

Track Access Contract (Open Access Passenger Services)

(1) Great British Railways Limited

(2) [Insert name of beneficiary]

Dated [●]

Note: This document is subject to review following consultation.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Contents

1.	Interpretation	1
2.	GBR Code and Traction Electricity Rules	7
3.	Conditions precedent and duration	7
4.	Standard of performance	8
5.	Permission to use	9
6.	Operation and maintenance of Trains and Network	10
7.	Track Charges and Other Payments	11
8.	Liability	11
9.	Not Used	11
10.	Liability - Other Matters	11
11.	Restrictions on claims	12
12.	Governing law	14
13.	Dispute resolution	14
14.	Confidentiality	16
15.	Assignment and novation	17
16.	Payments, interest and VAT	18
17.	Force Majeure Events	19
18.	Miscellaneous	22
19.	Transition	25
	Schedule 1	1
	Schedule 2	2
	Schedule 3	3
	Schedule 4	4
	Schedule 5	30
	Schedule 6	35
	Schedule 7	40
	Schedule 8	59
	Schedule 9	80
	Schedule 10	Error! Bookmark not defined.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

This Contract is made the [●] day of [●]

Between:

- (1) **Great British Railways Limited**, a company registered in England under number [●] having its registered office at [●] (“**GBR**”); and
- (2) [●], a company registered in England under number [●] having its registered office at [●] (the “**Train Operator**”).

Background

- (A) GBR is the owner of the Network; and
- (B) GBR grants the Train Operator permission to use certain track comprised in the Network on the terms and conditions of this contract.

It is agreed as follows:

1. Interpretation

1.1 Definitions

In this contract unless the context otherwise requires:

"1993 Act" means the Railways Act 1993;

"2026 Act" means the Railways Act 2026;

“Access Agreement” has the meaning ascribed to it in Part A of the GBR Code;

"Access Beneficiary" has the meaning ascribed to it in Part A of the GBR Code;

“Access and Use Policy” means one or more documents setting out GBR's policy about, and procedures for, access to and the use of its Network for the operation of trains as contemplated in [section 59] of the 2026 Act;

“Affected Party” has the meaning ascribed to it in Clause 17.1;

“Affiliate” means, in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes “holding company” and “subsidiary” have the meanings ascribed to them in section 1159 of the Companies Act 2006;

“Ancillary Movements” has the meaning ascribed to it in [Part A] of the GBR Code;

“Applicable Engineering Access Statement” means the Engineering Access Statement in force in respect of the Routes on the date on which Services may first be operated by the Train Operator under this contract, as from time to time amended or replaced under Part D of the GBR Code;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

“Applicable Timetable” means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Part D of the GBR Code as at 22:00 hours on the day prior to that day;

“Applicable Timetable Planning Rules” means the Timetable Planning Rules in force in respect of the Routes on the date on which Services may first be operated by the Train Operator under this contract, as from time to time amended or replaced under Part D of the GBR Code;

“associate” has the meaning ascribed to it in section 17 of the 1933 Act;

"Capacity Commitments Register" has the meaning ascribed to it in Part A of the GBR Code;

"Charging Scheme" means the scheme made pursuant to section 64 of the 2026 Act;

“Claims Allocation and Handling Agreement” means the agreement of that name approved by ORR;

“Collateral Agreements” means the agreements and arrangements listed in Schedule 3;

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

“contract” means this document including all schedules and appendices to it, the GBR Code and the Traction Electricity Rules;

“D-X” has the meaning ascribed to it in Part A of the GBR Code;

“Default Interest Rate” is two percent above the base lending rate of Bank of England Base Rate as varied from time to time;

"Dispute Resolution Body" has the meaning ascribed to it in Part A of the GBR Code;

“Environmental Condition” has the meaning ascribed to it in Part A of the GBR Code;

“Environmental Damage” has the meaning ascribed to it in Part A of the GBR Code;

“European licence” has the meaning ascribed to it in section 6(2) of the 1993 Act;

“Event of Default” means a Train Operator Event of Default or a GBR Event of Default;

“Expiry Date” means [date to be added];

“Force Majeure Event” has the meaning ascribed to it in Clause 17.1;

“Force Majeure Notice” has the meaning ascribed to it in Clause 17.1.

“Force Majeure Report” has the meaning ascribed to it in Clause 17.1;

"GBR Code" means the document by that name published by GBR;

"GBR Event of Default" has the meaning ascribed to it in paragraph 1.3 of Schedule 6;

"GBR Schemes" means one or more of:

- (a) the Charging Scheme; and

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

(b) the Performance Scheme;

“Innocent Party” means, in relation to a breach of an obligation under this contract, the party who is not in breach of that obligation;

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

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
 - (i) section 123(1) and (2) of the Insolvency Act 1986 shall have effect as if the words “it is proved to the satisfaction of the court that” did not appear in those sections; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

- (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the 1993 Act and for so long as any such order (or application) remains in force or pending; or
- (ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

“Liability Cap” has the meaning ascribed to it in paragraph 1 of Schedule 9;

“Longstop Date” means [date to be added];

“Network” has the meaning ascribed to it in Part A of the GBR Code;

"Network Rail" means Network Rail Infrastructure Limited as the predecessor to GBR;

“New Working Timetable” means, in respect of any day, the version of the Working Timetable for that day provided by GBR in accordance with [Condition D2.8.3, as amended pursuant to Condition D3.1];

“Office of Rail and Road” has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, , as amended by the Office of Rail Regulation (Change of Name) Regulations 2015, and includes any successor to all or any of its functions, and references to “ORR” shall be construed as references to the Office of Rail and Road;

“Performance Order” has the meaning ascribed to it in Clause 13.3.2;

"Performance Scheme" means the scheme made pursuant to section 65 of the 2026 Act;

"Period" means each consecutive period of 28 days during the term of this contract commencing at 00:00 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from GBR to the Train Operator;

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

“Railway Code Systems” means necessary systems within the meaning of the Systems Code;

“Relevant Dispute” means any difference between the parties arising out of or in connection with this contract;

“Relevant Force Majeure Event” has the meaning ascribed to it in Clause 17.1;

“Relevant Losses” means, in relation to:

- (a) a breach of this contract; or
- (b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a "breach" for the purpose of this definition); or
- (c) in the case of Schedule 8, the matter specified in paragraph 19 of Schedule 8 (a "breach" for the purposes of this definition only),

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

“Relevant Obligation” has the meaning ascribed to it in Clause 17;

“Relevant Year” has the meaning ascribed to it in Schedule 7;

“Rolled Over Timetable Proposal” has the meaning ascribed to it in Part A of the GBR Code;

“Routes” means that part of the Network specified in Schedule 2;

"Rules of Procedure" has the meaning ascribed to it in Part A of the GBR Code;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

“safety authorisation” has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“safety certificate” has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

“Services” means the railway passenger services specified in Schedule 5;

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

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

“SPP Threshold” has the meaning ascribed to it in paragraph 19 of Schedule 8;

“Stabling” means the parking or laying up of the Specified Equipment or such other railway vehicles as the Train Operator is permitted by this contract to use on the Network, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Specified Equipment required for the provision of the Services;

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

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

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

“Timetable Change Date” has the meaning ascribed to it in Part A of the GBR Code;

“Timetable Participant” shall have the meaning ascribed to it in Part A of the GBR Code;

“Timetable Period” has the meaning ascribed to it within Part A of the GBR Code;

“Track Charges” means the charges payable by or on behalf of the Train Operator to GBR, as set out in paragraph 1 of Part 2 of Schedule 7 or under the Traction Electricity Rules;

“Traction Electricity Rules” means the document known as the Traction Electricity Rules published by GBR on its website and as may be amended from time to time;

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

“Train Operator Event of Default” has the meaning ascribed to it in paragraph 1.1 of Schedule 6;

“Train Slot” has the meaning ascribed to it in Part A of the GBR Code;

“TW-X” has the meaning ascribed to it in Part A of the GBR Code;

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

“Working Day” has the meaning ascribed to it in Part A of the GBR Code; and

“Working Timetable” has the meaning ascribed to it in Part A of the GBR Code.

1.2 Interpretation

In this contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) any one gender includes the other;
- (c) all headings are for convenience of reference only and shall not be used in the construction of this contract;
- (d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- (e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- (f) reference to a party is to a party to this contract, its successors and permitted assigns;
- (g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word "person" or "persons" or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) "otherwise" and words following "other" shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- (l) words and expressions defined in the 1993 Act, the 2026 Act, the Railways and Other Guided Transport Systems (Safety) Regulations 2006 GBR's [network] licence shall, unless otherwise defined in this contract, have the same meanings in this contract;
- (m) any reference to the term "possession", either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use as defined in Schedule 4;
- (n) words and expressions defined in the GBR Code shall have the same meanings in this contract; and
- (o) if there is any conflict of interpretation between this contract and the GBR Code, the GBR Code shall prevail;
- (p) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (q) if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules) and the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules).

1.3 Indemnities

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

2. GBR Code and Traction Electricity Rules

2.1 Incorporation

The GBR Code and the Traction Electricity Rules are incorporated in and forms part of this contract.

2.2 Modifications to the GBR Code or the Traction Electricity Rules

If either the GBR Code or the Traction Electricity Rules or both are modified at any time, Clause 18 shall have effect in relation to any associated modifications to this contract.

2.3 Compliance by other operators

GBR shall ensure that all Access Beneficiaries having permission to use any track comprised in the Network agree to comply with the GBR Code.

3. Conditions precedent and duration

3.1 Effective date

The provisions of this contract, other than Clause 5, take effect from the later of the signature of this contract and ***[insert date on which Services may first be operated by the Train Operator under this contract]***.

3.2 Conditions precedent to Clause 5

Clause 5 shall take effect when the following conditions precedent have been satisfied in full:

- (a) to the extent required by the 1993 Act and/or the Railways (Licensing of Railway Undertakings) Regulations 2005, the Train Operator is authorised to be the operator of trains for the provision of the Services by:
 - (i) a licence granted under section 8 of the 1993 Act; and/or
 - (ii) a European licence and corresponding SNRP;
- (b) GBR is authorised by a licence granted under section [7B/8] of the [1993] Act to be the operator of that part of the Network comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the [1993] Act;
- (c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);
- (d) each of the parties has, as necessary, a valid safety certificate or safety authorisation as required by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and has established and is maintaining a safety management system which meets the requirements of those Regulations; and

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 Obligations to satisfy conditions precedent to Clause 5

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

- (a) in the case of GBR, the conditions precedent contained in Clause 3.2(b) and, insofar as within its control, Clauses 3.2(c) and 3.2(d); and
- (b) in the case of the Train Operator, the conditions precedent contained in Clause 3.2(a) and, insofar as within its control, Clauses 3.2(c) and 3.2(d).

3.4 Consequences of non-fulfilment of conditions precedent to Clause 5

If the conditions precedent set out in Clause 3.2 have not been satisfied in full on or before the Longstop Date:

- (a) this contract shall lapse save for the obligations of confidence contained in Clause 14 which shall continue in force; and
- (b) neither party shall have any liability to the other except in respect of any breach of its obligations under this contract.

3.5 Expiry

This contract shall continue in force until the earliest of:

- (a) lapse under Clause 3.4;
- (b) termination under Schedule 6; and
- (c) 0159 hours on the Expiry Date.

3.6 Suspension and termination

Schedule 6 shall have effect.

4. Standard of performance

4.1 General standard

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

- (a) network owner and operator having comparable functions and duties under the 2026 Act to GBR (in the case of GBR); and
- (b) train operator (in the case of the Train Operator).

4.2 Good faith

The parties to this contract shall, in exercising their respective rights and complying with their respective obligations under this contract (including when conducting any discussions or

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

negotiations arising out of the application of any provisions of this contract or exercising any discretion under them), at all times act in good faith.

5. Permission to use

5.1 *Permission to use the Routes*

GBR grants the Train Operator permission to use the Routes.

5.2 *Meaning*

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

- (a) to use the track comprised in the Routes for the provision of the Services using the Specified Equipment;
- (b) to use the track comprised in the Network in order to implement any plan established under Part H of the GBR Code;
- (c) to make Ancillary Movements;
- (d) to Stable, which shall be treated, for the purposes of [Part D] of the GBR Code, as the use of a Train Slot;
- (e) for the Train Operator and its associates to enter upon that part of the Network comprising the Routes, with or without vehicles; and
- (f) for the Train Operator and its associates to bring things onto that part of the Network comprising the Routes and keep them there,

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

- (i) the GBR Code;
- (ii) the Applicable Engineering Access Statement; and
- (iii) the Applicable Timetable Planning Rules.

5.3 *Permission under Clauses 5.2(e) and 5.2(f)*

In relation to the permissions specified in Clauses 5.2(e) and 5.2(f):

- (a) the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of GBR, which consent shall not be unreasonably withheld or delayed;
- (b) the Train Operator shall remove any vehicle or other thing so brought onto any part of the Network when reasonably directed to do so by GBR; and
- (c) whilst exercising any rights conferred by Clauses 5.2(e) and 5.2(f), the Train Operator shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as GBR shall specify.

5.4 *Changes to Applicable Engineering Access Statement and Applicable Timetable Planning Rules*

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Changes to the Applicable Engineering Access Statement and the Applicable Timetable Planning Rules are subject to the procedures set out on regulatory protection (including appeals) in accordance with [Part D] of the GBR Code.

5.5 *Engineering Access Statement, Timetable Planning Rules and Restrictions of Use*

Schedule 4 shall have effect.

5.6 *The Services and the Specified Equipment*

Schedule 5 and Schedule 12 shall have effect.

5.7 *Performance*

Schedule 8 shall have effect.

5.8 *Stabling*

Without prejudice to GBR's obligations, if any, under Schedule 5 to provide Stabling, GBR shall use all reasonable endeavours to provide such Stabling facilities as are necessary or expedient for or in connection with the provision of the Services in accordance with the Working Timetable.

6. *Operation and maintenance of Trains and Network*

6.1 *General*

Without prejudice to the other provisions of this contract:

- (a) the Train Operator shall maintain and operate the Specified Equipment used on the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes in accordance with the Working Timetable and the making of Ancillary Movements; and
- (b) GBR shall maintain and operate the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes using the Specified Equipment in accordance with the Working Timetable and the making of Ancillary Movements.

6.2 *Trespass, vandalism and animals*

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

- (a) trespass;
- (b) vandalism; and
- (c) intrusions on to the Network by animals,

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

6.3 *Safety*

In relation to Safety Obligations:

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

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

6.4 Use of Railway Code Systems

6.4.1 General

The parties shall:

- (a) use the Railway Code Systems in their dealings with each other in connection with matters provided for in this contract; and
- (b) comply with the Systems Code.

6.4.2 Provision of Train Consist Data

Without prejudice to Clause 6.4.1, the Train Operator shall:

- (a) provide to GBR such Train Consist Data as shall be necessary to enable GBR to calculate the amount of Track Charges; and
- (b) procure that such data is true and accurate in all respects.

7. Track Charges and Other Payments

Schedule 7 shall have effect.

8. Liability

8.1 Performance Orders in relation to breach

In relation to any breach of this contract:

- (a) the Innocent Party shall be entitled to apply under Clause 13 for a Performance Order against the party in breach; and
- (b) if a Performance Order is made, the party against whom it has been made shall comply with it.

8.2 Compensation in relation to breach

In relation to any breach of this contract, the party in breach shall indemnify the Innocent Party against all Relevant Losses.

9. Not Used

10. Liability - Other Matters

10.1 Train Operator indemnity

The Train Operator shall indemnify GBR against all Relevant Losses resulting from:

- (a) a failure by the Train Operator to comply with its Safety Obligations;
- (b) any Environmental Damage arising directly from the acts or omissions of the Train Operator or the proper taking by GBR under Condition E2 of the GBR Code of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator; and

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (c) any damage to the Network arising directly from the Train Operator's negligence.

10.2 GBR indemnity

GBR shall indemnify the Train Operator against all Relevant Losses resulting from:

- (a) a failure by GBR to comply with its Safety Obligations;
- (b) any Environmental Damage to the Network arising directly from any acts or omissions of the British Railways Board prior to 1 April 1994, [any Environmental Damage to the Network arising directly from any acts or omissions of Network Rail prior to *[date to be added]*] and any Environmental Damage arising directly from the acts or omissions of GBR; and
- (c) any damage to the Specified Equipment or other vehicles or things brought onto the Network in accordance with the permission to use granted by this contract arising directly from GBR's negligence.

11. Restrictions on claims

11.1 Notification and mitigation

A party wishing to claim under any indemnity provided for in this contract:

- (a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and
- (b) subject to Clause 11.1(c), shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but
- (c) shall not be required to exercise any specific remedy available to it under this contract.

11.2 Restrictions on claims by GBR

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

- (a) shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:
 - (i) the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less
 - (ii) any other compensation which the Train Operator has an obligation to pay for such damage;
- (b) shall exclude loss of revenue in respect of permission to use any part of the Network under or in accordance with any Access Agreement with any person; and
- (c) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which GBR would not have incurred as network owner and operator but for the relevant breach; and

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

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

11.3 Restrictions on claims by Train Operator

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

- (a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in circumstances where the SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8); and
- (b) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and
 - (ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

11.4 Restriction on claims by both parties

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

- (a) do not arise naturally from the breach; and
- (b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:
 - (i) at the time of the making of this contract; or
 - (ii) where the breach relates to a modification or amendment to this contract, at the time of the making of such modification or amendment,as the probable result of the breach.

11.5 Limitation on liability

Schedule 9 shall have effect so as to limit the liability of the parties to one another under the indemnities in Clauses 8.2 and 10, but:

- (a) does not limit any liability arising under Schedule 4, Schedule 5, Schedule 7 or Schedule 8 (other than under paragraph 18 of Schedule 8) or under the Traction Electricity Rules;
- (b) in relation to a failure to perform an obligation under the GBR Code, only to the extent (including as to time and conditions) that the GBR Code so provides; and
- (c) subject to Clause 18.3.3.

11.6 Claims Allocation and Handling Agreement

11.6.1 General

Clauses 16 and 17 of the Claims Allocation and Handling Agreement provide that claims between parties to it are limited to specified amounts unless the parties expressly contract otherwise.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

11.6.2 *Restriction of application*

Except as otherwise expressly provided in this contract, Clauses 16 and 17 of the Claims Allocation and Handling Agreement shall not apply as between the parties to this contract if and to the extent that the giving of any right or remedy as provided for under this contract would be prevented or restricted by Clauses 16 and 17 of the Claims Allocation and Handling Agreement.

11.6.3 *Liability for small claims*

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

12. **Governing law**

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

13. **Dispute resolution**

13.1 ***Referral and appeal***

Subject to clauses 13.1A and 13.1B, a Relevant Dispute shall be referred to the relevant Dispute Resolution Body for resolution in accordance Part M of the GBR Code and be conducted and determined in accordance with Part M of the GBR Code, unless:

- (a) any Part of the GBR Code or the Traction Electricity Rules provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (b) any Part of Schedule 4, Schedule 5, Schedule 7 or Schedule 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply; or
- (c) Clause 13.2 applies.

13.1A Insofar as the Relevant Dispute relates to a matter capable of being appealed to the Office of Rail and Road under the 2026 Act, the Train Operator may refer the Relevant Dispute to the Office of Rail and Road.

13.1B Where any Relevant Dispute is referred for resolution by arbitration by virtue of Clause 13.1, the Rules of Procedure are, insofar as applicable, modified by this Clause 13.

13.2 ***Unpaid sums***

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges; or
- (b) any other sum which has fallen due in accordance with any provision of this contract,

then:

- (i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any invoice or other sum due);

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
- (iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.5 shall not apply to proceedings commenced under this Clause 13.2.

13.3 **Performance Orders**

13.3.1 *Power to order provisional relief*

For the purposes of section 39 of the Arbitration Act 1996, should any Relevant Dispute be referred for resolution by arbitration by the relevant Dispute Resolution Body in accordance with the Rules of Procedure, the arbitrator shall have power to order on a provisional basis any relief which they would have power to grant in a final award including Performance Orders.

13.3.2 *Performance Orders*

A Performance Order:

- (a) is an order made under Clause 13.3.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and
- (b) may be applied for by GBR or the Train Operator in the circumstances set out in Clause 8.1, subject to the qualifications in Clause 17.8,

and an application for a Performance Order shall be without prejudice to any other remedy available to the claimant under this contract (whether final or interim and whether by way of appeal under the GBR Code or otherwise).

13.3.3 *Duties of arbitrator in relation to Performance Orders*

Without prejudice to any additional remedies that may be ordered by the arbitrator under Clause 13.4, where a dispute is referred for resolution by arbitration by the relevant Dispute Resolution Body in accordance with the Rules of Procedure and a party has applied for a Performance Order, the parties shall agree that:

- (a) the arbitrator shall decide as soon as possible whether the application is well founded or not; and
- (b) if the arbitrator decides that the application is well founded, they shall be required to make an interim or final declaration to that effect and, in that event, the arbitrator may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which they consider just and reasonable in all the circumstances.

13.4 **Remedies**

The powers exercisable by the arbitrator as regards remedies shall include:

- (a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;
- (b) the powers specified in the Rules of Procedure;
- (c) the power to make Performance Orders; and
- (d) the power to order within the same reference to arbitration any relief specified in Clause 13.4(a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

13.5 **Exclusion of applications on preliminary points of law**

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Any recourse to any Court for the determination of a preliminary point of law arising in the course of the arbitration proceedings is excluded.

14. Confidentiality

14.1 Confidential Information

14.1.1 General obligation

Except as permitted by Clause 14.2, all Confidential Information shall be held confidential during and after the continuance of this contract and shall not be divulged in any way to any third party without the prior written approval of the other party.

14.1.2 GBR - Affiliates

Except as permitted by Clause 14.2, GBR shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.1.3 Train Operator - Affiliates

Except as permitted by Clause 14.2, the Train Operator shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.2 Entitlement to divulge

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

- (a) to ORR;
- (b) to any Affiliate of either party;
- (c) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- (d) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (e) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
- (f) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
- (g) to the extent required by the 1993 Act, the 2026 Act, the Railways (Licensing of Railway Undertakings) Regulations 2005, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (h) to the extent that it has become available to the public other than as a result of a breach of confidence; and
- (i) under the order of any court or tribunal of competent jurisdiction (including the relevant Dispute Resolution Body).

14.3 Return of Confidential Information

Each of GBR and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

- (a) is made on or within 2 months after the Expiry Date or, if this contract lapses or is terminated earlier, is made within 2 months after the date on which this contract lapses or is terminated;
- (b) is reasonable; and
- (c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

14.4 Retention or destruction of Confidential Information

If GBR or the Train Operator, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 14.3, it may destroy or retain such Confidential Information.

14.5 Ownership of Confidential Information

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

14.6 GBR Code and Schedule 7 and the Traction Electricity Rules

Nothing in this Clause 14 restricts the right of GBR to disclose information to which this Clause 14 applies to the extent that it is permitted or required so to do under the GBR Code, the Traction Electricity Rules or Schedule 7.

15. Assignment and novation

15.1 Assignment

[Subject to Clause 15.2, neither party may assign, transfer, novate or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this contract without the consent of the other party.

15.2 Novation

GBR (and any assignee of all or part of GBR's rights under this contract) shall:

- (a) agree to the novation of the rights and obligations of the Train Operator under this contract in favour of another person in any circumstances;

15.3 Novation terms

Any novation under Clause 15.2 shall be on terms that:

- (a) the Train Operator shall not be released from:
 - (i) any accrued but unperformed obligation;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (ii) the consequences of any breach of this contract which is the subject of any proceedings (arbitral or otherwise) for the resolution of a dispute between the parties; or
 - (iii) any liability in respect of anything done under this contract before, or as at the date of, any such novation (except to the extent that such other person agrees to assume and be responsible for it); and
- (b) [such other person shall not be required by GBR, as a term of or a condition to the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequence of a breach of the kind referred to in Clause 15.3(a) but this shall not prevent any such agreement being a term or condition of the novation if required by the Secretary of State.]

16. Payments, interest and VAT

16.1 Payment

16.1.1 No deduction

All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in any Schedule to this contract, in the GBR Code, or under the Traction Electricity Rules.

16.1.2 Delivery of invoices

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 4, Schedule 5 or Schedule 8, or the GBR Code, or under the Traction Electricity Rules, shall be delivered by hand, or sent by prepaid first class post or by email to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

16.1.3 Content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and, where required by either party, include a purchase order number.

16.1.4 Method of payment

All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

16.2 Interest

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause 16.1.2 or Clause 16.1.3.

16.3 VAT

16.3.1 Payment of VAT

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Where any taxable supply for VAT purposes is made under or in connection with this contract by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

16.3.2 *Reimbursement of VAT*

Where under this contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

16.3.3 *VAT credit note to be issued on repayment*

Where under this contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

17. **Force Majeure Events**

17.1 ***Meaning of Force Majeure Event***

In this Clause 17:

“Affected Party” means, in relation to a Force Majeure Event, the party claiming relief under this Clause 17 by virtue of that Force Majeure Event, and “Non-affected Party” shall be construed accordingly;

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

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;
- (f) discovery of fossils, antiquities or unexploded bombs; and
- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

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

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

“Relevant Force Majeure Event” means a Force Majeure Event in relation to which an Affected Party is claiming relief under this Clause 17; and

“Relevant Obligation” means an obligation under this contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under this Clause 17.

17.2 Nature and extent of relief for Force Majeure

Force Majeure relief under this Clause 17:

- (a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 8.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but
- (b) is not available in respect of:
 - (i) any obligation to pay money under Schedule 4, Schedule 5, Schedule 7 and Schedule 8 or the Traction Electricity Rules; or
 - (ii) any other obligation to do or refrain from doing any other thing provided for in this contract; and
- (c) is only available in relation to a failure to perform an obligation under the GBR Code to the extent (including as to time and conditions) that the GBR Code so provides.

17.3 Entitlement to Force Majeure relief

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

- (a) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;
- (b) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):
 - (i) to avoid the occurrence of the Force Majeure Event; and
 - (ii) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and
- (c) except in the case of Clause 17.1(f), none of the Affected Party, its officers, employees or agents caused the Force Majeure Event.

17.4 Procedure for claiming relief

Without prejudice to Clause 17.3, an Affected Party is only entitled to claim Force Majeure relief under this Clause 17 if it complies with the obligations to give Force Majeure Notices, Force Majeure Reports and provide other information under Clause 17.5 and to perform its obligations under Clause 17.6.

17.5 Force Majeure Notices and Reports

17.5.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

- (a) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

under this Clause 17 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and

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

17.5.2 *Force Majeure Report*

Following the giving of a Force Majeure Notice:

- (a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within 7 days of service of the Force Majeure Notice; and
- (b) the Force Majeure Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the Force Majeure Notice and containing such information as may reasonably be required by the Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the Affected Party's performance of the Relevant Obligations.

17.5.3 *Other information*

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

17.6 ***Mitigation***

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

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

and shall keep the Non-affected Party fully informed of the actions which it has taken or proposes to take under this Clause 17.6.

17.7 ***Duration of relief for force majeure***

The right of an Affected Party to relief under Clause 17.2 shall cease on the earlier of:

- (a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and
- (b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 17.6.

17.8 ***Availability of Performance Order***

If and to the extent that a breach of this contract has been caused by a Relevant Force Majeure Event, the Non-affected Party shall not be entitled to a Performance Order except to secure performance by the Affected Party of its obligations under this Clause 17.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

18. Miscellaneous

18.1 Non waiver

18.1.1 No waiver

No waiver by either party of any failure by the other to perform any obligation under this contract shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

18.1.2 Failure or delay in exercising a right or remedy

The failure to exercise or delay in exercising a right or remedy under this contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

18.2 Variations

18.2.1 This Contract may be varied at any time by agreement in writing between the Parties.

18.2.2 Subject to following the process specified in clauses 18.2.3 to 18.2.6 and without prejudice to the ability of the parties to negotiate an amendment to Appendix 1 of Schedule 8 in accordance with paragraph 17 of Schedule 8, GBR may at any time propose and implement a variation to this contract where it considers it necessary to do so:

- (a) in order to comply with or give effect to GBR's Licence;
- (b) in order to implement updated model contract terms;
- (c) in order to comply with a Direction, including of the Office of Rail and Road in exercise of its safety functions, duties and powers under the 1993 Act and the Railways and Transport Safety Act 2003;
- (d) in order to effect a change under the GBR Code or as a consequence of a change to the GBR Code, including Vehicle Change, Network Change, or a "Change" under Part C of the GBR Code;
- (e) in order to effect, or as a consequence of, a change to the Traction Electricity Rules; or
- (f) as a result of a change in law.

18.2.3 Before implementing any variation under Clause 18.2.2, GBR shall:

- (a) give the Train Operator written notice of the proposed variation, including reasonable details of its nature, the proposed contractual wording of change, the reasons for it, and its anticipated impact;
- (b) consult the Train Operator for a period of not less than 30 days from the date of such notice (or such longer period as the Parties may agree); and
- (c) during that period, allow the Train Operator a reasonable opportunity to make representations in respect of the proposed variation, which may include proposing modifications to the variation.

18.2.4 GBR shall consider any representations made by the Train Operator in response to the consultation carried out under clause 18.2.3, including any proposed modifications, before deciding whether to proceed with the proposed variation.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- 18.2.5 GBR shall notify in writing the Train Operator of its decision pursuant to clause 18.2.4 and give its reasons for the decision.
- 18.2.6 If GBR decides to proceed with the variation as originally proposed or as modified, GBR shall include in its notice pursuant to clause 18.2.5, the text of the variation to this contract, and specify the date on which the variation shall take effect (being no fewer than five Working Days from the date on which the notice is given) and this contract shall be varied in accordance with the terms of such notice with effect from the date specified in the notice.
- 18.2.7 GBR shall be entitled to propose any necessary amendments to this contract to reflect any introduction of, change, alteration or update to any of the GBR Schemes (a **Scheme Amendment**) and shall notify the Train Operator of such proposed Scheme Amendments. Where the Train Operator considers that the proposed Scheme Amendments do not reflect one or more of the GBR Schemes it shall, within 14 days, notify GBR of its concerns and GBR shall, at its discretion, take such concerns into account prior to confirming, adjusting or withdrawing the relevant Scheme Amendment. GBR shall notify the Train Operator of its final proposed Scheme Amendments and, subject to Clause 18.2.3, such Scheme Amendments shall take effect as specified by GBR.
- 18.2.8 Where the Train Operator, having followed the process set out in Clause 18.2.2, considers that it does not accept one or more of the proposed Scheme Amendments, it may terminate this contract in accordance with Paragraph 3 of Schedule 6.
- 18.2.9 *Conformed copy of contract*

GBR shall produce and send to the Train Operator a conformed copy of this contract within 28 days of the making of any amendment or modification to it.

18.3 ***Entire contract and exclusive remedies***

18.3.1 *Entire contract*

Subject to Clause 18.3.3:

- (a) this contract contains the entire agreement between the parties in relation to the subject matter of this contract;
- (b) each party acknowledges that it has not been induced to enter into this contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and
- (c) neither party shall have any right to rescind or terminate this contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this contract.

18.3.2 *Exclusive remedies*

Subject to Clause 18.3.3 and except as expressly provided in this contract:

- (a) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this contract; and
- (b) the remedies provided for in this contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

18.3.3 *Fraud, death and personal injury*

Without prejudice to the generality of this Clause 18.3, nothing in this contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

- (a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this contract, in respect of any statement made fraudulently by the other party before the execution of this contract;
- (b) any right which either party may have in respect of fraudulent concealment by the other party;
- (c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the 1993 Act, whether or not proceedings have been instituted in that respect; or
- (d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 *Notices*

18.4.1 *Giving of notices*

Any notice to be given under this contract:

- (a) shall be in writing; and
- (b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand, or by sending it by prepaid first class post, recorded delivery or by email to the relevant address or email address set out in Schedule 1.

For the purposes of this Clause 18.4 and Clause 16.1.2, delivery by hand shall include delivery by a reputable firm of couriers.

18.4.2 *Right to modify registered company and communication details*

A party shall be entitled to modify in any respect:

- (a) the registered name and address details which relate to it and are set out on page one of this contract (provided that this modification shall not amount to or purport to be an assignment, transfer or novation of this contract); and
- (b) the communication particulars which relate to it and which are set out in Schedule 1, by giving notice of such modification, to the other party as soon as reasonably practicable.

18.4.3 *Deemed receipt*

A notice shall be deemed to have been given and received:

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) not used; and

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (d) if sent by email (subject to confirmation of receipt of delivery) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 hours on the next following Working Day.

18.4.4 *Copyees*

If Schedule 1 specifies any person to whom copies of notices shall also be sent:

- (a) the party giving a notice in the manner required by this Clause 18.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under this Clause 18.4; and
- (b) such copy notice shall be sent immediately after the original notice.

18.5 ***Counterparts***

This contract may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this contract by signing either of such counterparts.

18.6 ***Survival***

Those provisions of this contract which by their nature or implication are required to survive expiry or termination of this contract (including the provisions of Clauses 8 (Liability), 10 (Liability - Other Matters), 11 (Restrictions on claims); 12 (Governing law), 13.2 (Unpaid sums), 14 (Confidentiality), 16 (Payments, interest and VAT), 17 (Force Majeure Events), paragraph 4 of Schedule 6 (Consequence of Termination) and Schedule 9 (Limitation on liability)), shall so survive and continue in full force and effect, together with any other provisions of this contract necessary to give effect to such provisions.

18.7 ***Contracts (Rights of Third Parties) Act 1999***

18.7.1 *Application to third parties*

Save as provided in this Clause 18.7 or as expressly provided elsewhere in this contract, no person who is not a party to this contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

18.7.2 *Not Used*

18.7.3 *Application of the Traction Electricity Rules to other train operators*

Any Metered Train Operator, Prospective Metered Train Operator or Modelled Train Operator (as defined in the Traction Electricity Rules) shall have the right under the Contracts (Third Parties) Act 1999 directly to enforce such rights as have been granted to it under the Traction Electricity Rules.

19. ***[Transition and Corresponding Rights - see explanatory notes in consultation document about approach to transition and preservation and treatment, where appropriate, of pre-transition accumulated rights. The Corresponding Rights wording has been retained in square brackets as a placeholder pending further development in light of the settled approach to transition.]***

19.1 ***[Corresponding Rights***

In relation to any Corresponding Right:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (a) any Access Proposal or Rolled Over Access Proposal made under the Previous Access Agreement in relation to a Train Slot in respect of which there is a Corresponding Right shall:
 - (i) cease to have effect under the Previous Access Agreement as from the Transition Date; and
 - (ii) be deemed to have effect under this contract as from the Transition Date;
- (b) any Train Slot which is the subject of an Access Proposal or Rolled Over Access Proposal referred to in Clause 19.1(a) shall for all purposes be treated as if it had been established in and under this contract and not the Previous Access Agreement;
- (c) any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made which:
 - (i) are made in accordance with [Parts D, F, G or H] of the GBR Code under the Previous Access Agreement in relation to the Engineering Access Statement or the Timetable Planning Rules, Major Projects, Vehicle Change, Network Change or train regulation; and
 - (ii) relate to a right under the Previous Access Agreement which is the subject of a Corresponding Right,shall:
 - (A) cease to have effect under the Previous Access Agreement as from the Transition Date; and
 - (B) be deemed to have effect under this contract as from the Transition Date; and
- (d) in applying Schedule 4, effect shall be given:
 - (i) in relation to any Restriction of Use which was notified before the Transition Date, to any Previous Notification Factor;
 - (ii) in relation to any Significant Restrictions of Use, to any bespoke compensation arrangements established under the Previous Access Agreement; and
 - (iii) in relation to any Competent Authority Restrictions of Use, to any bespoke compensation arrangements established under the Previous Access Agreement.]

19.2 ***[Definitions***

In this Clause 19:

“Corresponding Right” means any right of a party under this contract which:

- (a) relates to the permission of the Train Operator to use the Routes; and
- (b) corresponds to a right which:
 - (i) existed under the Previous Access Agreements; and
 - (ii) ceased to have effect under the Previous Access Agreements as from the Transition Date;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

“Previous Access Agreements” means the track access agreements dated [●] between Network Rail and [●].

“Previous Notification Factor” means the Notification Factor as established by reference to Column C, D or E of Annex A to Part [3] of Schedule 4 under the relevant Previous Access Agreements; and

“Transition Date” means the date on which this contract comes into effect for all purposes.]

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Schedule 1

(Contract Particulars)

1. GBR's address for service of notices is:

Great British Railways Limited

Tel: [●]

Email: [●]

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to:

Address: [●]

Tel: [●]

Email: [●]

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

Address: [●]

Tel: [●]

Email: [●]

All written notices to be marked:

"URGENT: ATTENTION [●]"

and copied to:

Address: [●]

Tel: [●]

Email: [●]

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Schedule 2

(The Routes)

1. In order to provide the Services, the Train Operator has permission to use the Routes specified in *[insert reference to rights in the Capacity Commitments Register.]*
2. In order to provide Services when any part of the Route is unavailable, the Train Operator has permission to use any reasonable route for diversionary purposes, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.
3. In order to make Ancillary Movements, the Train Operator has permission to use any reasonable route, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.
4. In order to Stable railway vehicles, the Train Operator has permission to use any reasonable location, subject to obtaining any necessary route clearance for the Specified Equipment for the location in question.
5. Use of all routes is subject to the GBR Code.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Schedule 3

(Collateral Agreements)

1. [An access agreement between (1) the Train Operator and (2) GBR granting the Train Operator permission to use the following station[s] [list relevant station[s] in respect of which GBR is the facility owner.]
2. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement and, for the purpose of Schedule 6, the Claims Allocation and Handling Agreement.
3. Not used.
4. An accession agreement to the document entitled Emergency Access Code and, for the purpose of Schedule 6, the Emergency Access Code.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Schedule 4

(Engineering Access Statement, Timetable Planning Rules and Restrictions of Use)

Part 1

(Not used)

Part 2

(Not used)

Part 3

A1 Change of Schedule

- A1.1 In the event that GBR publishes a notice pursuant to paragraph 17.1A of Schedule 8 and GBR notifies the Train Operator that such notice will result in a change in accordance with paragraph 2.8 of 'PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes' (a **"Change Notice"**), the Train Operator may serve a notice, in the form set out in Appendix 4A (an **"Opt-in Notice"**). The effect of the Train Operator serving an Opt-in Notice is that this Schedule 4 shall be replaced with Schedule 4 of the model track access contract for publicly specified passenger services, save for this paragraph A1 and Annexes A, B, C and D, and subject to the inclusion of annual Access Charge Supplement payment sums in paragraph 1 of Part 5 of the replacement Schedule 4 and any bespoke terms being agreed between the parties.
- A1.2 The Train Operator must serve an Opt-in Notice given pursuant to paragraph A1.1 on GBR no later than two months after the date GBR publishes the Change Notice referred to in paragraph A1.1. Promptly following the service of the Opt-in Notice the parties shall endeavour to agree the required amendment.
- A1.3 In the event that GBR publishes a Change Notice after the Train Operator has served an Opt-in Notice in accordance with A1.2 above, the Train Operator may serve a notice, in the form set out in Appendix 4B (an **"Opt-out Notice"**). The effect of the Train Operator serving an Opt-out Notice is that this Schedule 4 shall be replaced with Schedule 4 of the model track access contract for open access passenger services, save for Annexes A, B, C and D, and subject to any bespoke terms agreed between the parties.
- A1.4 The Train Operator must serve an Opt-out Notice given pursuant to paragraph A1.3 on GBR no later than two months after the date GBR publishes the Change Notice referred to in paragraph A1.3. Promptly following the service of the Opt-out Notice the parties shall endeavour to agree the required amendment.

Definitions

1.1 Defined terms

In this Part [3] and its Annexes, unless the context otherwise requires:

"Cancellation Minutes" shall have the meaning ascribed to it in Schedule 8;

"Cap" shall have the meaning ascribed to it in Schedule 8;

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

- (a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
- (c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;

"Corresponding Day Timetable" means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;

"CPI" shall have the meaning ascribed to it in Schedule 7;

"Day 42 Statement" shall have the meaning ascribed to it in paragraph 13.1(a);

"Defined Service Group Revenue" shall have the relevant value as set out in Annex D to Part [3] of this Schedule 4;

"Disrupted" means:

- (a) cancelled;
- (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or
- (c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;

"First Restriction" shall have the meaning ascribed to it in paragraph 2.12(a)(i);

"First Restriction Period" shall have the meaning ascribed to it in paragraph 2.12(a)(ii);

"Further Restriction" shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);

"GBR Restriction of Use" means any Restriction of Use other than an Operator Restriction of Use;

"High Speed Diversion" means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the New Working Timetable;

"Monitoring Point" shall have the meaning ascribed to it in Schedule 8;

"Notification Factor" or **"NF"** shall have the meaning ascribed to it in paragraph 9;

"Off Peak" where applicable, has the meaning ascribed to it in Schedule 5;

"Operator Restriction of Use" means a Restriction of Use of the type referred to in paragraph 2.3;

"Over-run" shall have the meaning ascribed to it in paragraph 2.12(a);

"Peak" where applicable, has the meaning ascribed to it in Schedule 5;

"Performance Monitoring System" shall have the meaning ascribed to it in Schedule 8;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

"Restriction of Use" means, in respect of any day, any difference from the normal capability of all or any part of the Routes (where the normal capability of the Routes is expressed in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in:

- (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or
- (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;

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

"RoU Claim Notice" means a notice issued by either party pursuant to paragraph 2.8;

"RoU Liability" means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim;

"RoU Variable Costs" means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge, the VUC Default Charge and the Variable Usage Charge (as such terms are defined in Schedule 7);

"SPD Claim" has the meaning specified in paragraph 2.10(d);

"SPD Notice" means a notice issued by either party pursuant to paragraph 2.10(a);

"SPD Period" means the period of any 3 or 7 (as the case may be) consecutive Periods in which it is agreed or determined that Sustained Planned Disruption has occurred in respect of the Train Operator, together with any subsequent consecutive Period up to but excluding the first Period to occur in respect of which it is agreed or determined that the test for Sustained Planned Disruption is not satisfied in respect of the Train Operator;

"SPD Cost Threshold No.1" means [£[●]]^{in 2023-2024 prices};

"SPD Cost Threshold No.2" means [£[●]]^{in 2023-2024 prices};

"SPD Revenue Threshold No.1" means 20% of 1/13th of the relevant Defined Service Group Revenue over three consecutive Periods;

"SPD Revenue Threshold No.2" means 15% of 1/13th of the relevant Defined Service Group Revenue over seven consecutive Periods;

"SPD Termination Notice" has the meaning specified in paragraph 2.10(c);

"Sustained Planned Disruption" or **"SPD"** means a circumstance where:

- (a) the aggregate of all of the Train Operator's notional revenue losses calculated in accordance with paragraph 3 for any one or more Restrictions of Use during:
 - (i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No. 1; or
 - (ii) 7 consecutive Periods is equal to or exceeds SPD Revenue Threshold No. 2,

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the Train Operator's notional revenue losses calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or

- (b) in respect of any one or more Restrictions of Use during:
 - (i) 3 consecutive Periods the difference between the Train Operator's RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's notional costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 1; or
 - (ii) 7 consecutive Periods the difference between the Train Operator's RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's notional costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 2;

"Service Code" shall have the meaning ascribed to it in Schedule 8;

"Service Group" shall have the meaning ascribed to it in Schedule 8;

"Train" shall have the meaning ascribed to it in Schedule 8;

"Train-Bus-Train Pattern" means a situation where:

- (a) a Restriction of Use occurs on any section of track between:
 - (i) successive Monitoring Points; or
 - (ii) the station of origin and the next Monitoring Point; and
- (b) the Train Operator uses a substitute bus or other alternative road service between any pair of stations situated:
 - (i) between or including such successive Monitoring Points; or
 - (ii) at or between the station of origin and the next Monitoring Point;

"Type 3 Restriction of Use" means a single Restriction of Use (including any Over-run) of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);

"Unplanned Over-run Period" shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A);

"Viable Transfer Point" a station normally served by the services operated by the Train Operator, and equipped to enable the efficient and safe transfer of trainloads of passengers to and from alternative modes of transport, and/or services operated by other Train Operators, and which the parties have agreed, and set out in Annex B, shall be used for the purpose of providing bus substitution services, and for calculating the cost of bus substitution services in accordance with the provisions of paragraph 4 Costs Compensation for GBR Restrictions of Use;

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

"White Period" means any period during which the taking of a Restriction of Use would not result in any notional revenue loss being calculated in accordance with paragraph 3.

1.2 *Suspension Notices*

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 4. A Restriction of Use shall only be treated as a Restriction of Use to the extent that it involves a Restriction of Use of all or any part of the Routes which is not covered by the restriction under that Suspension Notice.

1.3 *Possession*

Any reference in this contract to the term "possession", whether on its own or in composite, should be construed as "Restriction of Use" as defined in this Part [3].

1.4 *White Period*

In respect of any Type 3 Restriction of Use, where a Restriction of Use starts before and/or ends after a White Period, the entire length of the Restriction of Use shall be taken into account when counting the cumulative total hours.

2. *Application of this Part*

2.1 *Entry into effect*

This Part [3] shall apply in respect of Restrictions of Use.

2.2 *Applicable Engineering Access Statement and the GBR Code*

The provisions of this Part [3] shall be without prejudice to:

- (a) GBR's right to take Restrictions of Use under or pursuant to the Applicable Engineering Access Statement;
- (b) the establishment of any amended Working Timetable under [Part H] of the GBR Code; and
- (c) any rights pursuant to the GBR Code that the Train Operator may have to challenge any decision of GBR.

2.3 *Operator Restriction of Use*

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

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

2.4 GBR payments

Subject to paragraph 2.3, GBR shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of a GBR Restriction of Use calculated in accordance with paragraph 2.7 to 2.10 where applicable.

2.5 Not Used

2.6 Not Used

2.7 Type 3 Restriction of Use

Where a Train Operator's RoU Liability exceeds £10,000 in respect of any Type 3 Restriction of Use GBR shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

2.8 RoU Claim Notice

- (a) A Train Operator wishing to make a request for payments from GBR pursuant to paragraph 2.7 must notify GBR that a Restriction of Use is a Type 3 Restriction of Use and that the circumstances in paragraph 2.7 apply within 56 days of the date of the end of such Type 3 Restriction of Use.
- (b) The notice referred to in paragraph 2.8(a) must include details of the estimate of the RoU Liability which the Train Operator has incurred in respect of the relevant Restriction of Use.

2.9 Changes to Restrictions of Use

- (a) Where a single Restriction of Use falls within the definition of a Type 3 Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use no longer falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had never been a Type 3 Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) Where a single Restriction of Use does not fall within the definition of a Type 3 Restriction of Use and there is a change which means that the Restriction of Use then falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been a Type 3 Restriction of Use
- (c) For the purposes of paragraph 2.9(d), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of "Restriction of Use" when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (d) Where a change to a Type 3 Restriction of Use reduces the impact of that Restriction of Use and accordingly changes it so that it no longer falls within the definition of a Type 3 Restriction of Use or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Type 3 Restriction of Use was notified to the Train Operator by GBR, serve a notice on GBR which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Type 3 Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

2.10 Sustained Planned Disruption

- (a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use for the relevant services during the relevant SPD Period be calculated in accordance with paragraph 8 by serving a notice on the other (an **"SPD Notice"**) in accordance with paragraph 2.10(b).
- (b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling 56 days after the issue of the Day 42 Statement which followed the end of the relevant SPD Period and must include a short explanation of why it reasonably believes a Sustained Planned Disruption has occurred and a statement of when the SPD Period commenced.
- (c) Following the issue of an SPD Notice, either party may serve a notice (an **"SPD Termination Notice"**) stating that it reasonably believes that the relevant Sustained Planned Disruption is no longer occurring, such notice to include a short explanation of why the party serving it reasonably believes that the Sustained Planned Disruption has ceased and stating the Period in which such cessation has occurred. A party receiving an SPD Termination Notice shall within 30 days of its receipt by notice to the serving party either accept or reject the SPD Termination Notice and where it rejects the notice it shall include with its rejection notice a short explanation of why it reasonably believes the Sustained Planned Disruption is continuing. If the parties fail to reach agreement within 30 days after service of a rejection notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify the other that the Dispute resolution procedure set out in paragraph 13.3 is to apply (save that references to paragraph 13.2 shall be construed as being references to this paragraph).
- (d) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an **"SPD Claim"**):
 - (i) no later than the day falling 112 days after the issue of the Day 42 Statement for the last Period in the relevant SPD Period; or
 - (ii) where an SPD Period has exceeded 13 consecutive Periods in length or upon the termination or expiry of this contract, whichever comes first, unless otherwise agreed in writing, no later than the day falling 112 days after the issue of the Day 42 Statement which followed the 13th consecutive Period or the termination or expiry of this contract (as applicable),whichever is the earlier.
- (e) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(d) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:
 - (i) each such SPD Claim relates to a different period within the said SPD Period (so there is no double-counting); and
 - (ii) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(d).
- (f) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:
 - (i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (ii) if the claim is made by GBR, the reasons why GBR reasonably believes that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.
- (g) Following the service of an SPD Claim, if and to the extent it is agreed or determined that a Sustained Planned Disruption has occurred in the period covered by the claim then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8 in respect of the SPD Period (or where applicable the part of the SPD Period) covered by the SPD Claim.

2.11 Early notice of RoU Liability

- (a) The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Liability and shall use reasonable endeavours to agree whether such RoU Liability calculated in accordance with paragraph 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Liability. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Liability will arise or mitigating actions should be contemplated.
- (b) Following any agreement or determination that such RoU Liability are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption. This may include any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption.
- (c) Nothing in this contract shall prevent GBR and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use.
- (d) Unless otherwise agreed, the timescales for claiming RoU Liability shall still apply.

2.12 Over-runs

- (a) An over-run ("**Over-run**") occurs where:
 - (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "**First Restriction**"); and
 - (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "**First Restriction Period**"), there is either:
 - (A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Engineering Access Statement) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this contract (the "**Unplanned Over-run Period**"); and/or
 - (B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly connected with or attributable

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

to any activities undertaken or planned to be undertaken under the First Restriction (a "**Further Restriction**"),

in each case without there being any intervening period between the First Restriction and the relevant Unplanned Over-run Period or Further Restriction, which is not either a White Period, Unplanned Over-run Period or a Further Restriction.

- (b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.
- (c) This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for GBR Restrictions of Use under paragraph 3 or costs compensation for GBR Restrictions of Use under paragraph 4.

3. **Notional revenue loss for GBR Restrictions of Use**

3.1 ***Basis for calculations***

For each Period and for each Service Group, GBR shall calculate the notional revenue loss in respect of all GBR Restrictions of Use on each Restriction of Use Day in that Period by applying, in accordance with paragraphs 3.2 and 3.3, the formulae in paragraphs 3.4, 3.5 and 3.6. For the purposes of determining for this paragraph 3 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

3.2 ***Separate calculations***

In applying the formula in paragraph 3.4, GBR shall calculate the notional revenue loss separately in respect of all:

- (a) GBR Restrictions of Use which are taken into account in the New Working Timetable; and
- (b) GBR Restrictions of Use which are not so taken into account but are taken into account in the Applicable Timetable.

3.3 ***Meaning of T1 and T2***

In paragraph 3.4:

- (a) where GBR is making the calculation for the purpose of paragraph 3.2(a), T1 shall mean the Corresponding Day Timetable and T2 shall mean the New Working Timetable for the Restriction of Use Day; and
- (b) where GBR is making the calculation for the purpose of paragraph 3.2(b), T1 shall mean the New Working Timetable for the Restriction of Use Day and T2 shall mean the Applicable Timetable for the Restriction of Use Day.

3.4 ***Formula***

The formula referred to in paragraph 3.1 is as follows:

$$GBRP = \sum((WACM + GBREJT) \cdot BF \cdot GBRPR \cdot NF)$$

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

where:

- (z) GBRP is the GBR Payment;
- (a) Σ is the sum across all GBR Restrictions of Use and all Restriction of Use Days in the Period;
- (b) WACM is the weighted average of Cancellation Minutes for the Service(s) (or part(s) thereof) in that Service Group as a result of a GBR Restriction of Use, calculated according to the following formula:

$$WACM = (CM - GBRPP) \cdot \Sigma \frac{(MPW \cdot CS)}{SS}$$

where:

CM is the Cancellation Minutes for the Service Group in question specified in column F of Appendix 1 to Schedule 8;

GBRPP is the GBR performance point for the Service Group in question specified in column B of Appendix 1 to Schedule 8;

Σ is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to the Monitoring Point, as specified in column K of Appendix 1 to Schedule 8;

CS is the number by which the number of stops at that Monitoring Point scheduled for that day in T2 is less than SS as a result of the GBR Restriction of Use; and

SS is the number of stops at the Monitoring Point scheduled for that day in T1;

- (c) GBREJT is the extended Journey Time as a result of a GBR Restriction of Use in respect of Services in that Service Group, for the Restriction of Use Day, being Services which are not cancelled, calculated according to the following formula:

$$GBREJT = EJT \cdot \left(1 - \Sigma \frac{(MPW \cdot CS)}{SS}\right)$$

where:

Σ , MPW, CS and SS have the meanings ascribed to them in paragraph 3.4(b) above; and

EJT is the extended Journey Time as a result of a GBR Restriction of Use in respect of Services in that Service Group calculated according to the following formula:

if no Train in that Service Group is scheduled in T2 for that day, then EJT shall equal 0;

if otherwise,

EJT is the lesser of:

the number of minutes specified as the Cap for the Service Group in column G of Appendix 1 to Schedule 8; and

$$AJT \cdot ((u - v)/v),$$

provided always that if v equals or is greater than u, EJT shall equal 0;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

where:

AJT is the average Journey Time for Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the Journey Times scheduled in T1 in respect of such Trains divided by the aggregate number of Journeys scheduled in T1 in respect of such Trains;

u is the average speed of Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the number of miles scheduled to be run in T1 by such Trains divided by the aggregate of the Journey Times scheduled in T1 in respect of such Trains; and

v is the speed to which the average speed of Trains in the Service Group scheduled for that day in T2 is reduced as a result of the GBR Restrictions of Use (calculated by reference to the aggregate of the number of miles which such Trains are scheduled to run in T2 divided by the aggregate of the end to end Journey Times scheduled in T2 in respect of such Trains),

and for the purposes of this paragraph 3.4:

"Journey"

means the journey of the Train scheduled in the relevant timetable from its station of origin to its destination station; provided that if a Train crosses a Service Group boundary then in respect of each Service Group the Train's station of origin and destination station shall respectively mean the station at which the Train commences that part of its journey in that Service Group and the station at which it ends that part of its journey in that Service Group; and that where any Train splits to become more than one Train then that part of the Train's journey up to the station where it splits shall be treated as one journey and each Train into which the Train splits shall be treated as making a separate journey; and

"Journey Time"

shall be calculated in respect of each journey by reference to the difference in minutes between the time of departure from the station of origin and the time of arrival at the destination station;

- (d) BF is the busyness factor, as calculated for each Service Group according to the following formula:

$$BF = \sum \frac{(MPW \cdot SS)}{AS}$$

where:

AS is the average number of stops at the Monitoring Point (being the Monitoring Point referred to in the definition of MPW) per day scheduled in the Timetable Period; and

MPW and SS have the meanings ascribed to them in paragraph 3.4(b); and

- (e) GBRPR is the GBR payment rate specified in column C of Appendix 1 to Schedule 8, as indexed according to the relevant provisions of Schedule 8.

3.5 **High Speed Diversions**

Where there is a High Speed Diversion and WACM, as defined in paragraph 3.4(b), has a value equal to or less than zero then the following formula shall apply:

$$AGBRP = \frac{TDR_{SG}}{TDT_{SG}} \cdot (CM - GBRPP) \cdot GBRPR \cdot BF \cdot NF$$

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

where:

AGBRP is the additional GBR payment;

TDR_{SG} is, in respect of each Service Group and each Restriction of Use Day on which a High Speed Diversion applies, the number of Trains in the Service Group scheduled in T2 to be subject to the High Speed Diversion;

TDT_{SG} is the total number of Trains scheduled to be run in the Service Group in T1;

T1 and T2 shall have the meanings ascribed to them in paragraph 3.3; and

CM, GBRPP, GBRPR and BF shall have the meanings ascribed to them in paragraph 3.4.

In such a situation, the Train Operator shall provide GBR with evidence, either that the High Speed Diversion has been common for the Services in question in the past or that the High Speed Diversion would arise as a result of a change in circumstances.

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and GBR within 28 days after the New Working Timetable is issued reflecting the relevant GBR Restriction of Use, the mechanism and procedure for dispute resolution set out in paragraphs 13.2, 13.3 and 13.4 shall apply.

3.6 ***Train-Bus-Train Patterns***

If any Service Group on any day is subject to a Train-Bus-Train Pattern on account of a GBR Restriction of Use, and where WACM, as defined in paragraph 3.4(b), has a value equal to or less than zero, then GBR shall pay to the Train Operator an additional payment calculated as follows:

$$AGBRP = \frac{TTS_{SG}}{TTR_{SG}} \cdot (CM - GBRPP) \cdot DV \cdot GBRPR \cdot BF \cdot NF$$

where:

AGBRP is the additional GBR payment;

TTS_{SG} is the total number of Trains scheduled in T2 to be run in the Service Group for that Restriction of Use Day to terminate at a destination other than that shown for those Trains due to a Train-Bus-Train Pattern in T1;

TTR_{SG} is the total number of Trains scheduled to be run in the Service Group in T1;

T1 and T2 shall have the meanings ascribed to them in paragraph 3.3;

CM, GBRPP, GBRPR and BF shall have the meanings ascribed to them in paragraph 3.4; and

DV shall have the value of 0.125,

provided that if:

TTR_{SG} is less than TTS_{SG} then $\frac{TTS_{SG}}{TTR_{SG}}$ shall be deemed to have the value of one.

In such a situation the Train Operator shall provide GBR with evidence, either that the Train-Bus-Train Pattern resulting from the GBR Restriction of Use is an arrangement that has been commonly used in the past by that Train Operator on the Services in question, or that it has arisen due to a change in circumstances.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and GBR within 28 days after the New Working Timetable is issued reflecting the relevant GBR Restriction of Use, the mechanism and procedure for dispute resolution set out in paragraphs 13.2, 13.3 and 13.4 shall apply.

4. Notional costs consequent on GBR Restrictions of Use

4.1 Basis for calculations

For each Period and for each Service Group, GBR shall calculate the notional costs of all GBR Restrictions of Use on each Restriction of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

4.2 Notional cost calculation formula

The formula referred to in paragraph 4.1 is as follows:

$$\text{Notional cost} = \sum (RRBC + TMC)$$

where:

- (a) $\sum$ is the sum across all applicable GBR Restrictions of Use and all Restriction of Use Days in the Period;
- (b) RRBC is the rail replacement bus cost, for the Service(s) (or part(s) thereof) in that Service Group as a result of a GBR Restriction of Use, calculated according to the following formula:

$$RRBC = EBM \times EBMPR$$

where:

EBM is the number of estimated bus miles for the Train Operator; and

EBMPR is the payment rate per EBM, which is £[● in 2023-2024 prices].

If there is full bus replacement

$$EBM = EBMW \times FBR_{\text{mile}}$$

If there is partial bus replacement

$$EBM = EBMW \times 0.5 \times PBR_{\text{miles}} \times IT$$

If there is no bus replacement (as set out in Annex B to this Part 1 of Schedule 4)

$$EBM = EBMW \times 0$$

where:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

EBMW is the weighting applicable to the affected section of route, as set out in Annex B to this Part 1 of Schedule 4;

FBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which full bus replacement is required as set out in Annex B to this Part 1 of Schedule 4;

PBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which partial bus replacement is required as set out in Annex B to this Part 1 of Schedule 4;

ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%; and

- (c) TMC is the cost or saving, expressed in pence per train mile and rounded to two decimal places, resulting from train mileage change, for the Service(s) (or part(s) thereof) in that Service Group as a result of a GBR Restriction of Use, calculated according to the following formula:

$$TMC = TM \times TMPR$$

where:

TM is the change in train mileage; and

TMPR is the payment rate per train mile, as stipulated in Annex C to this Part [3] of Schedule 4.

5. Estimated bus miles change mechanism

5.1 Circumstances in which parties agree to amend Annex B

Either party may by notice to the other propose that Annex B be amended in accordance with this paragraph 5.

5.2 Procedure for amendments to Annex B

- (a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
- (i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls 6 months before the relevant Timetable Change Date on which that timetable change is due to occur; and
 - (ii) in any other case prior to the date from which it proposes such change shall have effect.
- (b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.
- (c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter may be referred for Dispute in accordance with Clause 13.
- (d) Any amendment to Annex B, which is agreed by the parties or determined by conclusion of the relevant Dispute resolution process, shall apply with effect from:
- (i) the relevant Timetable Change Date (where paragraph 5.2(a)(i) applies); or

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (ii) the date proposed by the party requesting the change in accordance with paragraph 5.2(a)(ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).

5.3 Costs of implementing amendment

The party proposing the amendment to Annex B shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) pay 90 percent of costs incurred by or on behalf of the other party in assessing and implementing the amendments to Annex B, provided that those costs shall be the minimum reasonably necessary to assess and implement that amendment.

6. Not Used

7. RoU Liability compensation for Type 3 Restrictions of Use

7.1 Compensation arrangements

- (a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, GBR and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by GBR to the Train Operator in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined the compensation to be paid by GBR to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts received by the Train Operator from GBR in respect of such Restriction of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii)(A) any amounts under Schedule 8).
- (c) GBR shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

8. Sustained Planned Disruption payments

8.1 Payment arrangements

- (a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, GBR and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by GBR to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined the compensation to be paid by GBR to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts received by the Train Operator from GBR in respect of such Restrictions of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii)(A) any amounts under Schedule 8)
- (c) Following any agreement or determination of an amount to be paid by GBR to the Train Operator in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by GBR to the Train Operator in accordance with paragraph 13.1.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (d) Where a Sustained Planned Disruption applies due to a circumstance which it is agreed or determined affects a part only of the Train Operator's services (including whether by reference to geographic location or Service Group), then in agreeing or determining the RoU Liability in respect of that SPD the RoU Liability in respect of the part of the Train Operator's services not affected by that circumstance shall (unless otherwise proven) be presumed to be equal to the payments made under paragraphs 3 and 4 of this Schedule 4 in respect of those other services.

9. Notification Factors

9.1 Early notification

The Notification Factor in respect of a GBR Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column C of Annex A to this Part [3] if and to the extent that:

- (a) the GBR Restriction of Use is reflected in the New Working Timetable; or
- (b)
- (i) details of the GBR Restriction of Use are notified to the Train Operator on or before D-26 for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by GBR), are not reflected in the New Working Timetable; and
- (ii) subject to paragraph 9.1(b)(iii), the GBR Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 2200 hours on the day which is 12 Weeks before the Restriction of Use Day; or
- (iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give GBR a revised Timetable Proposal in accordance with Condition D3.4.9 of the GBR Code, the GBR Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.2 Notification by TW-22

The NF in respect of a GBR Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column D of Annex A to this Part 1 if and to the extent that paragraph 9.1 does not apply, and:

- (a) details of the GBR Restriction of Use are notified to the Train Operator by TW-22; and
- (b)
- (i) the GBR Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 2200 hours on the day which is 12 Weeks before the Restriction of Use Day; or
- (ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give GBR a revised Timetable Proposal in accordance with Condition D3.4.9 of the GBR Code, the GBR Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.3 Late Notification

The NF in respect of a GBR Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Annex A to this Part [3] if and to the extent paragraphs 9.1 and 9.2 do not apply but the GBR Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by GBR to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i)

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

respectively, notwithstanding the Train Operator having given a revised Timetable Proposal in accordance with Condition D3.4.9 of the GBR Code.

10. Dispute resolution

10.1 If the Train Operator and GBR fail to reach agreement as required under paragraph 2.10(g), 2.11, 7 or 8 or fail to reach agreement on the amount of costs notified under paragraph 2.9(d):

- (a) within 6 months, or such other period as the parties may agree, of the issue of the relevant notice (as set out in paragraphs 2.9(d), 2.10(d) or 7.1(a) or once discussions or negotiations have commenced (as required under 2.11 and 8.1(a)) (as applicable), the parties shall meet to discuss outstanding aspects of the claim, which may include but is not limited to the provision of information or points in dispute;
- (b) if, no later than 28 days after the date of the meeting referred to in paragraph 10.1(a), the claim is not resolved or withdrawn:
 - (i) the parties shall agree a timetable for a subsequent meeting; or
 - (ii) either party may refer the matter for Dispute in accordance with Clause 13.

10.2 Notwithstanding paragraph 10.1, either party may refer the matter for Dispute in accordance with Clause 13 at any time following the issue of the relevant notice(s) in accordance with paragraph 2.9(d), 2.10(d) or 7.1(a) and once the discussions or negotiations have commenced in accordance with paragraph 2.11 or 8.1(a).

11. Schedule 8 application

If and to the extent that a GBR Restriction of Use is not reflected in the Applicable Timetable for the Restriction of Use Day, the amount of compensation (if any) shall be calculated in accordance with Schedule 8 (to the exclusion of any compensation under this Schedule 4 except as provided in paragraph 2.12).

12. Restriction of Use Day and Corresponding Day

12.1 Information provision

In respect of any Restriction of Use Day for which there is either notional revenue loss or notional costs to be calculated in a Period under paragraphs 3 and 4, GBR shall accurately record such information as it uses and as may properly and reasonably be required to make the calculations required under paragraphs 3 and 4 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i)). GBR shall maintain that information until the calculations required under paragraphs 3 and 4 in respect of that Period are finally agreed or determined and provide such information to the Train Operator at its reasonable request.

12.2 Corresponding Day

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition "Corresponding Day" and the parties have failed to reach agreement on the Corresponding Day by the date falling 8 Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved as a Dispute in accordance with Clause 13.
- (b) The parties shall agree that the relevant Dispute Resolution Body's remit shall be to:
 - (i) reach a decision which is fair and reasonable; and
 - (ii) identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D-26 in either case which has been

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

produced in accordance with the GBR Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or

- (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant Dispute Resolution Body may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.

13. **Payment procedures**

13.1 ***GBR Restrictions of Use***

Within 14 days after the end of each Period, GBR shall provide to the Train Operator a statement (the "**Day 42 Statement**") showing:

- (a) all GBR Restrictions of Use taken during that Period;
- (b) any notional revenue losses and notional costs calculated in accordance with paragraphs 3 and/or 4 in respect of the GBR Restrictions of Use identified; and
- (c) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Liability in respect of a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by GBR to the Train Operator,

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

13.2 ***Disputes***

Within 15 days of receipt of a statement from GBR under paragraph 13.1, the Train Operator shall notify GBR of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

13.3 ***Dispute resolution***

The procedure for resolving disputes notified under paragraph 13.2 shall be as follows:

- (a) within 7 days of service of any notice under paragraph 13.2, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;
- (b) if, within 7 days of that meeting (the "**first meeting**"), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within 7 days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;
- (c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;
- (d) if no resolution results within 14 days of that meeting, either party may refer the matter for resolution in accordance with the Rules of Procedure.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

13.4 *Payments in the event of a dispute*

Where any amount under paragraph 13.1 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 13.1;
- (b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and
- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

14. Indexation

14.1 The indexation formula applicable to this paragraph 14 is:

$$RI_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

RI_t is the relevant indexation value in the Relevant Year t ;

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

CPI_{2022} means the CPI published or determined with respect to the month of November 2022.

14.2 Each of the EBMPR (defined and specified in paragraph 4.2), TMPR (defined in paragraph 4.2 and specified in Annex C to this Part 1 of Schedule 4) and Defined Service Group Revenues (specified in Annex D to this Part 1 of Schedule 4) shall be adjusted in respect of Periods in Relevant Year t by multiplying them by the relevant indexation value, as set out in paragraph 14.1.

14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2, as set out in paragraph 1.1 of this Schedule 4, shall be adjusted in respect of Periods in Relevant Year t by multiplying them by the relevant indexation value, as set out in paragraph 14.1.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Annex A

to Part [3] of Schedule 4

Notification Factors

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES
Annex B

to Part [3] of Schedule 4

Lookup Table for EBM Weights

Viable Transfer Point [VTP]	Viable Transfer Point [VTP]	Applicable Infrastructure Rules	Other Operating Rules	S4CS Code	Description of Possession Response	Comments and Other Routes to Consider	Service Group	% Applicable	FULL Bus Replacement (100%)				PARTIAL Bus Replacement (50% x X%)					No Bus Replacement (0%)	EBMs Total	
									From	To	Miles	Trains	From	To	Miles	Trains	% Trains			
[Description]																				
																		0	0	
																			0	0
																			0	0
																		0	0	

[insert map]

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Annex C

to Part [3] of Schedule 4

Payment Rate per train mile

Service Group	Description	Compensation Rates	Total Train Cost per Mile (pence)

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Annex D

to Part [3] of Schedule 4

Defined Service Group Revenue

Service Group	Description	Defined Service Group Revenue

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Part 2

(Not used)

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Appendix 4A

Opt-in Notice

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Great British Railways Limited

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Opt-in to the Schedule 4 Restrictions of Use provisions

This is an Opt-in Notice in respect of Schedule 4 of the track access contract between Great British Railways Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt in to the provisions of Schedule 4 of the model track access contract for publicly specified passenger services, pursuant to paragraph A1.1 of Part [3] to Schedule 4 to the contract.

This notice has no effect in relation to Annexes A, B, C and D of Part [3] of Schedule 4, and is subject to the inclusion of annual Access Charge Supplement payment sums in paragraph 1 of Part 2 of the replacement Schedule 4 and any bespoke terms to be agreed with GBR.

{I have sent a copy of this notice to [any other person at GBR entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].}

Yours faithfully

[Name of train operator representative]

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Appendix 4B

Opt-out Notice

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Great British Railways Limited

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Opt-out from the Schedule 4 Restrictions of Use provisions

This is an Opt-out Notice in respect of Schedule 4 of the track access contract between Great British Railways Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt out of the provisions of Schedule 4 of the model track access contract for publicly specified passenger services and substitute those with the provisions of Schedule 4 of the model track access contract for open access passenger services, pursuant to paragraph A1.3 of Part [3] to Schedule 4 to the contract.

This notice has no effect in relation to Annexes A, B, C and D of Part [3] of Schedule 4, and is subject to any bespoke terms to be agreed with GBR.

{I have sent a copy of this notice to [any other person at GBR entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].}

Yours faithfully

[Name of train operator representative]

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Schedule 5

(Services)

1. Definitions

1.1 In this Schedule unless the context otherwise requires:

"Calling Pattern" means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;

"Capacity Commitments" has the meaning ascribed to it in Part A of the GBR Code;

"Capacity Commitments Register" has the meaning ascribed to it in Part A of the GBR Code;

"Contingent Capacity Commitment" has the meaning ascribed to it in Part A of the GBR Code

"Day" means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;

"Firm Capacity Commitment" has the meaning ascribed to it in Part A of the GBR Code

"Network Change" has the meaning ascribed to it in Part A of the GBR Code;

"Off-Peak Services" means Services Scheduled on any part of a Weekday which are not **"Peak Services"**, and **"Off-Peak"** shall be construed accordingly;]

"Passenger Train Slot" means a Train Slot intended by the Train Operator to be used for the provision of a Service;

"Peak Services" means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at [●] between [●] hours and [●] hours or (ii) to depart from [●] between [●] hours and [●] hours, and "Peak" shall be construed accordingly;] **[Explanatory note** (to be deleted from completed contract): If this definition is not required and is common to all relevant Service Groups, it may be populated here. If it is not common to all such Service Groups, delete and populated the footnotes to Table 2.1.]

"Reduced Regular Calling Pattern" has the meaning ascribed to it in paragraph 2.12;

["Route Acceptance"]

"Reduced and Regular Calling Pattern" have the meaning ascribed to them in paragraph 2.12;

"Scheduled" means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;

"Service Group" means any one or more (as the context may require) of the service groups described in this Schedule;

"Timetable Period" means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;

"Timing Load" means, in relation to a Service, the timing reference code as defined from time to time in the Working Timetable.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

"Train Service Code" or "TSC" means the eight character code applied in the Performance Monitoring System and used to identify Services;

"Weekday" means any day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday; and

"xx20" means, as an example of this notation, 20 minutes past the hour.

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

2. Capacity Commitments

Passenger Train Slots

- 2.1 The Train Operator has Firm Capacity Commitments to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in [Column X] of the Capacity Commitments Register on the Days and within the Peak and Off-Peak times so listed using Specified Equipment included in paragraph 5.1(a) that is capable of achieving the Timing Load shown but only to the extent that such Capacity Commitment is designated to the Train Operator in [column X] of the Capacity Commitments Register. If the Train Operator makes a Timetable Proposal, or relies on a Rolled Over Timetable Proposal, to operate any of the Services specified in the Capacity Commitments Register using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Capacity Commitments for the purposes of Part D of the GBR Code.
- 2.2 In order to provide for the Scheduling of part only of Passenger Train Slots designated to the Train Operator in [Column X] of the Capacity Commitments Register the Train Operator has:
- (a) Firm Capacity Commitments for such a Passenger Train Slot to commence from and/or terminate at [mmm, nnn, III]; and
 - (b) Contingent Capacity Commitments for such a Passenger Train Slot to commence from and/or terminate at [kkk, jjj, iii] [any other station listed in its Calling Pattern].
- 2.3 In order to provide through Services the Train Operator has:
- (a) Firm Capacity Commitments to combine Passenger Train Slots at [nnn, mmm and III]; and
 - (b) Contingent Capacity Commitments to combine Passenger Train Slots at [kkk, jjj and iii] [all other locations].

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Additional Passenger Train Slots

- 2.4 The Train Operator has Contingent Capacity Commitments to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in [Column X] of the Capacity Commitments Register where “contingent” is entered in the “Type of Commitment” column and on the Days so listed, but only to the extent that such capacity commitment is designated to the Train Operator in [column X] of the Capacity Commitments Register.
- 2.5 A Contingent Capacity Commitments for an additional Passenger Train Slot under paragraph 2.4 includes:
- (a) a Contingent Capacity Commitments to call at any station listed in [Column X] of the Capacity Commitments Register;
 - (b) a Contingent Capacity Commitments to have Scheduled part only of the Passenger Train Slot in question; and
 - (c) a Contingent Capacity Commitments to combine Passenger Train Slots to provide a through Service.

Ancillary Movements

- 2.6 The Train Operator has Firm Capacity Commitments to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Capacity Commitments of the Train Operator, including:
- (a) movements for the purpose of maintenance of rolling stock to and from maintenance depots;
 - (b) movements for driver training purposes; and
 - (c) empty stock movements.
- 2.7 For the purpose of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:
- (a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the route in question; or
 - (b) where the route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the route without passengers on board.

Relief Passenger Train Slots

- 2.8 The Train Operator has Contingent Capacity Commitments to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Capacity Commitments are subject to:
- (a) the relief Passenger Train Slot being additional to a Service for which the Train Operator has entitlements in the Capacity Commitments Register in accordance with paragraphs 2.1–2.5; and
 - (b) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- 2.9 Save by prior agreement with GBR, the Train Operator shall not be entitled to operate Services on 25 and 26 December in any year. Any prior agreement shall be subject to such conditions as GBR may reasonably impose, including paying for GBR's reasonable costs for providing such access.
- 2.10 *[Arrangements specifying the treatment of Public Holidays – whether as Saturday, Sunday or Weekday services or mixture – to be developed].*
- 2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in [Column X] of the Capacity Commitments Register.

Calling Patterns

- 2.12 In respect of each Service designated to the Train Operator in the Capacity Commitments Register, the Train Operator has Firm Capacity Commitments to the corresponding Calling Pattern listed in [Column X] of the Capacity Commitments Register (the "**Regular Calling Pattern**") or any subset of the Calling Pattern (the "**Reduced Regular Calling Pattern**").

Additional calls

- 2.13 The Train Operator has Contingent Capacity Commitments to have Scheduled, in respect of any Passenger Train Slot, calls at one or more of the stations set out opposite the Service in [Column X] of the Capacity Commitments Register being stations which do not form part of the Regular Calling Pattern.

3. **Specified Equipment**

Specified Equipment

- 3.1 In order to provide the Services specified in this Schedule 5, subject to obtaining any necessary route clearance for the Route in question, the Train Operator has:

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

[List here all rolling stock to which Firm Capacity Commitments are being given]
--

and

- (b) Contingent Capacity Commitments to operate any railway vehicles registered with RSSB's R2 system (incorporating the former Rolling Stock Library).

For the purposes of this contract the railway vehicles specified in paragraph 3.1(a) and 3.1(b) are known as the "Specified Equipment".

Train length

- 3.2 The Train Operator has a Firm Capacity Commitment to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of GBR to vary the train length in cases where the Network cannot accommodate all Timetable Proposals and Rolled Over Timetable Proposals to operate to the maximum length.
- 3.3 Nothing in paragraph 2.2 precludes the operation of trains in excess of platform lengths where appropriate measures have been taken to control, so far as is reasonably practicable, any risks introduced by the use of such longer trains.

[Information]

- 3.4 [The parties make no representations regarding the data set out in the Capacity Commitments Register for those columns which are marked as "N" under the Contractual Column in the ICP]

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

& CCR Data record. Such data does not form part of this contract and is included in the Capacity Commitments Register for convenience and information only.]

Schedule 6

(Events of Default, Suspension and Termination)

1. Events of Default

1.1 *Train Operator Events of Default*

The following are Train Operator Events of Default:

- (a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services in accordance with Clause 3.2(a);
- (b) an Insolvency Event occurs in relation to the Train Operator;
- (c)
 - (i) any breach by the Train Operator of this contract, its Safety Obligations or any of the Collateral Agreements; or
 - (ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance, GBR reasonably considers constitutes a threat to the safe operation of any part of the Network;
- (d) any Track Charges or other amount due by the Train Operator to GBR under this contract remain unpaid for more than 7 days after their due date;
- (e) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to GBR; and
- (f) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators.

1.2 *Notification*

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

1.3 *GBR Events of Default*

The following are GBR Events of Default:

- (a) GBR ceases to be authorised to be the operator of that part of the Network comprising the Routes by a licence granted under section [7B/8] of the 1993 Act unless exempt from the requirement to be so authorised under section 7 of the 1993 Act;
- (b) an Insolvency Event occurs in relation to GBR;
- (c)
 - (i) any breach by GBR of this contract, its Safety Obligations or any of the Collateral Agreements; or

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

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

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

- (d) any breach of this contract or any material breach of any of the Collateral Agreements by GBR which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

1.4 ***Notification***

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

2. ***Suspension***

2.1 ***Right to suspend***

- 2.1.1 GBR may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.

- 2.1.2 The Train Operator may serve a Suspension Notice where a GBR Event of Default has occurred and is continuing.

2.2 ***Contents of Suspension Notice***

A Suspension Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) the date and time at which suspension is to take effect;
- (c) in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Routes or any parts of them or any other part of the Network;
- (d) in the case of a Suspension Notice served on GBR, details of any necessary suspension of the Services; and
- (e) whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:
 - (i) the steps reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amount due, 7 days shall be a reasonable grace period).

2.3 ***Effect of Suspension Notice served by GBR***

Where GBR has served a Suspension Notice on the Train Operator:

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from GBR to the Train Operator under paragraph 2.5.4;
- (c) service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Track Charges; and
- (d) service of the Suspension Notice shall not affect the Train Operator's Firm Capacity Commitments (as defined in Schedule 5) for the purposes of Part D of the GBR Code.

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

Where the Train Operator has served a Suspension Notice on GBR:

- (a) it shall have the effect of suspending the Train Operator's permission to use the Routes to provide the Services to the extent specified in the Suspension Notice;
- (b) in relation to Services suspended by the Suspension Notice, the amount of the Fixed Track Charge (as that term is defined in Schedule 7) shall be abated on a daily basis by an amount equal to the proportion of passenger vehicle miles not run on any day due to the suspension divided by the passenger vehicle miles timetabled for the Corresponding Day to that day (as that term is defined and determined under Part [3] of Schedule 4), as multiplied by the daily amount of the Fixed Track Charge (as so defined);
- (c) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to GBR under paragraph 2.5.4; and
- (d) the service of the Suspension Notice shall not affect the Train Operator's Firm Capacity Commitments (as defined in Schedule 5) for the purposes of Part D of the GBR Code.

2.5 *Suspension to be proportionate to breach*

2.5.1 A Suspension Notice served under paragraph 2.3 in respect of any of the Train Operator Events of Default specified in paragraphs (a) and (c) to (f) (inclusive) of paragraph 1.1 shall, so far as reasonably practicable, apply only to the:

- (a) railway vehicles;
- (b) Services;
- (c) Routes; and
- (d) categories of train movements or railway vehicles,

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

2.5.2 A Suspension Notice served under paragraph 2.4 in respect of any of the GBR Events of Default specified in paragraphs 1.3(a), (c) and (d) shall, so far as reasonably practicable, apply only to the:

- (a) railway vehicles;
- (b) Services;
- (c) Routes; and

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (d) categories of train movements or railway vehicles,

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

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

- (a) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and
- (b) keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.

2.5.4 Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5.3 (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.

3. **Termination**

3.1 ***GBR's right to terminate***

GBR may serve a Termination Notice on the Train Operator:

- (a) where the Train Operator fails to comply with any material restriction in a Suspension Notice;
- (b) where the Train Operator fails to comply with its obligations under paragraph 2.5.3;
- (c) where the Train Operator Event of Default specified in paragraph 1.1(a) has occurred and is continuing; or
- (d) where the Train Operator Event of Default specified in a Suspension Notice served by GBR is not capable of being remedied and 3 months have elapsed from the service of that Suspension Notice.

3.2 ***Train Operator's right to terminate***

The Train Operator may serve a Termination Notice on GBR:

- (a) where GBR fails to comply with its obligations under paragraph 2.5.3;
- (b) where the GBR Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or
- (c) pursuant to Clause 18.2.3(b); or
- (d) where the GBR Event of Default specified in a Suspension Notice served by the Train Operator is not capable of being remedied and 3 months have elapsed from the service of that Suspension Notice.

3.3 ***Contents of Termination Notice***

A Termination Notice shall specify:

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and
- (c) whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the relevant Event of Default is capable of remedy:
 - (i) the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of the Train Operator to pay Track Charges or other amounts due, 7 days is a reasonable grace period).

3.4 Effect of Termination Notice

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

- (a) the service of the Termination Notice shall not affect the parties' continuing obligations under this contract up to the date of termination, which date shall be determined in accordance with paragraph 3.4(c);
- (b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and
- (c) this contract shall terminate on the date and time specified in the Termination Notice for the contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified)

4. Consequence of termination

4.1 Directions regarding location of Specified Equipment

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

4.2 Failure to comply with directions

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

4.3 Evidence of costs

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Schedule 7

(Track Charges and Other Payments)

Part 1

(Interpretation)

1. Definitions

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

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

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

"Bimodal Locomotive" means a train hauled by a locomotive that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel;

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

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

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

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

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

"GBR Distribution System Loss Factor" means the relevant factor that represents the electrical losses between the On-Train Meter and GBR'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;

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

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

"Infrastructure Cost Charge" or "ICC" means the charge calculated in accordance with paragraph 2 of Part 2;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

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

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

in either case as specified in Appendix 7D of this Schedule 7;

"New Modelled Train" means a type of train for which E_{tmo} is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category i, and no modelled consumption rate, is shown in the Passenger Traction Electricity Modelled Consumption Rates for CP7 table in the Traction Electricity Modelled Consumption Rates List;

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

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

"Open Access ICC Rates List" means the document entitled "Open Access ICC Rates List" published by Network Rail (as predecessor to GBR) on or about 20 December 2023 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

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

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

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

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

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

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

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

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail (as predecessor to GBR) on or about 20 December 2023 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail (as predecessor to GBR) on or about 20 December 2023 and specifying freight and passenger traction electricity modelled consumption rates;

"Traction Electricity Modelled Default Rate" means, in respect of any New Modelled Train used on the Network by the Train Operator, the corresponding default consumption rate for that type of vehicle set out in the section of the Traction Electricity Modelled Consumption Rates List entitled "Traction Electricity Modelled Default Rates for CP7";

"Traction Electricity Modelled Default Rate Period" means the period from the date on which the New Modelled Train is first used on the Network by the Train Operator until the date on which the train in question has been added to Appendix 7D of this Schedule;

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

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

"train category i" means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP7";

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

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

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

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

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

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

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

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

- (a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or
- (b) 1 April 2024,

until the date on which [** a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment is published by GBR];

"VUC Default Rate" means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates"; and

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

Part 2

(Track Charges)

1. Principal formula

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

$$T_t = F_t + V_t + D_t + E_t + EAV_t$$

where:

T_t means Track Charges in Relevant Year t ;

F_t means an amount in respect of the ICC in Relevant Year t which is calculated in accordance with paragraph 2;

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

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

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

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

2. Infrastructure Cost Charge

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

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

where:

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

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

in relation to any Relevant Year t commencing on or after 1 April 2024, R_{ti} shall have the value for the rate per Service Coded Group i shown for the Train Operator in the Open Access ICC Rates List, multiplied by the phased-in charges indexation adjustment derived from the following formula:

$$PCIA_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

$PCIA_t$ means the phased-in charges indexation adjustment in respect of Relevant Year t;

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

CPI_{2022} means the CPI published or determined with respect to the month of November 2022,

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

3. **Variable Usage Charge**

3.1 **Variable Usage Charge**

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

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

where:

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

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2024, V_{it-1} shall have, in respect of vehicle type i, the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List; ;

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

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

3.2 **Not used**

3.3 **VUC Default Charge**

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

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

where:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

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

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2024, D_{nt-1} shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment;

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

Σ means the summation across all relevant New Specified Equipment.

4. Traction Electricity Charge

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

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

where:

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

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

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

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

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

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

Calculation of modelled consumption

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

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

where:

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

E_{tmog} is derived from the following formula:

$$E_{tmog} = \Sigma C_i \bullet EF_{gjt} \bullet UE_{igjt}$$

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

where:

$\sum$ means the summation across all relevant train categories i (determined in accordance with paragraph 4.1.1 above), New Modelled Trains and tariff bands j, as appropriate;

C_i means, as appropriate:

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

for train category i shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules; or
- (b) for New Modelled Trains, the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

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

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

Calculation of consumption using metered consumption data

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

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

where:

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

E_{tmeg} is derived from the following formula:

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

where:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

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

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

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

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

4.1.4

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

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

where:

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

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \Sigma (CME_{mijtAC} \bullet EF_{ijt}) \bullet \lambda_{ACg}$$

where:

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

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

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

λ_{ACg} means the GBR 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:

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

E_{tmugDC} is derived from the following formula:

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

where:

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

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

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

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

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

4.1.5

- (a) Where Metered Train m is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, as a minimum, within seven days of the end of each of the third, sixth, tenth and thirteenth Periods, provide to GBR the Traction Electricity Usage Occurrence Data for Metered Train m . The Traction Electricity Usage Occurrence Data provided: within seven days of the end of the third Period shall cover Periods one, two and three; within seven days of the end of the sixth Period shall cover Periods four, five and six; within seven days of the end of the tenth Period shall cover Periods seven, eight, nine and ten; and within seven days of the end of the thirteenth Period shall cover Periods eleven, twelve and thirteen.
- (b) Where, after seven days, any Traction Electricity Usage Occurrence Data is missing in respect of any such Bimodal Electric Multiple Unit or Bimodal Locomotive, all mileage, if any, of such Bimodal Electric Multiple Unit or Bimodal Locomotive operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified in Traction-Train Compatible situations and paragraphs 4.1.3 and 4.1.4 shall apply in respect of all such mileage.

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

4.2

- (a) If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by GBR for traction electricity, it shall notify GBR of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 4.2(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

setting out the reasons for those changes, and GBR shall respond in writing within 56 days of service of any such notice.

- (c) Promptly following any response served by GBR under sub-paragraph 4.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a), that amendment shall take effect from the date agreed by the parties.

5. **Not used.**

6. **Not used.**

7. **Not used.**

8. **Electrification Asset Usage Charge**

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

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

where:

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

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

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2024, EV_{t-1k} shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and

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

- (i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is operating in a Traction-Train Compatible situation and is not a Metered Train m, it shall be deemed that all mileage, if any, of such train is electrified; or
- (ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 4.1.5 above.

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- 9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform GBR in writing of the date or likely date from which it intends to do so.
- 9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay GBR the relevant VUC Default Charge during the VUC Default Period.
- 9.2A Where the Train Operator uses a New Modelled Train on the Network, GBR shall apply the Traction Electricity Modelled Default Rate in order to calculate the Traction Electricity Charge for the purposes of paragraph 4.1.2 above, during the Traction Electricity Modelled Default Rate Period.
- 9.3 Subject to paragraph 9.7, no supplement to the Track Usage Price List or Open Access ICC Rates List shall have effect unless it has been agreed between the parties.
- 9.4 Either the Train Operator or GBR shall be entitled to propose that:
- (a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
 - (b) the Open Access ICC Rates List be amended or supplemented as necessary to take account of any changes to the Services or to include rates in respect of new Services (and in this instance an amendment to the Open Access ICC Rates List shall be treated as a supplement for the purposes of this paragraph 9).
- 9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.
- 9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 9.7 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, GBR shall be entitled to decide on any supplement to the Track Usage Price List and shall give written reasons for its decision. The Train Operator shall be entitled to refer the matter as a Relevant Dispute in accordance with Clause 13 if it is dissatisfied with GBR's decision..
- 9.8 In the case of a supplement to the Open Access ICC Rates List, the supplement shall have effect from such date as GBR shall determine by notice to the parties, provided that such date shall not be a date falling prior to the first day the new or changed Services are operated by the Train Operator.
- 9.9 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 9.10 GBR shall:
- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
 - (b) within 28 days of the date of the date specified in paragraph 9.8:
 - (i) issue any adjusting invoice or credit note to the Train Operator in the case of a supplement to the Track Usage Price List, to reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

been in place at the time the Train Operator first used the relevant railway vehicle on the Network;

and

- (ii) publish on its website or other electronic platform, details of the supplement alongside the details of any other such supplements to which GBR is a party.

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

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

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

- (i) the Variable Usage Charge;
- (ii) the Infrastructure Cost Charge;
- (iii) not used;
- (iv) the VUC Default Charge;
- (v) the Traction Electricity Charge;
- (vi) the Electrification Asset Usage Charge; and
- (vii) any other sums which have fallen due in accordance with any provision of this contract,

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

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

10.2 *Train Consist Data*

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

10.3 *Invoices and right to object to invoices*

- (a) GBR will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by GBR of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, GBR shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

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

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

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

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

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for Dispute in accordance with Clause 13.
- (e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), GBR shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within 7 days after the date of its issue.
- (f) 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 10.3(d) on or before 90 days after the end of Relevant Year t.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 Unrepresentative Train Consist Data

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.
- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time either party may refer the matter for Dispute in accordance with Clause 13.

10.5 Disputed amounts repayment and interest rate

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

Part 3

(Not used)

Part 3A

(Not used)

Part 4

(Not used)

Part 5

(Additional Charges)

(Not used)

Part 6

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

(Supplemental Provisions)

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

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Part 7

(Not used)

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Appendix 7A

(Not used)

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Appendix 7B

(Not used)

Appendix 7C

Default Train Consist Data

Train Service Code	Description of Journey	Default Train Consist Data

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Appendix 7D

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

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

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Schedule 8

(Performance Regime)

1. Interpretation

1.1 Definitions

In this Schedule 8 and its Appendix 1 and Appendix 2, unless the context otherwise requires:

"Cancelled Stop" means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point);

"Cancellation Minutes" means, in relation to a Cancelled Stop, the number of Cancellation Minutes specified in column F of Appendix 1 for the Service Group which includes that Train;

"Cap" means, in relation to a Monitoring Point, or a Train, the cap for the relevant Service Group in column G of Appendix 1;

"Capped Value" means in relation to any Service Group, the capped value (if any) specified in respect of that Service Group in Appendix 1 (as indexed in accordance with paragraph 9);

"CPI" has the meaning ascribed to it in Schedule 7;

"ETCS" means the European Train Control System;

"ETCS Amendments" has the meaning ascribed to it in paragraph 18.1;

"GBR Performance Point" or **"GBRPP"** means, in relation to a Service Group, the GBR performance point specified in column B of Appendix 1;

"Joint Inquiry" means a formal inquiry which is required by any of the Railway Group Standards to be held or is permitted by any of the Railway Group Standards to be held and is in fact held;

"Minutes Delay" means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;

"Minutes Late" means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2;

"Monitoring Point" means, in relation to a direction of a Service, a point listed in column J of Appendix 1 as a point to be used for recording lateness of Trains in accordance with paragraph 2, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point for the same Service in the opposite direction and/or for other Services;

"Off-Peak" where applicable, has the meaning ascribed to it in Schedule 5;

"Passenger Timetable" means those elements of the Applicable Timetable which are intended to be advertised to the public;

"Peak" where applicable, has the meaning ascribed to it in Schedule 5;

"Performance Data Accuracy Code" means the version of the Performance Data Accuracy Code referred to in Part B of the GBR Code;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

"Performance Monitoring System" means the recording system which GBR is required to operate under Part B of the GBR Code;

"Performance Sum" means, in relation to a Service Group, a sum of money which GBR or the Train Operator is liable to pay to the other under this Schedule 8, as calculated in accordance with paragraph 9 or 10, as the case may be;

"Recording Point" means a point at which GBR records Trains using the Performance Monitoring System;

"Recovery Time" means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;

"Relevant Year" has the meaning ascribed to it in Schedule 7;

"Restriction of Use" has the meaning ascribed to it in Schedule 4;

"Season Ticket" means any ticket valid for unlimited travel on a Service for not less than a period of one calendar month;

"Service Code" means the third, fourth and fifth digits of an eight character train service code applied in the Performance Monitoring System to Trains and used to identify them;

"Service Group" means a collection of Services contained within the service groups specified in column A of Appendix 1;

"Train" means each train operating a Service which is:

- (a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and
- (b) used to provide services for the carriage of passengers by railway,

but excludes any and all trains making an Ancillary Movement; and

"Train Operator Performance Point" means, in relation to a Service Group, the Train Operator performance point specified in column D of Appendix 1.

1.2 ***Interpretation***

For the purposes of this Schedule 8:

- (a) a Train shall be treated as being in a Service Group for that part of its journey during which it satisfies the characteristics specified in columns A, H and J of Appendix 1 as forming a Service which is included in that Service Group;
- (b) events in respect of a Train shall be treated as occurring on the day on which the Train is scheduled in the Applicable Timetable to depart from the first point at which it is to pick up passengers; and
- (c) save as otherwise provided, each final calculation of minutes shall be accurate to three decimal places.

1.3 ***Suspension Notices***

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 8. Accordingly, for the purposes of this Schedule 8:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (a) neither GBR nor the Train Operator shall be allocated any responsibility for those effects; and
- (b) those effects shall not be regarded as causing any Minutes Late or Minutes Delay or Cancelled Stops.

2. Calculation of Minutes Late

The Minutes Late at a Monitoring Point on a day shall be derived from the following formula:

$$\text{Minutes Late} = \sum L$$

where:

L in respect of a Train is the lesser of:

- (a) the number of minutes (rounded down to the nearest whole minute) by which the time at which the Train stops at the Monitoring Point is later than the time at which that Train is scheduled in the Passenger Timetable to stop at that Monitoring Point; and
- (b) the Cap,

provided that no regard shall be had for any Train which is not recorded as stopping at the Monitoring Point; and

$\sum$ is the sum across all those Trains in the relevant Service Group which are scheduled in the Passenger Timetable to stop at that Monitoring Point on that day which do so stop.

3. Calculation of Minutes Delay

The Minutes Delay in respect of a Train when it triggers a Recording Point shall be equal to:

- (a) in respect of the first Recording Point triggered by that Train on any day, the number of minutes (rounded down to the nearest whole minute) by which the time at which that Train triggers the Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and
- (b) in respect of any other Recording Point, the lesser of:
 - (i) the number of Minutes Delay in respect of that Recording Point calculated in accordance with paragraph 3(a) (as if that Recording Point were the first Recording Point triggered by that Train); and
 - (ii) the greater of $((A_1 - A_2) + B)$ and zero

where:

A_1 is the number of minutes between the time at which the Train triggers the Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a Recording Point (rounded down to the nearest whole minute);

A_2 is the relevant time lapse scheduled in the Applicable Timetable between those same two Recording Points; and

B is any Recovery Time between those Recording Points incorporated in the Applicable Timetable;

provided that:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (1) any Minutes Delay which arise from a single incident or a series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero; and
- (2) if for any Train the aggregate Minutes Delay in respect of all Recording Points caused by a single incident are in excess of the Cap specified in column G of Appendix 1 for that Service Group, then such excess shall be disregarded.

4. Recording of performance information

4.1 *Recording of lateness, Minutes Delay and Cancelled Stops*

Without prejudice to its obligations under [Part B] of the GBR Code, GBR shall use the Performance Monitoring System to record for each day in respect of each Train scheduled in the Applicable Timetable:

- (a) the time at which the Train stops to set down passengers at each Monitoring Point;
- (b) each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;
- (c) the time at which the Train triggers each Recording Point;
- (d) the Minutes Delay for that Train at each Recording Point; and
- (e) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:
 - (i) the incident(s) causing each minute of any delay included in Minutes Delay; and
 - (ii) those Minutes Delay for which GBR is unable to identify a cause,

The provisions of this Schedule 8, which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code.

4.2 *Recording of allocated responsibility for Minutes Delay and Cancelled Stops*

GBR shall for each day and for each Train scheduled in the Applicable Timetable record separately in the Performance Monitoring System those Minutes Delay and Cancelled Stops caused by incidents:

- (a) for which GBR is allocated responsibility in accordance with paragraph 5.2;
- (b) for which the Train Operator is allocated responsibility in accordance with paragraph 5.3;
- (c) for which GBR and the Train Operator are allocated joint responsibility, in accordance with paragraph 5.4;
- (d) for which no cause can be identified; and
- (e) which are planned incidents in accordance with paragraph 5.7.

4.3 *Failed Recording Points*

Without prejudice to its obligations under Part B of the GBR Code, GBR shall use all reasonable endeavours:

- (a) to restore as soon as reasonably practicable any failed Recording Point; and
- (b) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Schedule 8.

4.4 *Provision of information by Train Operator*

The Train Operator shall record and shall continue to record such information as GBR may reasonably require and which it is reasonable to expect the Train Operator to have or procure in connection with any Minutes Delay that may arise and shall provide such information to GBR promptly after such information first becomes available to the Train Operator.

GBR shall promptly notify the Train Operator upon GBR becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraph 4.1. Any such notification shall be in sufficient detail to enable the Train Operator to institute the recording of such information in connection with the Trains for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. The Train Operator shall institute such recording as soon as it is reasonably able following receipt of the notification from GBR and will provide GBR with the resulting information no later than 1700 hours two Working Days following the day on which it was recorded.

5. *Allocation of responsibility for Minutes Delay and Cancelled Stops*

5.1 *Assessment of incidents causing Minutes Delay and Cancelled Stops*

- (a) In assessing the cause of any Minutes Delay or Cancelled Stop, there shall be taken into account all incidents contributing thereto including:
 - (i) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and
 - (ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running;
- (b) The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident;
- (c) GBR shall identify:
 - (i) in respect of each incident recorded under paragraph 4.1(e)(i) as causing Minutes Delay, the extent to which that incident caused each of the Minutes Delay; and
 - (ii) in respect of each incident recorded under paragraph 4.1(b), the extent to which that incident caused the Cancelled Stop;
- (d) So far as GBR is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Stops is to be allocated to GBR or to the Train Operator or to them jointly in accordance with the following provisions of this paragraph 5.

5.2 *GBR responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which GBR is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to GBR. Unless and to the extent otherwise agreed, GBR shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:

- (a) by breach by GBR of any of its obligations under this contract; or
- (b) (whether or not GBR is at fault) by circumstances within the control of GBR in its capacity as operator of the Network; or
- (c) (whether or not GBR is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract.

5.3 *Train Operator responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 5.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7) if that incident:

- (a) is caused wholly or mainly:
 - (i) by breach by the Train Operator of any of its obligations under this contract; or
 - (ii) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains; or
 - (iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance originating in connection with or at any station (other than in connection with signalling under the control of GBR at that station or physical works undertaken by GBR at that station), any light maintenance depot or any network other than the Network; or
- (b) causes delay to:
 - (i) rolling stock operated by or on behalf of another train operator which is delayed in entering or leaving the Network due to any act, omission or circumstance originating in connection with a light maintenance depot or network other than the Network and, as a result of that delay, rolling stock operated by or on behalf of the Train Operator which is scheduled to leave or enter the Network at the connection with that light maintenance depot or other network is then delayed behind the first mentioned rolling stock; or
 - (ii) the commencement of a Train's journey, which is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator.

5.4 *Joint responsibility incidents*

- (a) GBR and the Train Operator shall be allocated joint responsibility for:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (i) any incident which is not a planned incident (as defined in paragraph 5.7) caused by an act, omission or circumstance originating in connection with or at a station which:
 - (A) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and
 - (B) prevents the access of passengers through the station to or from the Train;and paragraphs 5.2 and 5.3 shall not apply to any such incident; or
 - (ii) any identified incident in respect of which GBR and the Train Operator are equally responsible and for which neither GBR nor the Train Operator is allocated responsibility under paragraph 5.2 or 5.3.
- (b) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which GBR and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to GBR and 50% to the Train Operator.

5.5 Unidentified incidents: Minutes Delay

Responsibility for Minutes Delay on any day in respect of a Service Group caused by incidents which are unidentified, as recorded under paragraph 4.2(d), shall be allocated as follows:

- (a) if there are any Minutes Delay in respect of the Service Group recorded as being caused by incidents for which GBR or the Train Operator are allocated responsibility:
 - (i) 50% of the unidentified Minutes Delay under paragraph 4.2(d) shall be allocated to GBR, the Train Operator and joint responsibility incidents pro rata to the aggregate Minutes Delay for that Service Group respectively recorded as being their responsibility under this paragraph 5 for that day; and
 - (ii) the balance of the Minutes Delay under paragraph 4.2(d) shall be allocated to GBR; and
- (b) if no Minutes Delay on that day in respect of the Service Group are recorded as being caused by incidents for which GBR or the Train Operator are allocated responsibility, then GBR and the Train Operator shall each be allocated 50% of the unidentified Minutes Delay recorded under paragraph 4.2(d).

5.6 Unidentified incidents: Cancelled Stops

Responsibility for Cancelled Stops on a day in respect of a Service Group caused by incidents which are unidentified shall be allocated 50% to GBR and 50% to the Train Operator.

5.7 Planned incidents

An incident shall be treated as a planned incident if and to the extent that:

- (a) such incident was a Restriction of Use notified in accordance with Schedule 4 by GBR to the Train Operator; or
- (b) there is Recovery Time in respect of that incident.

5.8 Allocation of responsibility for Minutes Delay at Service Group level: aggregate Minutes Delay

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

In respect of a Service Group, the aggregate Minutes Delay on a day shall be the aggregate of all Minutes Delay recorded under paragraphs 4.2(a) to 4.2(d) in respect of all Trains in that Service Group scheduled in the Applicable Timetable.

5.9 *Allocation of responsibility for Minutes Delay at Service Group level: GBR Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to GBR shall be the aggregate of any Minutes Delay allocated to GBR under paragraph 5.2, paragraph 5.4 and paragraph 5.5.

5.10 *Allocation of responsibility for Minutes Delay at Service Group level: Train Operator Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to the Train Operator shall be the aggregate of any Minutes Delay allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.5.

5.11 *GBR Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to GBR shall be the aggregate of any Cancelled Stops allocated to GBR under paragraph 5.2, paragraph 5.4 and paragraph 5.6.

5.12 *Train Operator Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to the Train Operator shall be the aggregate of any Cancelled Stops allocated to the Train Operator under paragraph 5.3, paragraph 5.4 or paragraph 5.6.

6. *Statement of allocated responsibility*

6.1 *Initial statement*

For each day, GBR shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day:

- (a) the allocation of responsibility for incidents made by GBR under paragraph 5; and
- (b) a summary for each Service Group showing:
 - (i) the aggregate Minutes Delay and Cancelled Stops recorded under each category set out in paragraph 4.2; and
 - (ii) a list of the Minutes Delay and Cancelled Stops (in each case broken down by incident) recorded as the responsibility of GBR and as the responsibility of the Train Operator.

6.2 *Further statements*

If GBR's nominated representative has reasonable grounds to believe that any further incident was the responsibility of the Train Operator or of GBR but was not shown as such in the information made available in accordance with paragraph 6.1, then GBR may, within 7 days after the last Minutes Delay or Cancelled Stop caused by that incident, issue a notice in accordance with paragraph 15 revising the information and/or allocations of responsibility made available under paragraph 6.1.

6.3 *Adjustment statements*

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

If Condition B3.3 (adjustment to prior results) applies in respect of all or part of a Period, then GBR shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period, and any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 28 days of GBR's statement.

6.4 Disputes about statements of allocated responsibility

- (a) Except to the extent that it has, within two Working Days of receipt, notified GBR in accordance with paragraph 15 that it disputes the contents of a statement under paragraphs 6.1 or 6.2, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.
- (b) The parties shall attempt to resolve disputes notified in accordance with paragraph 6.4(a) as follows:
 - (i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and
 - (ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.
- (c) Negotiations under paragraph 6.4(b)(ii) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 6.4(a) occurred.

7. Allocation of Minutes Late to GBR

In respect of each Monitoring Point, the Minutes Late on a day at that Monitoring Point allocated to GBR (MLGBR) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLGBR = \frac{(MDGBR \cdot ML)}{MD} + DMLGBR$$

or if MD is equal to zero

$$MLGBR = (0.5 \cdot ML) + DMLGBR$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column J of Appendix 1, calculated in accordance with paragraph 5.8;

MDGBR is that part of such MD allocated to GBR in accordance with paragraph 5.9; and

DMLGBR is the deemed minutes late at that Monitoring Point on that day allocated to GBR, derived from the following formula:

$$DMLGBR = RC \cdot CM$$

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

where:

RC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which GBR is allocated responsibility in accordance with paragraph 5.11; and

CM is the Cancellation Minutes for that Service Group set out in column F of Appendix 1.

8. Allocation of Minutes Late to the Train Operator

In respect of each Monitoring Point, the Minutes Late at that Monitoring Point on a day allocated to the Train Operator (MLT) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLT = \frac{(MDT \cdot ML)}{MD} + DMLT$$

or if MD is equal to zero

$$MLT = (0.5 \cdot ML) + DMLT$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column J of Appendix 1, calculated in accordance with paragraph 5.8;

MDT is that part of such MD allocated to the Train Operator in accordance with paragraph 5.10; and

DMLT is the deemed minutes late at that Monitoring Point on that day allocated to the Train Operator, derived from the following formula:

$$DMLT = TC \cdot CM$$

where:

TC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which the Train Operator is allocated responsibility in accordance with paragraph 5.12; and

CM is the Cancellation Minutes for that Service Group set out in column F of Appendix 1.

9. GBR Performance Sums

9.1 In respect of a Service Group, the GBR Performance Sum (GBRPS) for each Period shall be calculated according to the following formula:

$$GBRPS = (GBRPP - GBRWAML) \cdot BF \cdot GBRPR$$

where:

GBRPP is the GBR Performance Point for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

GBRWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to GBR in accordance with the following formula:

$$GBRWAML = \sum \frac{(MLGBR \cdot MPW)}{SP}$$

where:

$\sum$ is the sum across all Monitoring Points in the Service Group;

MLGBR is the Minutes Late allocated to GBR in respect of each Monitoring Point in that Period, in accordance with paragraph 7;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1; and

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that $\frac{(MLGBR \cdot MPW)}{SP}$ shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \sum \frac{(MPW \cdot SD)}{AS}$$

where:

$\sum$ is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1;

SD is the aggregate number of stops to set down passengers at that Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Timetable Period in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that $\frac{(MPW \cdot SD)}{AS}$ shall equal zero; and

GBRPR is the relevant GBR payment rate for that Service Group specified in column C of Appendix 1 as indexed in accordance with paragraph 13,

provided that:

- (i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of GBRPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then the value of GBRPS shall be deemed to be equal to the Capped Value in respect of such Period;
- (ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;
- (iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

$$CV_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}}\right)$$

where:

CV_t means the CV indexation in Relevant Year t ;

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

CPI_{2022} means the CPI published or determined with respect to the [month of November 2022].

- 9.2 Where GBRPS is less than zero, GBR shall pay the amount of the GBRPS to the Train Operator. Where GBRPS is greater than zero, the Train Operator shall pay that amount to GBR.

10. Train Operator Performance Sums

- 10.1 In respect of a Service Group, the Train Operator Performance Sum (TPS) for each Period shall be calculated according to the following formula:

$$TPS = (TPP - TWAML) \cdot BF \cdot TPR$$

where:

TPP is the Train Operator Performance Point for the Service Group specified in column D of Appendix 1;

TWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to the Train Operator in accordance with the following formula:

$$TWAML = \sum \frac{(MLT \cdot MPW)}{SP}$$

where:

$\sum$ is the sum across all Monitoring Points in the Service Group;

MLT is the Minutes Late allocated to the Train Operator in respect of each Monitoring Point in that Period, in accordance with paragraph 8;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1; and

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if $SP=0$ for any Monitoring Point, then for that Monitoring Point it shall be deemed that $\frac{(MLT \cdot MPW)}{SP}$ shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \sum \frac{(MPW \cdot SD)}{AS}$$

where:

$\sum$ is the sum across all Monitoring Points in the Service Group;

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1;

SD is the aggregate number of stops to set down passengers at the Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Timetable Period in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that $\frac{(MPW \cdot SD)}{AS}$ shall equal zero; and

TPR is the relevant Train Operator payment rate for that Service Group specified in column E of Appendix 1 as indexed in accordance with the provisions in paragraph 13.

- 10.2 Where TPS is less than zero, the Train Operator shall pay the amount of the TPS to GBR. Where TPS is greater than zero, GBR shall pay that amount to the Train Operator.

11. Notification of Performance Sums

11.1 Notification

Within 14 days after the end of each Period, GBR shall provide the Train Operator with a statement for each Service Group for that Period showing:

- (a) any Performance Sums for which GBR or the Train Operator is liable, together with such supporting information (other than information in respect of incidents recorded as the responsibility of GBR) as the Train Operator may reasonably require; and
- (b) any matter referred to in paragraph 6.1 which the Train Operator has disputed in accordance with paragraph 6.4(a) and which is still in dispute.

11.2 Disputes

Within 14 days after receipt by the Train Operator of a statement required under paragraph 11.1, the Train Operator shall notify GBR of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 6. Such disputes and any matter referred to in paragraph 11.1(b) shall be resolved in accordance with the procedure in paragraph 16. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.

12. Payment procedures

12.1 Payments and set-off

- (a) In respect of any and all Performance Sums for which GBR and the Train Operator are liable in any Period, the aggregate liabilities of GBR and the Train Operator shall be set off against each other. The balance shall be payable by GBR or the Train Operator, as the case may be, within 35 days after the end of the Period to which the payment relates.
- (b) Subject to paragraph 12.2, and save as otherwise provided, all other sums payable under this Schedule 8 shall be paid within 35 days after the end of the Period to which such payment relates.

12.2 Payments in the event of dispute

Where any sum which is payable under this paragraph 12 is in dispute:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (a) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 12.1;
- (b) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid or set off (as the case may be) within 35 days after the end of the Period in which the dispute is resolved or determined; and
- (c) from the date at which such balance would but for the dispute have been due to be paid or set off, the disputed balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate, unless the dispute relates to an incident the responsibility for which is the subject of a Joint Inquiry, in which case interest shall be payable at the prevailing Bank of England Base Rate.

13. Payment rates

13.1 Each payment rate in columns C and E of Appendix 1, expressed in pounds sterling and rounded to two decimal places, shall be adjusted in respect of Periods in the Relevant Year t as follows:

- (a) if, pursuant to paragraph 17.1 or 17.1A, amendments to columns C and/or E of Appendix 1 took effect in Relevant Year t, each value specified in Appendix 1 (as so amended) expressed in pounds sterling and rounded to two decimal places, shall be multiplied by the below indexation figure for the Relevant Year:

$$RI_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}}\right)$$

where:

RI_t is the relevant rate in the Relevant Year t;

CPI_{t-1} has the same meaning as set out in paragraph 9.1 above of this Schedule 8; and

CPI_{2022} has the same meaning as set out in paragraph 9.1 above of this Schedule 8.

- (b) in any other Relevant Year, in accordance with the following formula:

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

where:

R_t is the relevant rate in the Relevant Year t;

R_{t-1} is the relevant rate in the Relevant Year t-1;

CPI_{t-1} has the same meaning as set out in paragraph 9.1 above of this Schedule 8; and

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

but so that in relation to the Relevant Year commencing on 1 April 2024, R_{t-1} shall have the relevant value specified in the relevant column (either C or E) of Appendix 1.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

14. **Not Used**

15. **Notices**

15.1 All notices under this Schedule 8 shall be given in writing and shall be sent by prepaid first class post, email or delivered by hand to the party in question at the address for service last notified by that party.

15.2 Any such notice shall be deemed to have been duly received:

- (a) if sent by prepaid first class post, 3 days after posting unless otherwise proven;
- (b) if sent by hand, when delivered;
- (c) not used; and
- (d) if sent by email, (unless a notice of non-delivery is received) upon receipt.

16. **Disputes**

16.1 If any dispute is notified under paragraph 11.2 it shall be resolved according to the following procedure:

- (a) within 7 days of service of the relevant notice (or, if the dispute relates to an incident the responsibility for which is or is to be the subject of a Joint Inquiry, within 7 days of publication of the conclusion of that Joint Inquiry), the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
- (b) if, for any reason, within 7 days of the meeting referred to in paragraph 16.1(a), the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within 7 days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;
- (c) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and
- (d) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for Dispute in accordance with Clause 13.

17. **Amendments to Appendix 1**

17.1 ***Circumstances in which parties agree to amend Appendix 1***

Either party may by notice to the other propose that Appendix 1 be amended in accordance with this paragraph 17.

17.2 ***Procedure for amendments to Appendix 1 under paragraph 17.1***

- (a) The party who wishes to amend Appendix 1 in accordance with paragraph 17.1 shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
 - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month 6 months before the relevant Timetable Change Date on which that timetable change is due to occur; and
 - (ii) in any other case, prior to the date from which it proposes such change shall have effect.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (b) Any notice under paragraph 17.2(a) shall:
 - (i) specify as far as possible that party's proposed amendments to Appendix 1; and
 - (ii) be accompanied by information and evidence in reasonable detail supporting the change proposed and setting out the reasons for it.
- (c) The party receiving a notice issued under paragraph 17.2(a) shall respond to that notice in writing, in reasonable detail and with reasons for its response, within 56 days of service of such notice.
- (d) Promptly (and in any event within 34 days) following the service of any response under paragraph 17.2(c), the parties shall endeavour to agree whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.
- (e) If the parties fail to reach agreement within 90 days of service of a notice under paragraph 17.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached within that date, either party may refer the matter for Dispute in accordance with Clause 13 and the parties shall agree that the relevant Dispute Resolution Body will set out its reasoning in any determination.
- (f) Any amendment to Appendix 1 in connection with the proposal referred to in paragraph 17.1 which is agreed by the parties or determined by conclusion of the relevant Dispute resolution process, shall apply with effect from either:
 - (i) the relevant Timetable Change Date (where paragraph 17.2(a)(i) applies); or
 - (ii) the date proposed by the party requesting the change (where paragraph 17.2(a)(ii) applies), unless otherwise agreed by the parties or determined in the Dispute resolution process in accordance with paragraph 17.2(e).

17.3 *Adjustments to the Performance Monitoring System*

GBR shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.1A or 17.2 such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance Monitoring System is not made until after that date, GBR shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period commencing on the date when in accordance with paragraph 17.1A or 17.2 such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement.

17.4 *Costs of implementing amendment*

GBR shall (subject to any determination of the Dispute Resolution Body as to costs, where a matter is referred to that forum under paragraph 17.2(e)) be entitled to ninety percent (90%) of costs incurred by or on behalf of GBR in assessing and implementing any amendments to Appendix 1 and the Performance Monitoring System, provided that those costs shall be the minimum reasonably necessary for GBR to assess and implement that amendment.

17.5 *Relationship with Appendix 3 and remainder of Schedule 8*

Amendments to Appendix 1 may require consequential amendments to Appendix 3, and therefore references in this paragraph to amendments to Appendix 1 shall include any

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.

18. ETCS Amendments

18.1 *Circumstances in which ETCS Amendments can be made*

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 of the Routes that the Train Operator has permission to use ("**ETCS Amendments**").

18.2 *ETCS Amendments agreed by the parties*

- (a) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:
 - (i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and
 - (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.
- (b) The party receiving a notice under paragraph 18.2(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 18.2(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 the parties fail to reach agreement within the 20 Working Days referred to in paragraph 18.2(c), GBR shall be entitled to decide on the wording of the ETCS Amendments and the date on which they are to have effect and shall give written reasons for its decision. The Train Operator shall be entitled to refer the matter for Dispute in accordance with Clause 13 if it is dissatisfied with GBR's decision.

19. Compensation for sustained poor performance

19.1 *Definitions*

In this paragraph 19, unless the context otherwise requires:

"Average Periodic Liability" means one thirteenth of the sum of all values of GBRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of GBRPS for which the Train Operator is liable from the sum of all values of GBRPS for which GBR is liable in each case in respect of the relevant Calculation Term;

"Calculation Term" means the 13 Periods immediately preceding each Periodic Liability Date;

"Periodic Liability Date" means the first day of the first, fourth, seventh and eleventh Periods in each Relevant Year ignoring for these purposes any Period that commences before the Transition Date as referred to in clause 19 (where this contract includes the same); and

"SPP Threshold" means the value specified in respect of the end of the relevant Calculation Term in Appendix 3 (as indexed in accordance with paragraph 20).

19.2 *Indemnity*

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

GBR shall indemnify the Train Operator against all Relevant Losses in accordance with paragraph 19 if, and to the extent that, the Average Periodic Liability shows GBR has exceeded (that is, equalled or been worse than) the relevant SPP Threshold. For the avoidance of doubt, Relevant Losses for the purpose of providing compensation for sustained poor performance under this paragraph are to be measured in comparison to the position the Train Operator would have been in had GBR met the GBRPP.

19.3 Determination of Relevant Losses

Subject to paragraph 19.4, the liability of GBR under paragraph 19.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:

$$SPPL = RL - PS$$

where:

RL means the Train Operator's Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3; and

PS means the sum of all values of GBRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of GBRPS for which the Train Operator is liable from the sum of all values of GBRPS for which GBR is liable in each case in respect of the relevant Calculation Term.

19.4 Restrictions on claims by Train Operator

The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 19:

- (a) if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 19 or otherwise; or
- (b) in relation to any Calculation Term or part of it that precedes the Transition Date as referred to in clause 19 (where this contract includes the same).

20. SPP Indexation

20.1 SPP Indexation

Each value specified in Appendix 3, expressed in pounds sterling and rounded to two decimal places, shall be multiplied by the SPP indexation figure for the Relevant Year.

20.2 Application of SPP Indexation

The SPP indexation figure in Relevant Year t shall be derived from the following formula:

$$SPPI_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$SPPI_t$ means the SPP indexation in Relevant Year t ;

CPI_{t-1} has the meaning as set out in paragraph 9.1 above of this Schedule 8; and

CPI_{2022} has the meaning as set out in paragraph 9.1 above of this Schedule 8.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Appendix 1

A	B	C	D	E	F	G	H	I	J	K
Service Group	GBR		TOC							
	Performance Point	Payment Rate	Performance Point	Payment Rate	Cancellation Minutes	Cap	Service Code	Direction	Monitoring Point	Weighting

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Appendix 2

(Not used)

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Appendix 3

SPP Threshold

	Period:	3	6	10	13
2024/25					
2025/26					
2026/27					
2027/28					
2028/29					

Schedule 9

(Limitation on liability)

1. Definitions

In this Schedule

“Contract Year” means each yearly period commencing on [insert the date on which the contract became effective under Clause 3.1] and subsequently on each anniversary of such date;

“Liability Cap” means:

- (a) in relation to the first Contract Year, the sum of £[●]; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \left(\frac{CPI_n}{CPI_1} \right)$$

where:

- (i) C_1 is the sum of £[●];
- (ii) C_n is the Liability Cap in the nth subsequent Contract Year;
- (iii) CPI_n is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and
- (iv) CPI_1 is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 3.1.

2. Application

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 11.5.

3. Limitation on GBR's liability

In relation to any claim for indemnity made by the Train Operator to which this Schedule 9 applies:

- (a) GBR shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and
- (b) to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and GBR shall have no further liability for it.

4. Limitation on Train Operator's liability

In relation to any claims for indemnity made by GBR to which this Schedule 9 applies:

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

- (a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and
- (b) to the extent its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Train Operator shall have no further liability for it.

5. Disapplication of limitation

To the extent that any Relevant Losses:

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

such Relevant Losses:

- (i) shall not be subject to the limitation of liability in Schedule 9; and
- (ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Contract Year for the purposes of the limitations of liability in this Schedule 9.

6. Exclusion of legal and other costs

The limits on the parties' liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7. Exclusion of certain Relevant Losses

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

8. Continuing breaches

Nothing in this Schedule 9 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

- (a) is a continuing breach of contract which continues for more than 12 months;
- (b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or
- (c) is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3(b) or 4(b).

9. Final determination of claims

For the purpose of this Schedule 9, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

Schedule 10

(Not used)

OFFICIAL
INDICATIVE CONSULTATION DRAFT
GBR MODEL CONTRACT – OPEN ACCESS PASSENGER SERVICES

In witness whereof the duly authorised representatives of GBR and the Train Operator have executed this contract on the date first above written.

Signed by

Print name

Duly authorised for and on behalf of

Great British Railways Limited

Signed by

Print name

Duly authorised for and on behalf of

[●]