [2](#) of this document set out suggested changes to ORR's mark-up of Schedules 7 and 8, reflecting the issues that we have identified<sup>4</sup>.
- 1.6 The remainder of this document is structured as follows:
- **Network Rail's high-level response:** responds to the areas set out in the covering letter accompanying ORR's consultation.

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<sup>3</sup> Available at: <http://www.networkrail.co.uk/publications/delivery-plans/control-period-5/periodic-review-2013/pr13-closed-consultations/revised-proposal-for-EC4T.pdf>

<sup>4</sup> See footnote 1.

- **Network Rail's detailed comments:** sets out the issues that we have identified with ORR's proposed mark-up of Schedules 7 and 8 of the Track Access Contract.
- **Next steps:** sets out the next steps in the periodic review process.
- **Annex 1:** sets out Network Rail's proposed mark-up of Schedule 7 addressing the issues that we have identified (except in relation to the Capacity Charge).
- **Annex 2:** sets out Network Rail's proposed mark-up of Schedule 8 addressing the issues that we have identified.

## **2. NETWORK RAIL'S HIGH-LEVEL RESPONSE**

### **General changes**

#### Summary of ORR's proposal

- 2.1 ORR is proposing to make a change to the contract that is separate from the policy changes on which it has concluded as part of PR13. It is proposing to substitute the reference to "Relevant Service" in the charging formulae with "Relevant Year". It is proposing this because it considers that it will make clearer that to adjust for RPI each year charges need to be summed by each year separately. It also considers that the concept of "Relevant Service" (in the way that it is currently defined and applied in the charter Track Access Contract) does not have any practical purpose.
- 2.2 ORR also proposes moving the rates for all charter charges from the contract to the relevant price lists. It notes that this is consistent with all other Track Access Contracts and is more transparent.

#### Network Rail's response

- 2.3 We have considered ORR's proposal to substitute the reference to "Relevant Service" in the charging formulae with "Relevant Year" and believe this to be appropriate as charges are adjusted for RPI each year. We have, therefore, reflected this change in the mark-up of Schedule 7 annexed to this document.
- 2.4 We are content with ORR's proposal to move the charge rates for charter operators into the relevant price lists. We agree that this will improve both consistency and transparency. However, as set out in our detailed comments, below, we propose making clearer how the charter Track Access Contract refers to charter rates on the Track Usage Price List. We also note that ORR has not proposed moving the Cancellation Charge from the Track Access Contract to the Track Usage Price List. We are content with this approach because it continues to facilitate the charging of a Cancellation Charge.

### **Capacity Charge**

#### Summary of ORR's proposal

- 2.5 In the draft charter Schedule 7, attached to its consultation, ORR has included wording in relation to the Capacity Charge consistent with retaining the CP4 approach for levying the charge, as is currently the position in other operators' Track Access Contracts. However, if ORR were to adopt the alternative 'RFOA approach' in relation to the Capacity Charge for charter operators, it would necessitate changes to Schedule 7. ORR states that it will consult, in due course, on the contractual wording that would implement such changes.

#### Network Rail's response

- 2.6 We note that in Schedule 7 ORR has included wording in relation to the Capacity Charge consistent with retaining the CP4 approach for levying the charge.

- 2.7 We do not consider that this consultation response is the most appropriate place to comment on the detail of the drafting in Schedule 7 in relation to the Capacity Charge. We note that on 30 September 2013, ORR issued a separate consultation on implementing the Capacity Charge in CP5. ORR's 30 September 2013 consultation covers any changes required to the charter Track Access Contract to implement the Capacity Charge, under different policy options. We will provide any detailed comments on the contractual drafting in relation to implementing the Capacity Charge in CP5 for charter operators in response to ORR's 30 September 2013 consultation, rather than in this document.

## **Traction electricity**

### Summary of ORR's proposal

- 2.8 ORR agreed with our conclusion that charter operators should be charged the actual electricity rates, consistent with those paid by passenger operators. To implement this change ORR has incorporated contractual wording, similar to that in the passenger contract, relating to the charge formula and procurement strategy. ORR noted that it had stated previously that it considered charter services should be included in the volume and cost reconciliation ('wash-up') for traction electricity. However, it wished to understand both the administrative complexity that this might entail and the implications for our billing system before proceeding.
- 2.9 Subject to the billing process not being disproportionate, ORR proposed that the same arrangements that apply to other operators should apply to charter operators for the billing of traction electricity. ORR's proposed mark-up of Schedule 7 reflects this.

### Network Rail's response

- 2.10 In our August 2013 conclusions document we stated that we would further consider the arrangements for charging charter operators for their use of EC4T. We wrote to ORR and the industry with our revised proposal on 10 October 2013. The revised proposal was to calculate charter operators' EC4T charges outside of our automated billing system, TABS (track access billing system), to minimise billing complexity and administrative costs for both charter customers and Network Rail. The key points of our revised proposal are:

- to use a traction electricity consumption rate of 28.12 kWh per train mile. This is based on the "*Generic default (Locomotive & coaches): parcels / mail*" EC4T consumption rate which is a kWh per KGTM rate, set out in the CP4 Freight Traction Electricity Consumption Rates list<sup>5</sup>. We proposed using this as a proxy rate for all charter services. We proposed to convert this to a 'per train-mile' rate based on a typical charter train 'consist', and apply the same rate to all electric charter services. If a charter operator wishes, it may commission consultants to calculate a specific modelled consumption rate for its service codes

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<sup>5</sup> Available at:  
<http://www.networkrail.co.uk/browse%20documents/regulatory%20documents/access%20charges%20reviews/cp4%20charges/c%20-%20traction%20electricity%20consumption%20rates%20list%20for%20cp4.pdf>

in line with the agreed methodology for calculating new consumption rates;

- to apply a blended average pence per kWh tariff, which we would publish before each financial year begins. This tariff would reflect all energy and delivery tariffs and would be consistent with the market-based tariff paid by Network Rail for its own traction and non-traction electricity; and
- recognising the low materiality of charter EC4T usage, that charter operators would not participate in either the volume or cost wash-up.

2.11 We consider that this revised proposal would result in minimal amendments to paragraph 6 of Part 2 of Schedule 7 of the current charter trains model Track Access Contract. The key amendment we are proposing is to remove any references to the IIEC adjustment factor and therefore we propose the deletion of paragraph 6.2. We are also proposing to include drafting to allow charter operators to introduce on-train metering. This is discussed in more detail in the following section.

## **Indexation provisions**

### Summary of ORR's proposal

2.12 In its mark-up of Schedule 7, ORR has included provisions that would apply its proposed 'true-up' approach to adjusting charges for RPI each year. This is consistent with what it proposed for other train operators in its July 2013 PR13 implementation consultation.

### Network Rail's response

2.13 In our response to ORR's July 2013 PR13 implementation consultation we set out our view in relation to the proposed 'true-up' mechanism. In summary, we welcomed the fresh think from ORR in relation to this issue and supported introducing the 'true-up' mechanism, subject to some points of clarification.

2.14 However, following the submission of our response to ORR's PR13 implementation consultation we attended a meeting with ORR and operators at which the proposed 'true-up' methodology was discussed in more detail. At this meeting operators expressed significant concerns in relation to the proposed 'true-up' methodology. We recognise that at this late stage of the periodic review process, there may not be sufficient time for ORR to adequately address the concerns raised by operators. Therefore, it could be necessary to retain the existing approach to uplifting charges for inflation each year and thus retain the existing drafting in Schedule 7 of Track Access Contracts. For the avoidance of doubt, if the proposed 'true-up' methodology is not introduced in CP5, we would not support any other approach to indexing charges and compensating us for inflation other than retaining the existing approach.



## **Other changes to Schedule 7**

### Summary of ORR's proposal

2.15 ORR also made changes to Schedule 7 to reflect its decisions on the Electrification Asset Usage Charge (EAUC) and VUC, including the application of a charge for light locomotive movements. In addition, the revised Schedule 7 proposed by ORR reflects some other minor changes, consistent with those proposed for other operators (e.g. relating to supplements to the price lists).

### Network Rail's response

2.16 We continue to propose that the EAUC is charged to charter operators, consistent with other passenger operators. This means that the pence per electrified vehicle mile rate would apply to electrified charter vehicle mileage.

2.17 We welcome the fact that ORR has accepted our conclusion to levy an appropriate VUC on light locomotive movements. As set out in our 10 October 2013 letter to ORR<sup>6</sup>, we have confirmed that it is possible, from a billing perspective, to separately identify and charge light locomotive movements. As discussed in more detail in the following section, we propose refining the contractual definition of "light locomotive movement" to align more closely with the basis on which the charge was calculated.

2.18 ORR has proposed amendments to paragraph 10 of Part 2 of Schedule 7 of the Track Access Contract to incorporate a process for bilateral supplements to be made to the Traction Electricity Consumption Rates List and the Track Usage Price List. In summary, we consider that the drafting proposed by ORR is appropriate for the Traction Electricity Consumption Rates List but not for the Track Usage Price List. This is discussed in more detail in the following section.

## **Changes to Schedule 8**

### Summary of ORR's proposal

2.19 In August 2013, ORR concluded on the following changes to Schedule 8:

- To introduce benchmarks for both Network Rail and charter operators;
- To introduce an annual adjustment to the charter operator benchmark to reflect changes in traffic levels;
- To introduce a menu of incident caps available to charter operators in return for an Access Charge Supplement (ACS); and
- To introduce reciprocal annual caps on Schedule 8 liability, consistent with the 'small operator' caps currently in place for freight Schedule 8 (i.e. an annual cap of approximately £0.5m).

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<sup>6</sup> Available at: <http://www.networkrail.co.uk/publications/delivery-plans/control-period-5/periodic-review-2013/pr13-closed-consultations/revised-proposal-for-EC4T.pdf>

- 2.20 In the mark-up attached to its consultation, ORR has amended the contractual wording of Schedule 8 to reflect these changes, taking a large amount of drafting from Schedule 8 of the freight operator contract.
- 2.21 ORR has also included some wording in relation to the newly introduced reciprocal annual cap, so that it can be adjusted if the annual mileage of a particular operator reaches or exceeds one million miles.

#### Network Rail's response

- 2.22 As set out in our September 2013 response to ORR's Draft Determination on the structure of charges and performance regime for charter operators, we welcome ORR's proposal to set explicit ACSs for charter operators in exchange for the provision of Incident Caps. In the mark-up of Schedule 8 annexed to this document we have included a 'menu' of Incident Caps and ACSs consistent with our discussions with ORR. We also propose a number of minor drafting changes which are set out in more detail, below.

### **Consequential changes**

#### Summary of ORR's proposal

- 2.23 ORR has also made a number of minor changes to charter contracts which it considers are necessary or expedient to give effect to changes elsewhere. These include the incorporation of the Traction Electricity Rules (TERs) into charter contracts and the amendment to Schedule 10 (modifications to the Network Code) to widen its scope to enable any consequential changes to be made to the contract in the event that the Traction Electricity Rules are themselves amended.

#### Network Rail's response

- 2.24 Our revised proposal for charging charter operators for their use of EC4T would not incorporate the TERs into the charter Track Access Contract. The reason for this is that no charter operators are currently metered and our proposal is for charter operators not to participate in either the cost or volume wash-ups, which eliminates the need to refer to the TERs. If an operator were to opt-in to on-train metering, the TERs would be incorporated into the relevant contract at that point. For this reason, we propose that none of the suggested changes in "Part A – Changes due to the incorporation of the Traction Electricity Rules" of Schedule 7 of the Track Access Contract should currently apply.
- 2.25 We do, however, suggest some minor changes to the TERs to clarify that the TERs would not apply to charter operators. Those changes are set out in paragraphs 3.28 - 3.29.

### **Process for making amendments to charter track access contracts**

#### Summary of ORR's proposal

- 2.26 ORR sets out two alternative options in relation to the process for making amendments to charter Track Access Contracts:

- **Option 1:** review notice and contract extension; and
  - **Option 2:** terminate contracts early and enter into new contracts before 1 April 2014.
- 2.27 ORR's view is that, broadly, both options equate to a similar administrative requirement on the industry but the least risky and preferable approach, overall, is option 1. Therefore, it proposes that option 1 will be its default approach unless Network Rail and all charter operators collectively prefer option 2. If Network Rail and charter operators collectively prefer option 2, ORR asks that it is advised of this ahead of the end of this consultation.

#### Network Rail's response

- 2.28 Following careful consideration of ORR's options, above, in relation to the process for making amendments to charter Track Access Contracts. We are content to proceed on the basis of ORR's proposed option 1. Namely, for the contracts to be amended through the periodic review process and the expiry date for each contract to be extended. Although it is not explicitly stated in ORR's consultation, we assume that its intention is that the expiry date of each contract would be extended until 31 March 2019, the last day of CP5.

### **3. NETWORK RAIL'S DETAILED COMMENTS**

- 3.1 In this section we provide detailed comments / observations on the mark-ups of Schedules 7 and 8 of the charter Track Access Contract proposed by ORR. We have reflected these comments in Annexes [1](#) and [2](#) of this document where we propose our own mark-ups to Schedules 7 and 8 of the charter Track Access Contract.
- 3.2 We comment, below, on each part of Schedules 7 and 8, in turn. Please note that where we have not provided any comments we are content with the mark-up proposed by ORR.

#### **Schedule 7**

##### Definitions

- 3.3 The definitions “Diesel or Electric Equipment” and “Steam Driven Equipment”, which are relevant to the VUC, have been deleted in the mark-up proposed by ORR. This reflects the fact that these terms are no longer used in Schedule 7, as they were only used for the purposes of the rates tables in Appendix 7D. The tables that were in Appendix 7D have been deleted as ORR is proposing to move the rates onto the published price list. We do not propose that these definitions need to be included on the published price list because we consider that their meaning is sufficiently clear in the context of the price list.
- 3.4 The definition of “light locomotive movement” has not been amended in the mark-up proposed by ORR. We consider that it is necessary to refine this definition in order to ensure that it aligns appropriately with the basis on which the light locomotive VUC rates have been calculated. In particular, that the light locomotive VUC rates only apply to the movements of a single locomotive, or a single steam locomotive travelling with one support coach. We do not consider that, for example, it would be appropriate for two locomotives coupled together to pay the proposed light locomotive VUC rate because this would materially under-recover our variable usage costs. In this situation the notional ‘per train’ VUC rate would be more appropriate and cost reflective. In the mark-up of Schedule 7 annexed to this document we have proposed a revised definition of “light locomotive movement” in order to clarify this point.
- 3.5 As set out in more detail, below, we propose setting out the methodology for calculating the Cancellation Charge formulaically, consistent with other track access charges. In order to give effect to this proposal we have included two new definitions (“Cancellation Percentage” and “Cancellation Type y”) in the Track Access Contract.
- 3.6 Consistent with our proposal discussed in more detail below, to amend the principal charging formula such that it refers to “Relevant Year t” rather than “Relevant Service s”, we propose deleting the definition “Relevant Service”.
- 3.7 Consistent with our revised proposal for charging charter operators for their use of EC4T, we are proposing that ORR’s suggested amendments to accommodate metered billing and the volume and cost wash-up are removed. Therefore, we also suggest the removal of the following definitions:

- “AC system”;
  - “DC system”;
  - “Electricity Type (AC/DC)”;
  - “Geographic Area g”;
  - “Gross Tonne Mile”;
  - “Network Rail Distribution System Loss Factor”;
  - “On-Train Meter” and “On-Train Metering”;
  - “Power Factor Correction”;
  - “Tariff Band”;
  - “Tolerance Factor”; and
  - “train category”.
- 3.8 In addition, we suggest reinstating the “Traction Electricity Rate” definition, albeit with a minor change to remove the requirement for annual adjustment by IIEC.
- 3.9 We also propose amending the “Traction Electricity Consumption Rates List” definition in order to clarify that it includes rates applicable to charter operators.
- 3.10 Furthermore, we propose inserting the “Vehicle Mile” definition from the passenger Track Access Contract, reflecting the fact that we propose levying EAUC on this basis.
- 3.11 We have also proposed amending the “Slot Charge” definition, by replacing the reference to “a particular Service” with a reference to category of vehicle and journey type, because we consider that this is more consistent with how charge is levied.
- 3.12 We also propose deleting the defined term “Public Holiday” as this term is not used in Schedule 7.
- 3.13 All of these proposals are marked-up in [Annex 1](#).

#### Principal formula

- 3.14 In the covering letter accompanying its consultation, ORR proposed substituting the reference to “Relevant Service s” in the charging formulae with “Relevant Year t”. However, it did not mark-up this proposed amendment in the marked-up Schedule 7 it attached to the consultation document. We have reviewed ORR’s proposal and agree that the charging formulae should be amended such that it refers to “Relevant Year t”, rather than “Relevant Service s”, to reflect the fact that charges are uplifted for inflation each year.

We do not consider that it is necessary to refer to the term Relevant Service in the principal charging formulae. Therefore, in the mark-up of Schedule 7, annexed to this document, we have reflected this revision. In particular, we have substituted each subscript “s” in the principal charging formulae with a subscript “t”, and substituted each reference in the supporting text to “Relevant Service s” with “Relevant Year t”. This revision is also made in all other charge formulae relating to the principal formula.

### Variable Usage Charge

- 3.15 It was not clear to us why ORR had proposed introducing a subscript “r” into VUC charging equation, or what purpose this served. Therefore, in the mark-up of Schedule 7 annexed to this document we propose deleting the subscript “r” from the VUC charging formula. We consider it appropriate to retain the subscripts “i” and “t” in the in the VUC charging formulae.
- 3.16 We also noted that in the mark-up of Schedule 7 attached to the consultation document, subscript “i” is not always referred to in a consistent way in the context of the VUC. For example in some places it is referred to as “vehicle type i” and in other places it is referred to as “category of vehicle i”. In the mark-up of Schedule 7, annexed to this document, we have amended the text so that it consistently refers to “category of vehicle i”. We note that vehicle type is less relevant to charter VUC rates as they are levied on a ‘per train’ basis.
- 3.17 Text has been included to reflect the proposed true-up approach to uplifting charges for inflation each year. As set out in the previous section, we recognise that at this late stage of the periodic review process there may not be sufficient time for ORR to adequately address the concerns raised by operators with regards to this innovative approach. Therefore, it could be necessary to retain the existing approach to uplifting charges for inflation each year and thus retain the existing drafting in Schedule 7 of Track Access Contracts. However, due to the uncertainty in relation to this issue, we have not reflected this potential revision in the mark-up of Schedule 7 annexed to this document.
- 3.18 In its mark-up of Schedule 7, ORR has amended the drafting such that it refers to the VUC rates on the Track Usage Price List, rather than in Appendix 7D to Schedule 7 of the Track Access Contract. As set out in the previous section, we are content with ORR’s proposal to move the VUC rates applicable to charter operators from the Track Access Contract to the Track Usage Price List. However, in the mark-up of Schedule 7 annexed to this document we have included a new definition “Charter Trains Track Usage Price List” in order to clarify which rates on the Track Usage Price List are applicable to charter operators. It is important to be clear that, under the current charging structure, charter operators are not eligible to pay the passenger and freight ‘per vehicle’ VUC rates on the Track Usage Price List and vice-versa.

### Slot Charge

- 3.19 In our mark-up of Schedule 7, annexed to this document, we have proposed amendments to the existing Slot Charge formula. We consider that it is not sufficiently clear from the existing formula that each year the Slot Charge should be summed across all categories of vehicle (i.e. steam and non-

steam) and journey types (i.e. exceeding or not exceeding 250 miles). To remedy this we propose including a summation sign at the beginning of the formula. In addition, we do not consider that it is sufficiently clear that in order to calculate the total Slot Charge payable by an operator you need to multiply the relevant charge rate by the number of journeys. Therefore, we propose including an additional term in the formula representing the number of journeys. We consider that these proposed changes are consistent with ORR's Draft Determination in relation to the Slot Charge.

- 3.20 As noted above, in its mark-up of Schedule 7, ORR has amended the drafting included in Schedule 7 to reflect the proposed true-up approach to uplifting charges for inflation each year in CP5. It could be necessary to retain the existing approach to uplifting charges for inflation each year and thus retain the existing drafting in Schedule 7 of Track Access Contracts. However, due to the uncertainty in relation to this issue, we have not reflected this potential revision in the mark-up of Schedule 7 annexed to this document.
- 3.21 ORR has also amended Schedule 7 such that it refers to the slot rates on the Track Usage Price List, rather than in Appendix 7D to Schedule 7 of the Track Access Contract. Consistent with the VUC, for the avoidance of doubt, we have amended the text in relation to the Slot Charge to refer to the "Charter Trains Track Usage Price List".

#### Cancellation Charge

- 3.22 Unlike other charter track access charges, in the mark-up of Schedule 7 proposed by ORR, the drafting in relation to the Cancellation Charge has not been amended to refer to the Track Usage Price List. Instead, the charge rates continue to be implied by the text in Schedule 7 of the Track Access Contract. We are content with this approach because it continues to facilitate the charging of a Cancellation Charge. However, we note that it is inconsistent with the approach proposed for other charter track access charges.
- 3.23 We also note that unlike other charges, at present, the methodology for calculating the Cancellation Charge is not set out formulaically in the Track Access Contract. We consider that it would be preferable to set out the calculation methodology formulaically because this would make it clearer that the total Cancellation Charge payable by an operator each year is the sum of the product of the number of cancelled services (disaggregated by notice period) and the relevant charge rates (disaggregated by category of vehicle, journey type and, generally, reduced pro-rata depending on the notice period). Therefore, in the mark-up of Schedule 7 annexed to this document we have proposed a formula which we consider mathematically describes the recovery of Cancellation Charges consistent with ORR's charter Draft Determination. As a result of this proposed change we have also proposed including two new definitions in Schedule 7 ("Cancellation Type y" and "Cancellation Percentage").

## Traction Electricity Charge

- 3.24 On 10 October 2013, we wrote to ORR and the industry setting out a revised proposal for charging charter operators for their use of EC4T<sup>7</sup>. The revised proposal was a simplified approach, which would take place outside of our automated billing system, to minimise billing complexity and administrative costs for both customers and Network Rail.
- 3.25 We consider that this revised proposal would result in minimal amendments to paragraph 6 to Schedule 7 of the current charter trains model Track Access Contract. The key amendment that we are proposing is to remove any references to the IIEC adjustment factor, and therefore we propose the deletion of paragraph 6.2. We also propose including drafting to allow charter operators to introduce on-train metering.
- 3.26 Shown as a mark-up against ORR's proposed contractual drafting, which incorporated contractual drafting similar to that in the passenger contract, we propose the removal of:
- all drafting (including definitions) relating to metered charges (including Appendix 7D);
  - all drafting (including definitions) relating to the cost and volume wash-up amounts S1 and S2;
  - all drafting (including definitions) relating to the incorporation of the Traction Electricity Rules; and
  - all drafting (including definitions) relating to the strategy for procurement of traction electricity.
- 3.27 These suggested changes are included in the mark-up of Schedule 7, which is set out in [Annex 1](#) of this response.
- 3.28 We have also suggested some changes to the TER to reflect that the TER provisions would not apply to charter operators. Those changes (shown below) are the addition of the double underlined words. The first of those changes is to clarify that charter operators would not participate in the cost or volume wash-up, we suggest the following change to paragraph 18.1 of the TER:
- “Within 90 days after the end of Relevant Year  $t$ , Network Rail shall calculate, for each train operator  $\omega$ , two supplementary amounts (“ $S1_{t\omega}$ ” and “ $S2_{t\omega}$ ”) which shall be payable by or to the train operator in accordance with this paragraph 18. The calculations of  $S1_{t\omega}$  and  $S2_{t\omega}$  shall be made for all train operators using electric traction, other than charter train operators”.*
- 3.29 In addition, to prevent charter operators being able to propose changes to the TER (unless they have opted-in to on-train metering), we propose the following amendment to the definition of “Modelled Train Operator” in paragraph 1.2 of the TER:

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<sup>7</sup> Available at: <http://www.networkrail.co.uk/publications/delivery-plans/control-period-5/periodic-review-2013/pr13-closed-consultations/revised-proposal-for-EC4T.pdf>



*““Modelled Train Operator” means a train operator (other than a charter train operator) that, in respect of Geographic Area g, is charged by Network Rail for traction electricity based on calibrated modelled consumption rates, and which is not a Metered Train Operator;”.*

#### Electrification Asset Usage Charge

- 3.30 As noted above, we continue to propose that the EAUC is charged to charter operators, consistent with other passenger operators. This means that the pence per electrified vehicle mile rate would apply to electrified charter vehicle mileage. The drafting in the ORR proposed contract refers to “electrified Train Mile”. We propose replacing this with “electrified Vehicle Mile”, using the same definition for “Vehicle Mile” as set out in the passenger contracts. Further to this, we note that the formula refers to the term “UKtk”; we suggest this is corrected so that it refers instead to “UVtk”. These proposed changes are set out in the mark-up to Schedule 7, set out in [Annex 1](#).
- 3.31 In its mark-up of Schedule 7, ORR has amended the drafting to reflect the proposed true-up approach to uplifting charges for inflation each year in CP5. As noted above, it could be necessary to retain the existing approach to uplifting charges for inflation each year and thus retain the existing drafting in Schedule 7 of Track Access Contracts. However, due to the uncertainty in relation to this issue, we have not reflected this potential revision in the mark-up of Schedule 7 annexed to this document.
- 3.32 ORR has also amended Schedule 7 such that it refers to the EAUC rates on the Track Usage Price List, rather than in Appendix 7D of the Track Access Contract. Consistent with the VUC and Slot Charge, for the avoidance of doubt, we have amended the text in relation to the EAUC to refer to the “Charter Trains Track Usage Price List”.

#### Capacity Charge

- 3.33 We note that in Schedule 7 ORR has included wording in relation to the Capacity Charge consistent with retaining the CP4 approach for levying the charge.
- 3.34 We do not consider that this consultation response is the most appropriate place to comment on the detail of the drafting in Schedule 7 in relation to the Capacity Charge. We note that on 30 September 2013, ORR issued a separate consultation on implementing the Capacity Charge in CP5. ORR’s 30 September 2013 consultation covers any changes required to the charter Track Access Contract to implement the Capacity Charge, under different policy options. We will provide any detailed comments on the contractual drafting in relation to implementing the Capacity Charge in CP5 for charter operators in response to ORR’s 30 September 2013 consultation, rather than in this document.
- 3.35 To be consistent, in the mark-up of Schedule 7 annexed to this document we have cascaded our proposed changes to the principal charging formulae (substituting each subscript “s” with a subscript “t” and substituting each reference to “Relevant Service s” with “Relevant Year t”) to the Capacity Charge charging formulae. However, as noted above, we will provide detailed

comments on this drafting in response to ORR's 30 September 2013 consultation, and the mark-up annexed to this document is without prejudice to that response.

### Supplements to the price list

- 3.36 We note that ORR has proposed amendments to paragraph 10 of Part 2 of Schedule 7 to incorporate a process for bilateral supplements be made to the Traction Electricity Consumption Rates List and the Tack Usage Price List so that it is broadly consistent with the passenger Track Access Contract.
- 3.37 In relation to EC4T, whilst we are proposing to apply a 'simplified' traction electricity consumption rate based on a typical 'consist', we also propose to offer charter operators the option to calculate a rate which is specific for their Service Code, consistent with the agreed methodology<sup>8</sup>. Therefore, we consider that it is appropriate to include text in relation to supplementing the Traction Electricity Consumptions Rates List.
- 3.38 We cannot foresee a situation where it would be necessary to make a supplement to the Track Usage Price List. The reason for this is that charter VUC rates are charged on a 'per train' basis and only disaggregated to a steam and diesel/electric level. Hence, as long as any train operated by a charter operator in CP5 is hauled by a steam, diesel or electric vehicle the existing 'per train' rates will be applicable and a supplement to the Track Usage Price List will not be required. Therefore, in the mark-up of Schedule 7 annexed to this document, we have deleted the references to supplementing the Track Usage Price List.

### Payment of Track Charges and Other Sums Due

- 3.39 As set out in our 10 October 2013 letter to ORR, our review of whether it was possible / administratively efficient to separately identify and charge light locomotive movements highlighted that in some instances charter train movements are not 'consisted' by the operator. In this situation we propose assuming a default consist of a Class 67/0 locomotive plus 11 Mark 1 coaches. As a result, if charter operators do not complete a 'consist' for light locomotive movements they would be charged the notional 'full train' non-steam VUC rate (£1.05 per train mile), rather than the lower light locomotive rates (£0.56 or £0.60 per train mile). We consider that levying the higher notional 'full train' VUC rate in the absence of 'consist' data will incentivise operators to provide the appropriate 'consist' for light locomotive movements in CP5 and avoid us under recovering our variable usage costs. We also note that the fact we have assumed the notional 'full train' non-steam VUC rate, rather than the notional 'full train' steam VUC rate, has no impact as the rates are identical. In the mark-up of Schedule 7 annexed to this document we have defined Default Train Consist Data consistent with the above.

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<sup>8</sup> The agreed methodology for calculating new traction electricity consumption rates is set out in Annex B of the letter available here: <http://www.networkrail.co.uk/publications/delivery-plans/control-period-5/periodic-review-2013/pr13-closed-consultations/revise-proposal-for-EC4T.pdf>

### Specific Additional Charges

- 3.40 As noted above, consistent with our proposal to amend the principal charging formula such that it refers to “Relevant Year t” rather than “Relevant Services”, we propose deleting the definition “Relevant Service”. In addition to being included in the charging formulae, the term “Relevant Service” is used in the Non-Core Operational Charges section of the Track Access Contract. In the mark-up of Schedule 7, annexed to this document, for consistency we also propose deleting the references to “Relevant Service” from the ‘Non-Core Operational Charges’ section of the contract. We propose replacing these references with “Service or Ancillary Movement” which we consider would facilitate the continued recovery of appropriate Non-Core Operational Charges in CP5.

### Supplemental Provisions

- 3.41 Reflecting our view that the TERs should not, at present, be incorporated into the charter Track Access Contract, in the mark-up of Schedule 7, annexed to this document, we have proposed deleting the reference to the TERs from the ‘Supplemental Provisions’ section of the contract. Consistent with our proposals, above, we also propose removing the references to “Relevant Service” and aligning this section of the contract more closely with how each charge is levied.

## **Schedule 8**

### Definitions

- 3.42 In the mark-up attached to this document we have proposed a minor amendment to the definition “Network Rail Benchmark” or “NRB” in order to clarify that these values are specified in Appendix 8A.

### Allocation of responsibility

- 3.43 We also propose deleting the word “Planned” from paragraph 6.4 (c). It appears to us that this word has been included in error as the term “Planned Service Characteristics” is not defined in the Track Access Contract, whereas the term “Service Characteristics” is.

### Payment terms and supplementary provisions

- 3.44 We have made some suggested amendments to ORR’s proposed drafting in paragraphs 7.1.2 and 7.1.3. The amendments are intended to clarify that the caps apply to payments of the balance due under paragraph 7.1.1. We have also made a minor drafting amendment to paragraph 7.1.1, which seemed to contain an incorrect cross-reference.

### Reviews of Benchmarks, Network Rail Annual Cap and Train Operator Annual Cap

- 3.45 In relation to paragraph 8.2.1 (a) of Schedule 8, we are unclear as to why ORR has proposed replacing “2010” with “2014” (rather than “2015”). Under ORR’s proposal, we believe that the contractual wording would imply that an update to caps could take place immediately following the start of CP5 (i.e. in April 2014). We do not believe that this is as ORR or the industry intends, nor

do we believe this would be appropriate. Rather, we consider that adjustments to caps should be possible from the second year of CP5, and as such that “2010” should be replaced by “2015”. We have proposed this change in the mark-up annexed to this document.

#### Selection by the Train Operator of the Planned Service Incident Cap

- 3.46 The Incident Caps in the mark-up of Schedule 8 proposed by ORR are the current Incident Caps available to freight operators. In the mark-up of Schedule 8 annexed to this document, we have substituted the freight Incident Caps with the charter ones, consistent with our discussions with ORR in relation to this issue. We have also included the associated ACSs.

## 4. NEXT STEPS

- 4.1 ORR is due to publish its Final Determination, including in relation to the structure of charges and performance regime for charter operators in CP5, on 31 October 2013. ORR is then planning to serve Review Notices on 20 December 2013. Network Rail has until 7 February 2014 to decide whether it wishes to accept ORR's Final Determination.
- 4.2 Subject to Network Rail accepting the Final Determination, ORR will aim to serve Notice of Agreement to Train Operators in mid-February 2014 before serving review implementation notices in mid-March 2014.
- 4.3 CP5 is scheduled to start on 1 April 2014, at which time the revised structure of charges and performance regime would apply until 31 March 2019.
- 4.4 We will continue to work closely with ORR and the industry with regard to finalising the CP5 track access charge price lists, due to be published on 20 December 2013, and CP5 implementation more generally. We would also, of course, be happy to discuss any aspect of this response with ORR or operators in more detail.
- 4.5 If you have any queries in relation to any aspect of this document please do not hesitate to contact Ben Worley ([Ben.Worley@networkrail.co.uk](mailto:Ben.Worley@networkrail.co.uk)).

# ANNEX 1: NETWORK RAIL MARK-UP OF SCHEDULE 7

## PR13 IMPLEMENTATION – PROPOSED SCHEDULE 7 FOR CHARTER OPERATORS

### SCHEDULE 7: TRACK CHARGES

#### PART 1: INTERPRETATION

##### 1 Definitions

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

|   |  |
|---|--|
| <b>“AC System”</b>                      | means the alternating current system of electricity traction supply on the Network;  |
| <b>“Cancellation Charge”</b>            | has the meaning given to that term in paragraph 5.1 of Part 2;   |
| <b><u>“Cancellation Percentage”</u></b> | <b><u>means:</u></b> <ul style="list-style-type: none"><li>(a) <u>10% where notice of such cancellation is given more than 25 Working Days in advance of the planned date of operation of the Cancelled Service;</u></li><li>(b) <u>50% where notice of such cancellation is given at least 20 but less than 26 Working Days in advance of the planned date of the Cancelled Service;</u></li><li>(c) <u>75% where notice of such cancellation is given at least 15 but less than 20 Working Days in advance of the planned date of the Cancelled Service;</u></li><li>(d) <u>85% where notice of such cancellation is given at least 5 but less than 15 Working Days in advance of the planned date of the Cancelled Service; and</u></li><li>(e) <u>100% where notice of such cancellation is given at less than 5 Working Days in advance of the planned date of the Cancelled Service.</u></li></ul> |

**“Cancellation Type y”**

means:

- (a) Y<sub>1</sub> where notice of such cancellation is given more than 25 Working Days in advance of the planned date of operation of the Cancelled Service;
- (b) Y<sub>2</sub> where notice of such cancellation is given at least 20 but less than 26 Working Days in advance of the planned date of the Cancelled Service;
- (c) Y<sub>3</sub> where notice of such cancellation is given at least 15 but less than 20 Working Days in advance of the planned date of the Cancelled Service;
- (d) Y<sub>4</sub> where notice of such cancellation is given at least 5 but less than 15 Working Days in advance of the planned date of the Cancelled Service; and
- (e) Y<sub>5</sub> where notice of such cancellation is given at less than 5 Working Days in advance of the planned date of the Cancelled Service.

**“Capacity Charge”**

means a variable charge calculated in accordance with paragraph 8 of Part 2;

**“Charter Capacity Rate”**

means, in respect of each Service, the charter capacity rate corresponding to the day (or days) of the week on which that Service is operated, as set out in the List of Capacity Charge Rates and adjusted in accordance with paragraph 8 of Part 2;

**“Charter Trains Track Usage Price List”**

means those parts of the Track Usage Price List which set out the rates applicable to charter services;

**“Core Operational Period”**

in relation to any part of the Network, means the period of the day when that part is generally open to train movements;

**“DC System”****“Default Train Consist Data”**

~~means the direct current system of electricity traction supply on the Network;~~means a Class 67/0 locomotive plus 11 Mark 1 coaches

**“ECS”**

means empty coaching stock (trains used to bring carriages into or take them out of service);

**“Electricity Type (AC/DC)”**

~~means either the alternating current (AC) or the direct current (DC) system of electricity supplied through the electrification system;~~

**“Electrification Asset Usage Charge”**

means the electrification asset usage charge calculated in accordance with paragraph 7.1 of Part 2, as adjusted in accordance with paragraph 7.2 of Part 2;

|   |  |
|---|--|
| <del>“Geographic Area g”</del>                            | means, for the purposes of performing the calculations set out in paragraph 6 of Part 2 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network, as set out in Appendix 5 of the Traction Electricity Rules;  |
| <del>“Gross Tonne Mile”</del>                             | in relation to a train, means a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question;  |
| “kWh”   | means kilowatt hours;  |
| “light locomotive movement”                               | means the movement of: <ul style="list-style-type: none"> <li>(f) a single locomotive; <del>or two locomotives coupled together;</del></li> <li>(g) <u>a single steam locomotive hauling no more than one other item of rolling stock (not being a locomotive);</u></li> </ul> before working, or after having worked, a Relevant Service; |
| “List of Capacity Charge Rates”                           | means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013;  |
| <del>“Network Rail Distribution System Loss Factor”</del> | <del>means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail’s meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in appendix 3 of the Traction Electricity Rules;</del>  |
| “New Specified Equipment”                                 | means a type of railway vehicle not included in the Track Usage Price <u>Traction Electricity Consumption Rates</u> List.  |
| “Non-Core Operational Charge”                             | means the charge calculated in accordance with paragraph 1.1 of Part 5;  |
| <del>“On-Train Meter” and “On-Train Metering”</del>       | <del>have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;</del>  |
| “Period”  | has the meaning ascribed to it in Schedule 8;  |
| <del>“Power Factor Correction”</del>                      | <del>means the relevant power factor correction as set out in appendix 2 of the Traction Electricity Rules;</del>  |
| “Public Holiday”  | <u>means any day other than a Saturday or Sunday on which the banks in the City of London are not open for business;</u>   |



|                                      |  |
|--------------------------------------|--|
| <b>“Relevant Service”</b>            | means the Service (which, for these purposes, includes any Ancillary Movements) to which a particular charge is to be applied;   |
| <b>“Repeat Business Slot Charge”</b> | means the charge payable in respect of a particular Service in accordance with paragraph 4.2 of Part 2;  |
| <b>“Relevant Year”</b>               | means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March;<br>“Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made;<br>“Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;  |
| <b>“RPI”</b>                         | means the General Index of Retail Prices All Items measured by CHAW and published each month or: <ul style="list-style-type: none"> <li>(a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or</li> <li>(b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;</li> </ul> |
| <b>“Route Clearance Charge”</b>      | means, in respect of a particular Train Slot a charge payable in respect of works identified in paragraph 1.2 of Part 5 as calculated in accordance with that paragraph;   |
| <b>“route type k”</b>                | means route type k as identified by type of electrification (OLE or DC) in the <a href="#">Charter Trains</a> Track Usage Price List;  |
| <b>“Slot Charge”</b>                 | means the charge payable <del>in respect of a particular Service</del> <a href="#">for a category of a vehicle i for journey type j</a> as established in accordance with paragraph 4.1 of Part 2;   |
| <b>“tariff band”</b>                 | <del>means the tariff zone and time band in which the train in question is operated;</del>   |
| <b>“Tolerance Factor”</b>            | <del>means the relevant Tolerance Factor as set out in appendix 4 of the Traction Electricity Rules;</del>   |
| <b>“Track Charge”</b>                | means the Variable Usage Charge, Slot Charge, Cancellation Charge and where the context admits, Capacity Charge, Traction Electricity Charge and Electrification Asset Usage Charge;   |

|   |   |
|---|---|
| <b>“Track Usage Price List”</b>                                       | means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013;  |
| <b>“Traction Electricity Charge”</b>                                  | means the charge calculated in accordance with paragraph 6 of Part 2;   |
| <b>“Traction Electricity Consumption Rates List”</b>                  | means the document entitled “Traction Electricity Consumption Rates List” published by Network Rail on or about 20 December 2013 and specifying freight, <u>charter</u> and passenger traction electricity consumption rates <del>by category i</del> ;   |
| <del>“train category”</del> <b><u>“Traction Electricity Rate”</u></b> | <p>means train type i using the relevant Electricity Type (AC/DC); <u>means such amount in (£ per kWh) as Network Rail shall specify for the purpose of each Relevant Year as reflecting, so far as reasonably practicable, the actual cost to Network Rail of providing traction electricity to the Train Operator, and subject to:</u></p> <p style="margin-left: 40px;">(a) <u>the agreement of the Train Operator to those amounts, such agreement not to be unreasonably withheld or delayed; and</u></p> <p style="margin-left: 40px;">(b) <u>the consent of ORR;</u></p> |
| <b>“Train Consist Data”</b>   | means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;   |
| <b>“Train Mile”</b>   | in relation to a train, means a mile travelled by that train on the Network and includes loaded Train Miles and ECS Train Miles; and  |
| <b>“Variable Usage Charge”</b>  | means a variable charge, calculated in accordance with paragraph 3.1 of Part 2; <u>and</u>  |
| <b><u>“Vehicle Mile”</u></b>  | <u>in relation to a railway vehicle, means a mile travelled by that vehicle on the Network.</u>   |

## PART 2: TRACK CHARGES

### 1 Principal formula

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

$$\frac{\cancel{T_s} = \cancel{V_s} + \cancel{S_s} + \cancel{E_t} + \cancel{EAV_s} + \cancel{C_s} + \cancel{K_s}}{T_t = V_t + S_t + E_t + EAV_t + C_t + K_t}$$

where:

- $T_s T_t$  means Track Charges for the Relevant Service s Year t;
- $V_s V_t$  means an amount in respect of the Variable Usage Charge for the Relevant Service s Year t which is derived from the formula in paragraph 3.1;
- $S_s S_t$  means an amount in respect of the Slot Charge for the Relevant Service s Year t which is derived from the formula in paragraph 4.1;
- $E_s E_t$  means an amount in respect of the Traction Electricity Charge for the Relevant Service s Year t which is derived from the formula in paragraph 6.1;
- $EAV_s EAV_t$  means an amount in respect of the Electrification Asset Usage Charge for Relevant Year t which is derived from the formula in paragraph 7.1;
- $C_s C_t$  means an amount in respect of the Cancellation Charge (whether of a positive or negative value) for the Relevant Service s Year t calculated in accordance with the provisions in paragraph 5.1; and
- $K_s K_t$  means an amount in respect of the Capacity Charge for the Relevant Service s Year t which is derived from the formula in paragraph 8.

**2 Not used**

**3 Variable Usage Charge**

**3.1 Variable Usage Charge**

For the purposes of paragraph 1, the term  $V_s V_t$  means an amount in respect of the Variable Usage Charge for the Relevant Service s Year t (including any light locomotive movements) which is derived from the following formula:

$$V_s = \sum V_{rit} \cdot UV_{ris}$$

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

where:

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

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

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

where:

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

$RPI_{t-2}$  means the average value of the monthly figures of RPI for the 12 months up to and including the month of

December which is 16 months before the relevant 1 April; and  
 TRUEUP<sub>t-1</sub> is derived from the following formula:

$$\text{TRUEUP}_{t-1} = \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} - \frac{(RPI_{t-2} - RPI_{t-3})}{RPI_{t-3}}$$

where:

RPI<sub>t-1</sub> has the meaning set out above;

RPI<sub>t-2</sub> has the meaning set out above; and

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

but so that in relation to the Relevant Year commencing on 1 April 2014,  $\forall_{\text{H}} V_{it}$  shall have, in respect of each Train Mile, the value set out in the Charter Trains Track Usage Price List; and in relation to the next following Relevant Year  $\forall_{\text{H}} V_{it-1}$  shall have the same value;

$\forall_{\text{H}} UV_{it}$  means the actual volume of usage (in Train Miles) for the Relevant Service-s Year t for category of vehicle type-i (referred to in the Charter Trains Track Usage Price List) operated by or on behalf of the Train Operator; and

$\Sigma$  means the summation across all relevant categories of vehicle types-i.

#### 4 Slot Charge

4.1 For the purposes of paragraph 1, the term  $S_s S_t$  means an amount in respect of the Slot Charge for the Relevant Service-s Year t which is derived from the following formula:

$$S_s = S_{ijt}$$

$$S_t = \sum S_{ijt} \bullet US_{ijt}$$

where:

$S_{ijt}$  means an amount in respect of the Slot Charge for a category of vehicle type-i for journey type j for Relevant Year t which is derived from the following formula:

$$S_{ijt} = S_{ijt-1} \bullet \left[ \left( 1 + \frac{RPI_{t-1} - RPI_{t-2}}{RPI_{t-2}} \right) \bullet (1 + \text{TRUEUR}_{-1}) \right]$$

where:

RPI<sub>t-1</sub> has the meaning set out in paragraph 3.1 above;

RPI<sub>t-2</sub> has the meaning set out in paragraph 3.1 above; and

TRUEUP<sub>t-1</sub> has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year commencing on 1 April 2014,  $S_{ijt}$  shall have, in respect of each Train Mile, the value set out in the Charter Trains Track Usage Price List; and in relation to the next following Relevant Year  $S_{ijt-1}$  shall have the same value.

$US_{ijt}$  means the actual number of journeys for Relevant Year t for category of vehicle i for journey type j (referred to in the Charter Trains Track Usage Price List) operated by or on behalf of the Train Operator; and:

$\Sigma$  means the summation across all categories of vehicle i for journey type j.

- 4.2 When a Train Operator Variation Request indicates a requirement for the Service to operate on more than one date, then, provided that all dates of operation fall within the same Timetable Period, Network Rail may levy and the Train Operator shall pay:
- (a) the Slot Charge as defined in paragraph 4.1 in respect of the first such Service; and
  - (b) for each subsequent Service the Slot Charge shall equal the Repeat Business Slot Charge set out in the Charter Trains Track Usage Price List.
- 4.3 When a Train Operator Variation Request is received by Network Rail on or before the Priority Date for the timetable in question, the Slot Charge  $S_{jt}$  shall equal zero.

## 5 Cancellation Charge

~~5.1 In~~

For the event purposes of a Network Rail paragraph 1, the term  $C_t$  means an amount in respect of the Cancellation or a Train Operator Cancellation the party cancelling the Service (the “Cancelled Service”) shall pay a cancellation charge,  $C_s$ , which shall be equivalent to:

~~10% of the Slot Charge for the Cancelled Service where notice of such cancellation Relevant Year t which is given more than 25 Working Days in advance of the Planned date of operation of the Cancelled Service;~~

~~50% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 20 but less than 26 Working Days in advance of the Planned date of the Cancelled Service;~~

~~75% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 15 but less than 20 Working Days in advance of the Planned date of the Cancelled Service;~~

~~85% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 5 but less than 15 Working Days in advance of the Planned date of the Cancelled Service; and~~

~~in all other cases the Slot Charge for the Cancelled Service.~~

## 6 Traction Electricity Charge

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

$$Ct = \sum \left[ \left( O_{yt} \cdot B_y \cdot S_{ijt} \right) - \left( N_{yt} \cdot B_y \cdot S_{ijt} \right) \right] \text{ ———}$$

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

where:

$E_{tmo}$

$O_{yt}$  means, in respect of cancellations notified by the Train Operator to Network Rail, the frequency of Cancellation Type y in Relevant Year t;

$N_{yt}$  means, in respect of cancellations notified by Network Rail to the Train Operator, the frequency of Cancellation Type y in Relevant Year t;

$B_y$  means Cancellation Percentage for Cancellation Type y.

$S_{ijt}$  means an amount calculated in accordance with paragraph 6.1.2 below;

$E_{tme}$  means an amount calculated in accordance with paragraph 6.1.3 below;

$E_{tmuAC}$  means an amount calculated in accordance with paragraph 6.1.4(a) below; and

$E_{tmuDC}$  means an amount calculated in accordance with paragraph 6.1.4(b) below.

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

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

*Calculation Slot Charge for a category of modelled consumption*

6.1.2  $E_{tme}$  vehicle i for journey type j for Relevant Year t which is derived from the following formula:

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

$$S_{ijt} = S_{ijt-1} \cdot \left[ \left( 1 + \frac{RPI_{t-1} - RPI_{t-2}}{RPI_{t-2}} \right) \cdot (1 + TRUEUR_{-1}) \right]$$

where:

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

$E_{tmog}$  is derived from the following formula:

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

where:

- $\Sigma$  — means the summation across all relevant train categories  $i$  (determined in accordance with paragraph 6.1.1 above) and tariff bands  $j$ , as appropriate;
- $C_i$  — means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category  $i$  shown in the Traction Electricity Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;
- $EF_{gjt}$  — means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area  $g$ , in tariff band  $j$  and in Relevant Year  $t$  as agreed or determined pursuant to paragraph 6.2; and
- $UE_{igt}$  — means the actual volume of usage (in electrified Train Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category  $i$ , in Geographic Area  $g$ , in tariff band  $j$  and in Relevant Year  $t$ , pursuant to this contract.

*Calculation of consumption using metered consumption data*

6.1.3  $E_{tme}$  is derived from the following formula:

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

where:

$\Sigma$  — means the summation across all Geographic Areas  $g$ , as appropriate;

$E_{tmeg}$  — is derived from the following formula:

$$E_{tmeg} = \Sigma [((CME_{igt} \bullet PF_i \bullet EF_{gjt}) - (RGB_{igt} \bullet PF_i \bullet EF_{gjt})) \bullet (1 + \delta_i)]$$

where:

$\Sigma$  — means the summation across all relevant train categories  $i$  (determined in accordance with paragraph 6.1.1 above) and tariff bands  $j$ , as appropriate;

$CME_{igt}$  — means the consumption of electricity (in kWh) by trains operated by or on behalf of the Train Operator in train category  $i$ , as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area  $g$  and in Relevant Year  $t$ ;

$PF_i$  — means the Power Factor Correction for train category  $i$ ;

$EF_{gjt}$  — means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area  $g$ , in tariff band  $j$  and in Relevant Year  $t$  as agreed or determined pursuant to paragraph 6.2;

$RGB_{igt}$  — means the electricity (in kWh) generated by braking by railway vehicles operated by or on behalf of the Train Operator in train category  $i$ , as measured by the On-Train Meters or as otherwise determined in accordance with the

Traction Electricity Rules, in Geographic Area g and in Relevant Year t; and

$\delta_i$  means the Tolerance Factor for train category i.

6.1.4—

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

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

where:

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

$E_{tmugAC}$  is derived from the following formula:

$$E_{tmugAC} = \Sigma [(CME_{igtAC} \bullet PF_i \bullet EF_{gjt}) \bullet (1 + \delta_i)] \bullet \lambda_{ACg}$$

where:

$\Sigma$  means the summation across all relevant train categories i (determined in accordance with paragraph 6.1.1 above) and tariff bands j, as appropriate;

$CME_{igtAC}$  means the consumption of electricity (in kWh) from the AC System by trains operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

$PF_i$  means the Power Factor Correction for train category i;

$EF_{gjt}$  means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 6.2;

$\delta_i$  means the Tolerance Factor for train category i; and

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

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

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

where:

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

$E_{tmugDC}$  is derived from the following formula:

$$E_{tmugDC} = \Sigma [(CME_{igtDC} \bullet EF_{gjt}) \bullet (1 + \delta_i)] \bullet \lambda_{DCg}$$

where:

$\Sigma$  means the summation across all relevant train categories i (determined in accordance with paragraph 6.1.1 above) and tariff bands j, as appropriate;

$CME_{igtDC}$  means the consumption of electricity (in kWh) from the DC System by trains operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

$EF_{gjt}$  means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of



the Train Operator in Geographic Area *g*, in tariff band *j* and in Relevant Year *t* as agreed or determined pursuant to paragraph 6.2;

$\delta_i$  means the Tolerance Factor for train category *i*; and

$\lambda_{DCg}$  means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area *g*.

*Strategy for the procurement of traction electricity*

6.2—At least three months prior to the start of each Relevant Year commencing on or after 1 April 2014, Network Rail shall consult with the Train Operator regarding a strategy for the procurement of traction electricity for the Train Operator in respect of that Relevant Year, and:

(a)—if Network Rail and the Train Operator agree on a strategy for the procurement of traction electricity, Network Rail will procure traction electricity for the Train Operator in accordance with that agreed strategy;

or

(b)—if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and the Train Operator has, during its consultation with Network Rail under this paragraph 6.2, notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity and it is possible for Network Rail, acting reasonably, to implement that strategy, Network Rail will procure traction electricity for the Train Operator in accordance with the traction electricity procurement strategy so notified to Network Rail by the Train Operator; or

(c)—if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and either (A) the Train Operator has not notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity during its consultation with Network Rail in accordance with this paragraph 6.2, or (B) it is not possible for Network Rail, acting reasonably, to implement the Train Operator's preferred strategy for the procurement of traction electricity as notified to Network Rail during its consultation in accordance with this paragraph 6.2, Network Rail will:

(i)—acting reasonably, determine the procurement strategy for traction electricity for the Train Operator, having regard to whatever information, if any, the Train Operator has supplied to Network Rail during its consultation under this paragraph 6.2; and

(ii)—procure traction electricity for the Train Operator in accordance with that traction electricity procurement strategy.

*Actual cost of traction electricity*

6.3—Network Rail shall provide to the Train Operator within 30 days of the end of each Period in each Relevant Year, the actual cost of traction electricity consumed by railway vehicles operated by or on behalf of the Train Operator in the relevant Period against the budgeted amounts. Network Rail shall also provide to the Train Operator a provisional six month Volume Reconciliation by Geographic Area *g* before 30 October of each Relevant Year and a provisional

nine month Volume Reconciliation by Geographic Area g before 30 January of each Relevant Year.

RPI<sub>t-1</sub> has the meaning set out in paragraph 3.1 above;

RPI<sub>t-2</sub> has the meaning set out in paragraph 3.1 above; and

TRUEUP<sub>t-1</sub> has the meaning set out in paragraph 3.1 above.

but so that in relation to the Relevant Year commencing on 1 April 2014, S<sub>ijt</sub> shall have the value set out in the Charter Trains Track Usage Price List; and in relation to the next following Relevant Year S<sub>ijt-1</sub> shall have the same value; and

Σ means the summation across all categories of vehicle i for all journey types j and all Cancellation Types y.

## **6 Traction Electricity Charge**

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

$$E_t = TER_t \times TM_t \times TEC_t$$

where:

TM<sub>t</sub> means the total Train Miles for all trains operated by or on behalf of the Train Operator in Relevant Year t;

TEC<sub>t</sub> means the Traction Electricity Consumption Rate for Relevant Year t; and

TER<sub>t</sub> means the Traction Electricity Rate for Relevant Year t.

*Election to introduce ~~On-Train~~ on-train m Metering for a vehicle or vehicle type*

**6.42** (a) If the Train Operator wishes to propose the introduction of ~~On-Train-on-train m~~ on-train m Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.

(b) Any notice under sub-paragraph 6.42(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.

(c) Promptly following any response served by Network Rail under sub-paragraph 6.42(b), the parties shall endeavour to agree whether the

contract should be amended in connection with that proposal and, if so, the amendments.

- (d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 6.42(a), that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 6.42(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.
- (f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 6.4(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- (g) Where ORR determines the matter pursuant to sub-paragraph (f), it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

## 7 Electrification Asset Usage Charge

7.1 For the purposes of paragraph 1, the term  $EAV_t$  means an amount in respect of the Electrification Asset Usage Charge for electrification asset usage which is derived from the following formula:

$$EAV_s = \sum EV_{tk} \cdot UK_{tk}$$

$$EAV_t = \sum (EV_{tk} \cdot UV_{tk})$$

where:

$\Sigma$  means the summation across all route types;

$EV_{tk}$  means an amount in respect of the Electrification Asset Usage Charge per electrified Train Vehicle Mile on route type k for the Relevant Service s in Relevant Year t, where, in relation to the Relevant Year commencing on 1 April 2014,  $EV_{tk}$  shall have, in respect of each electrified Train Vehicle Mile on route type k, the value per electrified Train Vehicle Mile on route type k for the

Electrification Asset Usage Charge set out in the Charter Trains Track Usage Price List; and

~~UV<sub>tk</sub> means the actual number of electrified TrainVehicle Miles on route type k for the Relevant Service in Relevant Year t for all railway vehicles operated by or on behalf of the Train Operator, on route type k in Relevant Year t~~

### Price Variation

7.2 EV<sub>tk</sub> is derived from the following formula:

here: 
$$\frac{W}{R} EV_{tK} = EV_{tK-1} \cdot \left[ \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

Pit-1 has the meaning set out in paragraph 3.1 above;

RPI<sub>t-2</sub> has the meaning set out in paragraph 3.1 above; and

TRUEUP<sub>t-1</sub> has the meaning set out in paragraph 3.1 above,

but so that, in relation to the Relevant Year commencing on 1 April 2014, EV<sub>tk</sub> shall have, in respect of each electrified TrainVehicle Mile on route type k, the value per electrified TrainVehicle Mile on route type k for the Electrification Asset Usage Charge set out in the Charter Trains Track Usage Price List, and in relation to the next following Relevant Year EV<sub>tk-1</sub> shall have the same value.

## 8 Capacity Charge

For the purposes of paragraph 1, the term ~~K<sub>s</sub>~~ K<sub>t</sub> means an amount in respect of the Capacity Charge for the Relevant ~~Service s~~ Year t which shall be derived from the following formula:

$$K_s = \sum (K_{mf} \bullet TM_{mf}) + (K_w \bullet TM_w)$$

$$K_t = \sum (K_{mf} \bullet TM_{mf}) + (K_{wt} \bullet TM_{wt})$$

where:

Σ means the summation across all Services;

K<sub>mf</sub> means the Charter Capacity Rate in respect of Services operated during the period from Monday to Friday (both inclusive) and indexed in accordance with the following formula:

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

where:

RPI<sub>t-1</sub> has the meaning set out in paragraph 3.1 above;

RPI<sub>t-2</sub> has the meaning set out in paragraph 3.1 above; and

TRUEUP<sub>t-1</sub> has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year commencing on 1 April 2014, K<sub>mf</sub> shall have, in respect of each Train Mile, the value set out in

the List of Capacity Charge Rates; and in relation to the next following Relevant Year  $K_{mft-1}$  shall have the same value;

$TM_{mft}$  means Train Miles in respect of Services operated during the period from Monday to Friday (both inclusive);

$K_w$  means the Charter Capacity Rate in respect of Services operated on Saturday and/or Sunday, and indexed in accordance with the following formula:

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

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

where:

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

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

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

but so that in relation to the Relevant Year commencing on 1 April 2014,  $K_w, K_{mft}$  shall have, in respect of each Train Mile, the value set out in the List of Capacity Charge Rates; and in relation to the next following Relevant Year  $K_w, K_{mft-1}$  shall have the same value; and

$TM_w, TM_{mft}$  means Train Miles in respect of Services operated during the period from Monday to Friday (both inclusive);

$K_{wt}$  means the Charter Capacity Rate in respect of Services operated on Saturday and/or Sunday, and indexed in accordance with the following formula:

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

where:

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

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

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

but so that in relation to the Relevant Year commencing on 1 April 2014,  $K_{wt}$  shall have, in respect of each Train Mile, the value set out in the List of Capacity Charge Rates; and in relation to the next following Relevant Year  $K_{wt-1}$  shall have the same value; and

$TM_w$  means Train Miles in respect of Services operated on Saturday and/or Sunday.

9 Not used

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

- 10.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall inform Network Rail of the date or likely date from which it intends to do so.
- 10.2 No supplement to the Traction Electricity Consumption Rates List ~~or Track Usage Price List~~ shall have effect unless it has been:
- (a) agreed between the parties and ORR has consented to it; or
  - (b) determined by a relevant ADRR Forum and ORR has consented to it; or
  - (c) determined by ORR, following consultation with the parties.
- 10.3 Either the Train Operator or Network Rail shall be entitled to propose that:
- ~~(a) the Traction Electricity Consumption Rates List be supplemented to include a new service code, new service group or new train category;~~
  - ~~(b) the Track Usage Price List shall be supplemented to include a vehicle category which is not included in the list.~~
- 10.4 Any proposal of a kind referred to in paragraph 10.3 shall be made by notice to the other party and shall be accompanied by a specification in reasonable detail of the proposal and the reasons for it. The parties shall thereafter negotiate in good faith the necessary supplement to the list in question.
- 10.5 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 10.6 Where the parties agree to a supplement following a proposal under paragraph 10.3, they shall request ORR's consent to it and provide such information as ORR requires in order to decide whether to give its consent.
- 10.7 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 10.4, either party shall be entitled to refer the matter for resolution in accordance with the ADRR.
- 10.8 If the matter is referred for resolution under paragraph 10.7, the parties shall agree, in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall reach a decision which is fair and reasonable to them, having regard to:
- (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
  - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.
- 10.9 The parties shall procure that any determination by a relevant ADRR Forum shall be delivered to ORR within seven days after the date of the determination.
- 10.10 Following notification under paragraph 10.6 or 10.9 ORR may either consent to the supplement agreed by the parties or determined by the relevant ADRR Forum or may, having consulted the parties, determine a different supplement.
- 10.11 A supplement to the Traction Electricity Consumption Rates List ~~or Track Usage Price List~~ shall have effect from such date as ORR shall determine by notice to the parties.
- 10.12 Following ORR's consent or determination under paragraph 10.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 10.11 above as applicable; and
  - (b) within 28 days of the date of ORR's consent or determination:
    - (i) issue any adjusting invoice or credit note to the Train Operator; and

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

## 11 Payment of Track Charges and Other Sums Due under the Contract

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

- (a) The Train Operator shall pay or procure the payment to Network Rail of:
  - (i) the Variable Usage Charge;
  - (ii) the Traction Electricity Charge;
  - (iii) the Capacity Charge;
  - (iv) the Electrification Asset Usage Charge
  - (v) the Slot Charge;
  - (vi) the Cancellation Charge; and
  - (vii) ~~and~~ any other sums which have fallen due in accordance with any provision of this contract,

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

- (b) ~~Any invoice issued by Network Rail under paragraph 18.5 of the Traction Electricity Rules (related to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.~~ Not used.

### 11.2 *Train Consist Data*

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

### 11.3 *Invoices and right to object to invoices*

- (a) Not used.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Track Charges in respect of any and all train movements operated by the Train Operator during that Period based on:
  - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed;
  - (ii) not used; and
  - (iii) not used.

Each such invoice will be payable in accordance with the provisions of paragraph 11.1.

- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data on which the whole or any part of the Track Charges included in the relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("notice of objection"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.



- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within fourteen days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 11.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Track Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) ~~The actual volume of usage used to calculate any supplementary amount payable under paragraph 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 11.3(d) on or before 90 days after the end of Relevant Year t.~~ **Not**
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 11.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

**11.4 Unrepresentative Train Consist Data**  
Not used.

**11.5 Disputed amounts repayment and interest rate**

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 11.5(a) that it disputes part of any invoiced amount:
  - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
  - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

**PART 3: NOT USED**

**PART 3A: NOT USED**

**PART 4: NOT USED**



## PART 5:

[This Part to be used for further additional items where payments due]

### 1 Specific Additional Charges

#### 1.1 Non-Core Operational Charge

The Train Operator shall, in respect of any ~~Relevant Service~~ (and its associated Ancillary Movements) that it wishes to operate wholly or partly outside of the Core Operational Period, or wholly or partly on routes which form part of the Network over which passenger services do not operate, pay to Network Rail a Non-Core Operational Charge. The Non-Core Operational Charge applicable to any such ~~Relevant Service~~ or Ancillary Movement shall consist of such reasonable out-of-pocket costs and expenses (including any costs and expenses in respect of additional staff reasonably required to facilitate that ~~Relevant Service~~ or Ancillary Movement) which Network Rail will incur by reason of the operation of that ~~Relevant Service~~ or Ancillary Movement, being costs and expenses which Network Rail, but for the operation of that ~~Relevant Service~~ or Ancillary Movement, would not have incurred, but only to the extent that, on or prior to accepting the Train Operator Variation Request for the ~~Relevant Service~~ or Ancillary Movement, Network Rail provides to the Train Operator:

i.(a) details, reasonably satisfactory to the Train Operator, of those items in respect of which Network Rail will, or is likely to, levy the Non-Core Operational Charge; and

ii.(b) an estimate, prepared in good faith, of the likely amount of such costs and expenses.

#### 1.2 Route Clearance Charge

Where any route clearance or investigative work is required as a result of a Train Operator Variation Request which involves in excess of checking the relevant equipment against the relevant sectional appendices for the routes concerned, Network Rail shall be entitled to charge the Train Operator its reasonable costs in carrying out such work (whether or not the Service, the subject of the Train Operator Variation Request, is operated) provided that:

1.7(a) Network Rail notifies the Train Operator of its intention to carry out such work and obtains the Train Operator's consent (failing receipt of which within a reasonable time Network Rail shall be entitled to reject the Train Operator Variation Request in question) before incurring such costs;

1.8(b) Network Rail shall not be entitled to charge the Train Operator for its costs in obtaining information which it has already procured or should reasonably have procured to meet the requirements of Network Rail through its Rolling Stock Acceptance Board, whether or not in connection with rolling stock operated or to be operated by the Train Operator; and

1.9(c) Network Rail shall endeavour to keep the level of its reasonable costs to the minimum reasonably required.

## PART 6: SUPPLEMENTAL PROVISIONS

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

- (a) the amount of the Slot Charge levied in respect of ~~each Relevant Service~~ category of vehicle i and journey type j;
- (b) the rate of Variable Usage Charge and the relevant number of Train Miles applicable to ~~vehicles for each Relevant Service so charged~~ category of vehicle i;
- (c) the rate of Traction Electricity Charge, if any, and the number of Train Miles ~~comprised in units for each Relevant Service~~;
- (d) the amount of the Cancellation Charge, if any, levied in respect of ~~each Service~~ category of vehicle i and journey type j;
- (e) the rate of the Electrification Asset Usage Charge, if any, on route type k and the number of ~~Train~~ electrified Vehicle Miles ~~comprised in units for each Relevant Service~~ on route type k;
- (f) ~~the amount of any sum S1<sub>tes</sub> and/or S2<sub>tes</sub> payable as provided in paragraph 18 of the Traction Electricity Rules~~ NOT USED;
- (g) the amount of any sum ~~K<sub>s</sub>~~ K<sub>t</sub> payable as provided in paragraph 8 of Part 2; and
- (h) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

## **PART 7: FUTURE ACCESS CHARGES REVIEWS**

### **1 General**

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2019 or such later date as may be specified in that review; and
- (b) not used.

### **2 Not used**

### **3 Interpretation**

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

## **PART 8: NOT USED**

|  
**APPENDIX 7A – NOT USED**

**APPENDIX 7B – NOT USED**

**APPENDIX 7C – NOT USED**

~~APPENDIX 7D – CATEGORIES OF METERED TRAINS FOR THE  
PURPOSES OF PARAGRAPH 6.1.1 O~~

# ANNEX 2: NETWORK RAIL MARK-UP OF SCHEDULE 8

## PR13 IMPLEMENTATION – PROPOSED SCHEDULE 8 FOR CHARTER OPERATORS

### SCHEDULE 8: PERFORMANCE REGIME

#### 1 Interpretation

##### 1.1 Definitions

In this Schedule 8 and its Appendix 8A, unless the context requires otherwise -

**“100 Train Operator Miles”** means the distance travelled by the Services operated by the Train Operator on the Network in any Period as recorded in Network Rail’s billing systems (unless there is a manifest error in such figure), divided by 100;

**“Adjusted Train Operator Benchmark”** means the Train Operator Benchmark as adjusted in accordance with paragraph 8.1.7;

**“Adjustment Fraction”** means the number of Periods or parts of a Period in the first or final Financial Year, divided by 13;

**“Applicable Timetable”** means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22.00 hours on the day prior to that day, and which is applicable to the Service or other trains;

**“Cancellation”** means, in respect of any Service, the failure to operate at all and “Cancelled” shall be construed accordingly;

**“Charter Service Variation Sum”** means, in respect of paragraphs 3.4 and 4.4, the amount specified in Appendix 8A as the Charter Service Variation Sum;

**“Diversion”** means a Service which operates but which is diverted off its Planned route and for these purposes, running on different lines on the same route shall not constitute such a Diversion;

**“ETCS”** means the European Train Control System;

**“Failure to Stop”** means a Service which, whether or not it is the subject of a Diversion, fails to call at one or more of the intermediate stations at which it is Planned to call;

**“Financial Year”** means a year commencing at 0000 hours on 1 April and ending immediately before 0000 hours on the next succeeding 1 April save that:

- (a) the first such period shall commence on the date upon which all the provisions of this contract come into effect in accordance with Clause 3; and

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|  | (b) the last such period shall end on the Expiry Date;   |
| <b>“Initial Planned Service Incident Cap Notice”</b> | has the meaning ascribed to it in paragraph 9.1.1;   |
| <b>“Interim Statement”</b>                           | means a written summary showing, in respect of Network Rail performance, the information required under paragraph 3.5 and, in respect of Train Operator performance, the information required under paragraph 4.5;   |
| <b>“Joint Cancellation Sum”</b>                      | means, in the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, the amount specified in Appendix 8A as the Joint Cancellation Sum for that Planned Service Cancellation;   |
| <b>“Minutes Delay”</b>                               | means the number of minutes of delay in respect of a Trigger of a Recording Point calculated in accordance with paragraph 5;   |
| <b>“Network Rail Annual Cap”</b>                     | means the Network Rail Annual Cap specified in Appendix 8A, as adjusted in accordance with paragraph 7 and paragraph 8.2 of this Schedule 8, save that in respect of the first and last Financial Year, the Network Rail Annual Cap shall be that specified in Appendix 8A, multiplied by the Adjustment Fraction; |
| <b>“Network Rail Benchmark” or “NRB”</b>             | means the Network Rail Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, <u>as specified in Appendix 8A;</u>   |
| <b>“Network Rail Cancellation Sum”</b>               | means, in the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, the amount specified in Appendix 8A as the Network Rail Cancellation Sum for that Planned Service Cancellation;   |
| <b>“Network Rail Payment Rate”</b>                   | means, in respect of a Planned Service, the rate, expressed as pounds per NR Performance Minute, specified in Appendix 8A as the Network Rail Payment Rate for that Planned Service (as adjusted in accordance with paragraph 7);  |
| <b>“NR Performance Minute”</b>                       | has the meaning set out in paragraph 3.1;  |
| <b>“Performance Sum”</b>                             | means an amount for which Network Rail or the Train Operator is liable under paragraphs 3 or 4 following a Period in relation to Minutes Delay in that Period and the preceding Periods, as adjusted in accordance with paragraph 8;   |
| <b>“Period”</b>                                      | means each consecutive period of 28 days during the term of this 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 seven days on reasonable prior notice from Network Rail to the Train Operator;           |

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| <b>“Planned”</b>                             | means entered into the Applicable Timetable;  |
| <b>“Planned Incident”</b>                    | means an incident described as such in paragraph 6.6;   |
| <b>“Planned Service”</b>                     | means a passenger carrying Service (excluding any Ancillary Movement) of the Train Operator under this contract which is entered in the Applicable Timetable;   |
| <b>“Planned Service Cancellation”</b>        | means the Cancellation or Termination of a Planned Service;   |
| <b>“Planned Service Incident Cap”</b>        | means, in respect of a Planned Service (and its associated Ancillary Movements) operated by or on behalf of the Train Operator, the Planned Service Incident Cap selected by the Train Operator in accordance with paragraph 9.1;   |
| <b>“Planned Service Incident Cap Notice”</b> | has the meaning ascribed to it in paragraph 9.1.2;  |
| <b>“Recording Point”</b>                     | means a location at which Network Rail records the times at which trains arrive, pass or depart that location;  |
| <b>“Recovery Time”</b>                       | means additional time incorporated into the Applicable Timetable to allow a train to regain time lost earlier in its journey as a result of a Restriction of Use;   |
| <b>“Restriction of Use”</b>                  | means any restriction of use of all or any part of the Network for the purposes of, or in connection with, inspection, maintenance, renewal or repair of the Network or any other works carried out in relation to the Network or any other railway asset or any other works in relation to it;   |
| <b>“RPI”</b>                                 | has the meaning given to it in Schedule 7;  |
| <b>“Service Characteristics”</b>             | means, in relation to any Service, the characteristics of that Service specified in any Train Operator Variation Request;   |
| <b>“Service Incident”</b>                    | means an incident which arises from, is caused by or results from a Planned Service or any of its associated Ancillary Movements;   |
| <b>“Termination”</b>                         | means, in respect of any Service, the operation of such train in such a way that it – <ul style="list-style-type: none"> <li>(a) fails to reach its Planned final destination station; or</li> <li>(b) commences at a point other than its Planned station start point and does not call at its Planned station start point</li> </ul> and which is not a Cancellation; |
| <b>“Third Party Train Cancellation”</b>      | means the Cancellation or Termination of any train excluding any Ancillary Movements and excluding any Planned Service;   |
| <b>“Third Party User”</b>                    | means the operator (including the Train Operator) of any train excluding any Ancillary Movements and excluding any Planned Service;   |

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| <b>“Third Party User Cancellation Minutes”</b> | means, in respect of a Third Party Train Cancellation, the number of minutes specified in Appendix 8A as the Third Party User Cancellation Minutes;  |
| <b>“TO Performance Minute”</b>                 | has the meaning set out in paragraph 4.1;  |
| <b>“Train Mile”</b>                            | has the meaning given to it in Schedule 7;   |
| <b>“Train Operator Annual Cap”</b>             | means the Train Operator Annual Cap specified in Appendix 8A, as adjusted in accordance with paragraph 7 and paragraph 8.2 of this Schedule 8, save that in respect of the first and last Financial Year, the Train Operator Annual Cap shall be that specified in Appendix 8A, multiplied by the Adjustment Fraction;   |
| <b>“Train Operator Benchmark” or “TOB”</b>     | means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as specified in Appendix 8A and adjusted in accordance with paragraph 8;  |
| <b>“Train Operator Payment Rate”</b>           | means, in relation to delay caused to a Third Party User, the rate, expressed as pounds per TO Performance Minute, specified in Appendix 8A (as adjusted in accordance with paragraph 7);  |
| <b>“Trigger”</b>                               | means the act of a train arriving at, passing or departing from a Recording Point;   |
| <b>“Week”</b>                                  | means a period of seven days beginning on Sunday and ending on the immediately following Saturday (both days inclusive), save that where that period of seven days would otherwise fall within two Periods (“Period A” and “Period B”) for the purposes of this Schedule each of the following shall constitute a Week – <ul style="list-style-type: none"> <li>(a) Sunday to the last day of Period A (both days inclusive); and</li> <li>(b) the first day of Period B to the immediately following Saturday (both days inclusive).</li> </ul> |

1.2 For the purposes of Schedule 8 events in respect of a Service shall be treated as occurring on the day on which the Service was Planned to depart from its point of origin.



## **2 General principles and performance information**

- 2.1 In respect of Cancellation, this Schedule 8 shall only apply to any Planned Service Cancellation for which Network Rail is responsible or jointly responsible with the Train Operator and which occurs after 22:00 on the day before such Planned Service is due to run.
- 2.2 Each of the Train Operator and Network Rail shall use all reasonable endeavours to keep the other of them informed of any known or anticipated delay to, or Cancellation, Termination or Diversion of, Planned Services or any Ancillary Movements associated therewith.
- 2.3 Each of Network Rail and the Train Operator shall take reasonable steps to avoid and mitigate the effects of:
- (a) any incidents upon the Planned Services; and
  - (b) any Service Incident affecting other trains.
- 2.4 Network Rail shall use recordings made using the Performance Monitoring System for the purposes of this Schedule 8 including the times at which the Services and other trains Trigger Recording Points. Where appropriate Network Rail may require the Train Operator, in respect of Services only, to make the relevant entry, to record such times on the Performance Monitoring System. Network Rail and the Train Operator shall each comply with and be bound by the provisions of the Performance Data Accuracy Code referred to in Part B of the Network Code and the provisions of that Code shall apply to this contract. Accordingly, the provisions of this Schedule 8 concerning the recording of train performance information or which refer to information regarding train performance (including references to the time at which a train Triggers a Recording Point), and the rights and remedies of the Train Operator in respect of the same, shall be subject to and interpreted in accordance with the provisions of that Code.
- 2.5 In respect of each Trigger of a Recording Point Network Rail shall use its reasonable endeavours to record separately, as unexplained delay, those minutes of delay of three minutes or more included in Minutes Delay for which it is unable to identify the incident(s) which caused that delay. The Train Operator shall co-operate with Network Rail on request by providing all such information as it has in its possession regarding the identification of the incident(s) which caused that delay.
- 2.6 All unexplained delay recorded in accordance with paragraph 2.5 shall, notwithstanding the provisions of paragraph 6.3(b) be allocated between the parties as follows –
- (a) any Minutes Delay or Cancellation Minutes in respect of Service Incidents arising either off the Network or at stations at which the Train Operator's Services are Planned to call shall be included in the TO Performance Minutes; and
  - (b) any Minutes Delay to a Service or Planned Service Cancellation arising on the Network and which are not allocated to the Train Operator under this Schedule (including paragraph 2.6(a)) shall be included in the NR Performance Minutes.
- 2.7
- (a) Network Rail shall provide to the Train Operator through the Performance Monitoring System as soon as reasonably practicable, and in any event no later than the following Working Day, the information recorded or provided to it under paragraphs 2.4 or 2.5.
  - (b) the Train Operator shall be deemed to have agreed the information recorded by Network Rail and Network Rail shall be deemed to have agreed the information recorded by the Train Operator except, in either case, to the extent that it has, within two clear Working Days of

the information being provided, notified the other that it disputes the information. Any such notification shall specify the reasons for the dispute, so as to assist resolution of the dispute. The parties shall endeavour to resolve each such dispute within two Working Days of its notification.

- 2.8 Within 5 Working Days of a Trigger occurring, Network Rail shall be entitled to re-allocate responsibility to the Train Operator for each minute of delay included in Minutes Delay where further information becomes available to Network Rail which would otherwise result in responsibility for the relevant incident being allocated to the Train Operator in accordance with paragraph 6.4. Paragraph 2.7(b) shall apply to the allocation of responsibility under this paragraph 2.8.
- 2.9 Network Rail shall have no liability to the Train Operator under the terms of this Schedule in respect of Minutes Delay to a Planned Service or a Planned Service Cancellation to the extent that it is caused, in either case, by that Planned Service being presented to Network Rail on the Network after the time Planned for such presentation. In such circumstances, Network Rail shall use its reasonable endeavours to facilitate the movement of the Planned Service as expeditiously as possible subject to
- (a) any access rights which it may have granted to third parties; and
  - (b) any Restrictions of Use of the Network in the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules.

### 3 Network Rail performance

- 3.1 The performance minutes allocated to Network Rail in respect of any Planned Service (the “**NR Performance Minutes**”) shall be equal to the sum of –
- (a) the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated responsibility under paragraphs 2.6(b) and 6.3; and/or
  - (b) 50% of the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated joint responsibility with the Train Operator under paragraph 6.5.

- 3.2.1 The NR Performance Minutes shall be converted into a per 100 Train Operator Miles figure (the “**Adjusted NR Performance Minutes**”) using the formula below:

$$\text{Adjusted NR Performance Minutes} = \frac{\text{NR Performance Minutes}}{100 \text{ Train Operator Miles}}$$

- 3.2.2 The Adjusted NR Performance Minutes calculated in accordance with paragraph 3.2.1 shall then be compared with the NRB and:

- (a) if the Adjusted NR Performance Minutes figure is less than NRB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$((\text{NRB} - \text{the Adjusted NR Performance Minutes}) \times \text{Network Rail Payment Rate}) \times \left( \frac{\text{CPCM}}{100} \right)$$

where:

CPCM means the total number of Train Miles operated by the Train Operator in the relevant Period;

- (b) if the Adjusted NR Performance Minutes figure exceeds NRB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$((\text{the Adjusted NR Performance Minutes} - \text{NRB}) \times \text{Network Rail Payment Rate}) \times \left( \frac{\text{CPCM}}{100} \right)$$

where CPCM has the meaning ascribed to it in paragraph 3.2.2(a); and

- (c) if the Adjusted NR Performance Minutes figure is equal to NRB, neither party shall be liable to the other for a Performance Sum under this paragraph 3.2.

- 3.3 In the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, Network Rail shall, in respect of that Planned Service be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Network Rail Cancellation Sum. In the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, then in respect of that Planned Service Network Rail shall be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Joint Cancellation Sum.

- 3.4 If a Planned Service is the subject of a Diversion or Failure to Stop due to a Service Incident for which Network Rail is allocated responsibility under paragraph 6.3 and, as a result, the Train Operator incurs, in relation to such Planned Service, additional costs which but for the Diversion or Failure to Stop it would not have incurred, Network Rail shall, in addition to any liability under paragraph 3.2, pay the Train Operator the Charter Service Variation Sum in respect of the Planned Service provided that the Train Operator shall have notified to and supplied Network Rail with evidence (to its reasonable satisfaction) of such costs on or before the end of the Period following the Period in which such Service Incident occurred.
- 3.5 Within five Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement showing in respect of each Planned Service which was Planned to depart from its point of origin during that Week and for which Network Rail is liable to make payment under this paragraph 3 either –
- (a) the Performance Sum calculated in accordance with paragraph 3.2;
  - or
  - (b) whether it is a Planned Service Cancellation for which Network Rail is liable to the Train Operator under paragraph 3.3.

Any unresolved dispute under paragraph 2.7 in relation to a Planned Service the subject of an Interim Statement shall be indicated as such on the Interim Statement. Within two Working Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

#### 4 Train operator performance

- 4.1 The performance minutes allocated to the Train Operator in respect of any Third Party User (the “**TO Performance Minutes**”) shall be calculated as follows:

$$\text{TO Performance Minutes} = (A + B) + (C + D)$$

where –

- A = the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated responsibility under paragraphs 2.6(a) and 6.4; and
- B = 50% of the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5;
- C = the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated sole responsibility under paragraphs 2.6(a) and 6.4, provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation; and
- D = 50% of the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5 provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation.
- 4.2 For the avoidance of doubt, in the event of a Planned Service Cancellation for which the Train Operator is allocated sole responsibility under paragraph 6.4, then in respect of that Cancellation the Train Operator shall only be liable to pay Network Rail the applicable charge under paragraph 5.1 of Part 2 of Schedule 7 and in the event of a Planned Service Cancellation for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5, then in respect of that Planned Service the Train Operator shall be liable to pay Network Rail 50% of the applicable charge under Schedule 7.
- 4.3.1 For the purposes of this paragraph 4.3, the TO Performance Minutes arising in respect of a Planned Service (and its associated Ancillary Movements) shall be capped at the Planned Service Incident Cap, so that any such minutes in excess of the Planned Service Incident Cap shall be disregarded.
- 4.3.2 The TO Performance Minutes shall be converted into a per 100 Train Operator Miles figure (the “**Adjusted TO Performance Minutes**”) using the formula below:
- $$\text{Adjusted TO Performance Minutes} = \frac{\text{TO Performance Minutes}}{100 \text{ Train Operator Miles}}$$
- 4.3.3 The Adjusted TO Performance Minutes calculated in accordance with paragraph 4.3.2 shall then be compared with the TOB and:

- (a) if the Adjusted TO Performance Minutes figure is less than TOB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$((\text{TOB} - \text{the Adjusted TO Performance Minutes}) \times \text{Train Operator Payment Rate}) \times \left( \frac{\text{CPCM}}{100} \right)$$

where:

CPCM means the total number of Train Miles operated by the Train Operator in the relevant Period;

- (b) if the Adjusted TO Performance Minutes figure exceeds TOB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$((\text{the Adjusted TO Performance Minutes} - \text{TOB}) \times \text{Train Operator Payment Rate}) \times \left( \frac{\text{CPCM}}{100} \right)$$

where CPCM has the meaning ascribed to it in paragraph 4.3.3(a); and

- (c) if the Adjusted TO Performance Minutes figure is equal to TOB, neither party shall be liable to the other for a Performance Sum under this paragraph 4.3.

4.4 If –

- (a) any service operated by a Third Party User is the subject of a Diversion or Failure to Stop but does not become a Third Party Train Cancellation for which Third Party User Cancellation Minutes are allocated to the Train Operator under paragraph 4.1; or
- (b) Network Rail has to postpone a Restriction of Use or has to keep open any part of the Network beyond the time at which such part of the Network is generally open to passenger carrying movements due to a Service Incident for which the Train Operator is allocated responsibility under paragraph 6.4 and, as a result, Network Rail incurs additional costs which, but for the Service Incident it would not have incurred, the Train Operator shall, in addition to any liability under paragraph 4.2, pay Network Rail the Charter Service Variation Sum in respect of the Planned Service provided that Network Rail shall have notified to and supplied the Train Operator with evidence (to its reasonable satisfaction) of such costs on or before the end of the Period following the Period in which such Service Incident occurred.

4.5 Within five Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement listing all Service Incidents during that Week for which the Train Operator is allocated responsibility under paragraph 6.4 or joint responsibility with Network Rail under paragraph 6.5 and showing, for each such Service Incident, the TO Performance Minutes. Any unresolved dispute under paragraph 2.7 in relation to any such Service Incident shall be indicated as such on the Interim Statement. Within two Working Days of receipt of the Interim Statement the

Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

## **5 Calculation of minutes delay**

- 5.1 Subject to paragraph 5.2 the Minutes Delay for a Planned Service in respect of a Trigger of a Recording Point shall be equal to –
- (a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train so Triggers the Recording Point is later than the time at which that train is Planned so to Trigger the Recording Point; and
  - (b) in respect of each other recorded Trigger by a train, the lesser of –
    - (i) the number of minutes in respect of the Trigger calculated as in paragraph 5.1(a) above; and
    - (ii) the greater of  $((A1-A2) + B)$  and zerowhere –
    - A1 is the number of minutes, between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);
    - A2 is the Planned time between such Triggers; and
    - B is any Recovery Time between such Triggers.
- 5.2 The Minutes Delay calculated in accordance with paragraph 5.1 shall be allocated to the incident(s) causing those Minutes Delay as described in paragraph 6. Any minutes of delay which are included in any Minutes Delay and which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall for the purposes of this Schedule 8 be deemed to be zero.



## **6 Allocation of responsibility**

- 6.1 For the purposes of this Schedule 8 responsibility for each minute of delay included in Minutes Delay, each Third Party Train Cancellation, each Diversion, each Failure to Stop and each Planned Service Cancellation shall be allocated according to the responsibility for the incident which caused such Minutes Delay, Third Party Train Cancellation, Diversion, Failure to Stop or Planned Service Cancellation as established in accordance with the following provisions of this paragraph 6.
- 6.2 In assessing the causes of any Minutes Delay, Third Party Train Cancellation, Diversion, Failure to Stop or Planned Service Cancellation there shall be taken into account all incidents contributing thereto including –
- (a) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents contributing thereto;
  - (b) where a train is affected by the cancellation of or delay to an Ancillary Movement, the incident(s) giving rise to that cancellation or delay; and
  - (c) where a Restriction of Use overruns, due to the start of such Restriction of Use being delayed by a late running train (including a Planned Service or an Ancillary Movement associated therewith), the incident(s) giving rise to that late running.
- 6.3 Subject to paragraph 6.5, Network Rail shall be allocated responsibility for an incident other than a Planned Incident if that incident is –
- (a) caused by breach by Network Rail of any of its obligations under this contract or any of its obligations in its safety authorisation which are relevant to the operation of the Services;
  - (b) caused by failures of or delays to Services arising on the Network which are not allocated to the Train Operator under this contract; or
  - (c) caused by acts or omissions of Network Rail's staff or Network Rail's contractors in breach of this contract.
- 6.4 Subject to paragraph 6.5, the Train Operator shall be allocated responsibility for an incident other than a Planned Incident if that incident is –
- (a) caused by breach by the Train Operator of any of its obligations under this contract or any of its obligations in its safety certificate which are relevant to the operation of the Services;
  - (b) caused by circumstances within the control of the Train Operator (whether or not the Train Operator is at fault) in its capacity as an operator of trains under this contract; or
  - (c) caused (whether or not the Train Operator is at fault) by any defect in or other failure by the Specified Equipment to comply with the **Planned** Service Characteristics of a Service whether or not such Specified Equipment is owned by the Train Operator; or
  - (d) caused by acts, or omissions of the Train Operator's staff, customers, contractors (including any associates or associate sub-contractors of the Train Operator) in connection with this contract, or passengers using the Services; or
  - (e) caused by circumstances arising –
    - (i) off the Network and which are not caused by Network Rail in breach of its obligations under this contract; or
    - (ii) in connection with the operation of any station, light maintenance depot or other facility to which the Train Operator has been granted access for the purpose of the operation of the relevant Service; or
    - (iii) under a connection agreement to which Network Rail is a party in relation to a light maintenance depot or other facility referred to under (ii) above.

- 6.5 Network Rail and the Train Operator shall be allocated joint responsibility for –
- (a) any incident caused by or in connection with any incident arising at or in a station which is not within the reasonable control of either party; or
  - (b) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 6.3 or 6.4.
- 6.6 An incident in connection with a Restriction of Use shall be treated as a Planned Incident to the extent that there is Recovery Time in respect of that Restriction of Use incorporated in the Applicable Timetable.

## 7 Payment terms and supplementary provisions

- 7.1.1 The aggregate of any and all sums for which each party is liable under this Schedule in relation to Planned Services which were Planned to depart from their point of origin during a Period ~~and which had been agreed under paragraph 7.1.1~~ shall be set off against each other and the balance, if any, shall be invoiced by Network Rail to the Train Operator or, as the case may be, shall be the subject of a credit note issued by Network Rail to the Train Operator within 14 days after the end of the Period and shall be payable within 28 days after the end of the Period.
- 7.1.2 In respect of any Financial Year, the aggregate liability of Network Rail to make balance payments to the Train Operator under ~~this~~ paragraph 7.1.1 shall not exceed the Network Rail Annual Cap.
- 7.1.3 In respect of any Financial Year, the aggregate liability of the Train Operator to make balance payments under ~~this~~ paragraph 7.1.1 shall not exceed the Train Operator Annual Cap.
- 7.1.4 Where any amount which is the subject of this Schedule is in dispute –
- the undisputed amount shall be accounted for in accordance with paragraph 7.1.1 (and shall be subject to set off accordingly);
  - the disputed balance (“disputed balance”) shall be accounted for in the calculations made under paragraph 7.1.1 for the Period in which the dispute is resolved or otherwise determined (and shall be subject to set off accordingly); and
  - the disputed balance shall carry interest (accruing daily and compounded monthly) at the Default Interest Rate from the date on which the disputed balance would but for such dispute have been due to be so accounted for until the date of such account.
- 7.2 On 1 April in each Financial Year, commencing with 1 April 2015, each of the Network Rail Payment Rate, Train Operator Payment Rate, Network Rail Annual Cap and Train Operator Annual Cap, Network Rail Cancellation Sum, Joint Cancellation Sum and the Charter Service Variation Sum respectively which in each case applied in the immediately preceding Financial Year shall be adjusted by multiplying them by the Adjustment Factor (rounded to three decimal places) which shall have been calculated in accordance with the following formula –

Adjustment Factor =  
where – 
$$\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}}\right) \cdot (1 + TRUEUP_{t-1})$$

- RPI<sub>t-1</sub> means the average value of the monthly figures of RPI for the 12 months up to and including the month of December immediately preceding the relevant 1 April; and
- RPI<sub>t-2</sub> means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 16 months before the relevant 1 April.

- TRUEUP<sub>t-1</sub> = 
$$\frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} - \frac{(RPI_{t-2} - RPI_{t-3})}{RPI_{t-3}}$$
  
where:  
RPI<sub>t-3</sub> means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 28 months before the relevant 1 April.

- 7.3 Each Service shall be allocated an eight character code in the Performance Monitoring System (being a different code to that which applies to services of

the Train Operator operated under any other access agreement) to allow for monitoring of each Planned Service and its associated Ancillary Movements.

- 8 Reviews of Benchmarks, Network Rail Annual Cap and Train Operator Annual Cap**
- 8.1 *Adjustments to the Train Operator Benchmark*
- 8.1.1 In this paragraph 8:
- “**Baseline Annual Train Mileage**” means the amount determined in accordance with paragraph 8.2.3;
- “**Baseline Network Mileage**” means the amount determined in accordance with paragraph 8.1.3;
- “**Relevant Train Operator Mileage**” means, in respect of any Financial Year, the aggregate mileage travelled by all empty coaching stock and freight services operated by the Train Operator under this contract during that Financial Year as recorded in Network Rail’s billing systems (unless there is a manifest error in such figure);
- “**Third Party Train Mileage**” means the aggregate mileage travelled by all passenger services, empty coaching stock and freight services on the Network during the Financial Year in question as recorded in Network Rail’s billing systems (unless there is a manifest error in such figure), excluding the Relevant Train Operator Mileage;
- “**Total Actual Operated Mileage**” means, in respect of any Financial Year, the aggregate of:
- (a) the Relevant Train Operator Mileage for that Financial Year; and
- (b) the Third Party Train Mileage for that Financial Year;
- “**Traffic Growth**” means the amount (if any) by which the Actual Mileage *t* exceeds the Baseline Network Mileage, expressed as a percentage of the Baseline Network Mileage; and
- “**Traffic Reduction**” means the amount (if any) by which the Actual Mileage *t* is less than the Baseline Network Mileage, expressed as a percentage of the Baseline Network Mileage.
- 8.1.2 The Train Operator Benchmark that shall apply from 1 April in each Financial Year in relation to each Period in that Financial Year shall be the Train Operator Benchmark specified in Appendix 8A as adjusted in accordance with this paragraph 8.
- 8.1.3
- (a) The Baseline Network Mileage that shall apply from 1 April in each Financial Year shall be the Total Actual Operated Mileage for Financial Year 2012/2013, as specified in Appendix 8A, unless it is adjusted in accordance with paragraph 8.1.3(b).
- (b) If, in accordance with paragraph 8.1.6, it is determined or agreed that an Adjusted Train Operator Benchmark is required, then the Baseline Network Mileage for (i) Financial Year *t*+1 and (ii) each subsequent Financial Year until any further adjustment is made to the Train Operator Benchmark in accordance with paragraph 8, shall be the Actual Mileage *t* for the Financial Year *t* in which the Traffic Growth or Traffic Reduction (as the case may be) which gave rise to the requirement for an Adjusted Train Operator Benchmark occurred.
- 8.1.4 Within 28 days after the last day of each Financial Year (“**Financial Year *t***”), Network Rail shall determine:
- (a) the Total Actual Operated Mileage for Financial Year *t* (the “**Actual Mileage *t***”); and

- (b) the difference (whether positive or negative) between the Actual Mileage t and the Baseline Network Mileage, in each case expressed as a percentage of the Baseline Network Mileage.

8.1.5 Promptly (and in any event, within 7 days) following determination, in accordance with paragraph 8.1.4, of the Traffic Growth or Traffic Reduction (as the case may be), Network Rail shall:

- (a) notify the Train Operator (at the same time as notifying any other operators whose access agreement in relation to track includes a similar provision to this paragraph 8) in writing of:
  - (i) the Actual Mileage t;
  - (ii) the Baseline Network Mileage;
  - (iii) Network Rail's calculation of the Traffic Growth or Traffic Reduction (as the case may be) in accordance with paragraph 8.1.4(b); and
  - (iv) Network Rail's determination of the Adjusted Train Operator Benchmark;
- (b) provide to the Train Operator (at the same time as providing to any other operators whose access agreement in relation to track includes a similar provision to this paragraph 8) such background data and workings as may reasonably be required for a proper understanding of Network Rail's calculations and determinations under this paragraph 8; and
- (c) confirm to the Train Operator (at the same time as confirming to any other operators whose access agreement in relation to track includes a similar provision to this paragraph 8) in writing that the same Adjusted Train Operator Benchmark shall apply to any other operators whose access agreement in relation to track includes a similar provision to this paragraph 8.

8.1.6

- (a) Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information, notification and confirmation from Network Rail required to be provided pursuant to paragraph 8.1.5, the Train Operator shall notify Network Rail in writing whether it agrees or disagrees with Network Rail's determination under paragraph 8.1.5(a)(iv).
- (b) If, within 28 days of despatch by Network Rail of the information, notification and confirmation from Network Rail required to be provided pursuant to paragraph 8.1.5, Network Rail has not received written notification from either (i) the Train Operator and/or (ii) any other train operator whose access agreement in relation to track includes a similar provision to this paragraph 8, informing Network Rail that the Train Operator and/or such other train operator (as the case may be) disagrees with Network Rail's determination pursuant to paragraph 8.1.5(a)(iv), then Network Rail shall notify ORR and the Train Operator, and the Train Operator Benchmark shall be adjusted in accordance with paragraph 8.1.7.
- (c) If, within 28 days of despatch by Network Rail of the information, notification and confirmation from Network Rail required to be provided pursuant to paragraph 8.1.5, Network Rail has received written notification from either (i) the Train Operator and/or (ii) any other

operator whose access agreement in relation to track includes a similar provision to this paragraph 8, informing Network Rail that the Train Operator and/or such other train operator (as the case may be) disagrees with Network Rail's determination pursuant to paragraph 8.1.5(a)(iv), then Network Rail shall notify ORR and the Train Operator, and the matter shall be referred for resolution in accordance with the ADRR save that the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall (i) have regard to any relevant criteria and/or policy statement most recently issued by ORR and/or any guidance issued by ORR in relation to the matter referred for resolution and (ii) set out in its determination the reasons for that determination.

- (d) The parties acknowledge and agree that any adjustment to the Train Operator Benchmark under this paragraph 8 must also apply to all other operators whose access agreement in relation to track includes a provision similar to this paragraph 8 and, accordingly, each party agrees to participate in any referral for resolution under paragraph 8.1.6(c), and to be bound by the determination, even if, either:
  - (A) pursuant to paragraph 8.1.6(a), the Train Operator has notified Network Rail that it agrees with Network Rail's determination notified pursuant to paragraph 8.1.5(a)(iv); and/or
  - (B) the determination of the relevant ADRR Forum differs from Network Rail's determination pursuant to paragraph 8.1.5(a)(iv) with which the Train Operator agreed.

8.1.7 The Train Operator Benchmark in respect of each Period within the Financial Year immediately following Financial Year t ("**Financial Year t+1**") and, subject to paragraph 8.1.8, each subsequent Financial Year, shall be adjusted in accordance with the following formula:

$$ATO B = TO B \times [(T a \times C F) + 1]$$

where:

ATO B means the Adjusted Train Operator Benchmark;

TO B means the current Train Operator Benchmark;

T a means the Traffic Growth or Traffic Reduction (as applicable) for Financial Year t, provided that:

- (i) in the case of Traffic Growth, for the purposes of this formula "T a" shall be a positive figure so that the TO B is increased to reflect the Traffic Growth; and
- (ii) in the case of Traffic Reduction, for the purposes of this formula "T a" shall be a negative figure so that the TO B is decreased to reflect the Traffic Reduction;

CF is 1.044 (being the "congestion factor").

8.1.8 When the Train Operator Benchmark in relation to any Financial Year is adjusted pursuant to paragraph 8.1.7(a) then, subject to paragraph 8.1.9, the

- Train Operator Benchmark for Financial Year t+1 shall be the Adjusted Train Operator Benchmark determined in accordance with paragraph 8.1.7.
- 8.1.9 If a reference is made to a relevant ADRR Forum in accordance with paragraph 8.1.6(c), the Train Operator Benchmark for Financial Year t+1 shall be the same Train Operator Benchmark as applied for Financial Year t until such time as the relevant ADRR Forum makes its determination pursuant to paragraph 8.1.6(c). Following the relevant ADRR Forum's determination pursuant to paragraph 8.1.6(c), the Train Operator Benchmark for Financial Year t+1 shall be replaced with effect from 1 April in Financial Year t+1 by the Adjusted Train Operator Benchmark as determined, as the case may be, by (i) the relevant ADRR Forum or (ii) following the relevant ADRR Forum's determination pursuant to paragraph 8.1.6(c), the parties in accordance with this paragraph 8.
- 8.1.10 Promptly following any adjustment to the Train Operator Benchmark under this paragraph 8, and in order to give effect to that adjustment, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:
- (a) any invoices and credit notes already issued; and
  - (b) any payments already made in respect of Performance Sums, in each case relating to the Periods in Financial Year t+1.
- 8.1.11 Any statement issued by Network Rail pursuant to paragraph 8.1.10 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 7.
- 8.2 *Adjustments to the Network Rail Annual Cap and Train Operator Annual Cap*
- 8.2.1 The Network Rail Annual Cap and the Train Operator Annual Cap that shall apply from 1 April in each Financial Year in relation to each Period in that Financial Year shall be the Network Rail Annual Cap and the Train Operator Annual Cap, in each case as specified in Appendix 8A and as adjusted in accordance with paragraph 7.2 and this paragraph 8.2, provided that no adjustment shall be made to the Network Rail Annual Cap or the Train Operator Annual Cap pursuant to this paragraph 8.2:
- (a) in respect of any period prior to 1 April 2015<sup>4</sup>; and
  - (b) thereafter only if the total number of Train Miles operated by the Train Operator during Financial Year t or the Baseline Annual Train Mileage is 1,000,000 or greater.
- 8.2.2 Within 28 days after the last day of Financial Year t, Network Rail shall notify the Train Operator in writing of:
- (a) the total number of Train Miles operated by the Train Operator during Financial Year t (the "Annual Train Mileage");
  - (b) Network Rail's determination as to whether or not the Annual Train Mileage for Financial Year t exceeds or is less than the Baseline Annual Train Mileage by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Train Mileage (the "Annual Train Mileage Variation"); and
  - (c) if Network Rail determines that there has been an Annual Train Mileage Variation, Network Rail's proposal for an adjusted Network Rail Annual Cap and/or Train Operator Annual Cap, in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR.
- 8.2.3
- (a) The Baseline Annual Train Mileage that shall apply from 1 April in each Financial Year shall be the total number of Train Miles operated by the Train Operator during the Financial Year commencing on 1 April 2013 and ending on 31 March 2014, unless it is adjusted in accordance with paragraph 8.2.3(b).



- (b) If, in accordance with paragraph 8.2.2(b), Network Rail determines that there has been an Annual Train Mileage Variation, then the Baseline Annual Train Mileage for Financial Year t+1 and each subsequent Financial Year until any further adjustment is made to the Baseline Annual Train Mileage pursuant to this paragraph 8.2.3(b) shall be the Annual Train Mileage for the Financial Year t in which the Annual Train Mileage Variation has occurred.
- 8.2.4 Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the parties shall endeavour to agree whether the Network Rail Annual Cap and/or the Train Operator Annual Cap should be adjusted in accordance with this paragraph 8.2 and, if so, the adjustment (in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR), provided that any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2 shall be subject to the prior approval of ORR.
- 8.2.5 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the Train Operator and Network Rail reach agreement as to any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap, the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine whether or not to approve the proposed adjustment. The parties agree to abide by any determination issued by ORR.
- 8.2.6 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, either:
  - (i) the parties fail to reach agreement; or
  - (ii) prior to the expiry of that 56 day period both parties agree that agreement is unlikely to be reached prior to the expiry of that period, the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine the matter. The parties agree to abide by any determination issued by ORR.
- 8.2.7 Any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap shall take effect only when it has been approved by ORR and, unless otherwise specified by ORR, any such adjustment shall take effect from 1 April in Financial Year t.
- 8.2.8 Promptly following any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2, and in order to give effect to that adjustment, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:
  - (a) any invoices and credit notes already issued; and
  - (b) any payments already made in respect of Performance Sums, in each case relating to the Periods in Financial Year t+1.
- 8.2.9 Any statement issued by Network Rail pursuant to paragraph 8.2.8 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 7.1.

**9 Selection by the Train Operator of the Planned Service Incident Cap**

*9.1 Selection by the Train Operator of the Planned Service Incident Cap*

9.1.1 On or before the date on which this paragraph 9.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Planned Service Incident Cap it wishes to apply (the “**Initial Planned Service Incident Cap Notice**”), and the Planned Service Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in the column adjacent to the Planned Service Incident Cap selected by the Train Operator in the Initial Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator in a Planned Service Incident Cap Notice issued pursuant to paragraph 9.1.2.

9.1.2 The Train Operator may change the level of Planned Service Incident Cap previously selected by it (either in the Initial Planned Service Incident Cap Notice or any subsequent Planned Service Incident Cap Notice issued pursuant to this paragraph 11.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Planned Service Incident Cap it wishes to apply for that Financial Year (the “**Planned Service Incident Cap Notice**”). Any such Planned Service Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Planned Service Incident Cap to apply, and the Planned Service Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in the column adjacent to the Planned Service Incident Cap selected by the Train Operator in the Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator pursuant to this paragraph 9.1.2.

*9.2 Level of Planned Service Incident Cap and Planned Service Incident Cap Access Charge Supplement Rate*

For the purposes of paragraph 9.1, the Train Operator shall select one of the following Planned Service Incident Caps:

| Planned Service Incident Cap                                    | Planned Service Incident Cap Access Charge Supplement Rate (£ per Train Mile operated in a Period, <u>2012/13 prices</u> ) |
|---|--|
| <del>93</del> <u>1,000</u> minutes                              | <u>1.31</u>  |
| <del>2,000</del> <u>147</u> minutes                             | <u>1.03</u>  |
| <del>3,000</del> <u>500</u> <del>0</del> minutes                | <u>0.56</u>  |
| <u>1000</u> minutes   | <u>0.41</u>  |
| <u>5000</u> minutes   | <u>0.14</u>  |
| <del>4,000</del> <u>No Planned Service Incident Cap</u> minutes | <u>None</u>  |
| <u>5,000</u> minutes  | <u>[TO BE INSERTED]</u>  |
| <u>6,000</u> minutes  | <u>[TO BE INSERTED]</u>  |

|                                 |                  |
|---------------------------------|------------------|
| 7,000 minutes                   | [TO BE INSERTED] |
| 8,000 minutes                   | [TO BE INSERTED] |
| 9,000 minutes                   | [TO BE INSERTED] |
| 10,000 minutes                  | [TO BE INSERTED] |
| No Planned Service Incident Cap |                  |

## 10 ETCS Amendments

### 10.1

- (a) Either party may by notice to the other propose that amendments are made to this Schedule 8 (and to any other provisions of this contract as a result of those amendments) as a consequence of the introduction of ETCS on any part of the Network that is used by the Train Operator (“**ETCS Amendments**”).
- (b) ORR may make ETCS Amendments, subject to complying with paragraph 10.3.

### 10.2

- (a) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:
  - (i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and
  - (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.
- (b) The party receiving a notice under paragraph 10.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.
- (c) Promptly, (and in any event within 20 Working Days) following service of a response pursuant to paragraph 10.2(b), the parties shall use reasonable endeavours to agree the wording of the proposed ETCS Amendments and the date on which they are to have effect.
- (d) If:
  - (i) the parties agree to make ETCS Amendments pursuant to paragraph 10.2(c); or
  - (ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 10.2(a), or prior to that date the parties agree that it is unlikely that agreement will be reached within that period,they shall notify ORR.

### 10.3

- (a) If ORR:
  - (i) receives a notification under paragraph 10.2(d); or
  - (ii) proposes to make ETCS Amendments itself,then in deciding whether to approve, determine or make (as the case may be) the ETCS Amendments it shall:
  - (A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and
  - (B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.

- (b) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 10.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

## **APPENDIX 8A**

Charter Service Variation Sum: £[\*\*INSERT\*\*]

Joint Cancellation Sum: £[\*\*INSERT\*\*]

Network Rail Cancellation Sum: £[\*\*INSERT\*\*]

Network Rail Payment Rate: £[\*\*INSERT\*\*] per NR Performance Minute

Network Rail Annual Cap: £[\*\*INSERT\*\*]

Network Rail Benchmark (NRB): the NRB in relation to a Period shall be [\*\*INSERT\*\*] Minutes Delay per 100 Train Operator Miles

Train Operator Payment Rate: £[\*\*INSERT\*\*] per TO Performance Minute

Train Operator Annual Cap: £[\*\*INSERT\*\*]

Train Operator Benchmark (TOB): subject to adjustment in accordance with paragraph 8, the TOB in relation to each Period shall be [\*\*INSERT\*\*] Minutes Delay per 100 Train Operator Miles

Third Party User Cancellation Minutes: 35 minutes