

Track Access Contract (Freight Services)

[Version published 2026]

between

(1) Great British Railways Limited

(2) [●]

Dated [●]

[Note: This document is subject to review following consultation]

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GBR MODEL CONTRACT – FREIGHT SERVICES

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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 [●] under number [●] having its registered office at [●] (the "**Train Operator**").

Background:

- (A) GBR is the owner of the Network; and
- (B) GBR grants to the Train Operator permission to use 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 Part A of the in 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 the 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;

"Alternative Train Slot" means, in relation to any Train Slot in the Working Timetable which becomes unavailable, an alternative Train Slot established under paragraphs 4 or 5 of Schedule 4;

"Ancillary Movements" has the meaning ascribed to it in Part A of the GBR Code;

"Applicable System" means any system other than Railway Code Systems which the parties may agree to use for the safe planning and operation of Train Slots over the Network;

"associate" has the meaning ascribed to it in section 17 of the 1993 Act;

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"Cancellation" has the meaning ascribed to it in paragraph 8.1 of Schedule 8;

"Cancellation Sum" means the Cancellation Sum specified in Appendix 1 to Schedule 8, as adjusted under paragraph 2.7.2 of Schedule 7;

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

"Charging Period" means each period of 28 days which coincides with a GBR accounting period save that:

- (a) the first period and the last period may be of less than 28 days if:
 - (i) the date of signature of this contract does not coincide with the first day of one of GBR's accounting periods; or
 - (ii) the Expiry Date does not coincide with the last day of one of GBR's accounting periods; and
- (b) the duration of the first and last such period in any Financial Year may be varied so as to coincide with the duration of GBR's accounting periods by notice from GBR to the Train Operator;

"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;

"Contract Year" means each yearly period commencing on *[insert the date on which Services may first be operated by the Train Operator under this contract]* and subsequently on each anniversary of such date;

"D-x" has the meaning ascribed to it in Part A of the GBR Code;

"Decision Criteria" 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;

"Destination" means, in relation to a Service:

- (a) the location on the Network at which that Service is Planned to terminate; or
- (b) if the location at which that Service is Planned to terminate is not on the Network, the location on the Network which:
 - (i) will enable the train operating that Service to leave the Network; and

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- (ii) is the most appropriate location for such train to use to terminate that Service on the Network;

"Diverted Service" means a Service, as such term is defined in paragraph 1.2 of Schedule 4, operated using an Alternative Train Slot established under paragraphs 4 or 5 of Schedule 4;

"Empty Service" means a Service which does not convey:

- (a) loaded wagons; or
- (b) empty passenger rolling stock;

"Engineering Access Statement" means the Engineering Access Statement in force in respect of the Network on [*insert 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;

"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*];

"Financial Year" means a year commencing at 00:00 hours on 1 April and ending immediately before 00:00 hours on the next succeeding 1 April save that:

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

"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
- (b) the Performance Scheme;

"Incident Cap Access Charge Supplement" means the charge calculated in accordance with paragraph 2.6 of Schedule 7;

"Incident Cap Access Charge Supplement Rate" means, in relation to any Financial Year, the rate determined in accordance with paragraph 11.1 of Schedule 8, as adjusted under paragraph 2.7.2 of Schedule 7;

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"Indemnity Incident Cap" means the sum calculated in accordance with Clause 11.6.5;

"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
 - (ii) 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;
 - (iii) 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;

"Intermediate Point" means, in relation to a Service:

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- (a) a location on the Network at which that Service is Planned to call; or
- (b) if the location at which that Service is Planned to call is not on the Network, a location on the Network which:
 - (i) will enable the train operating that Service to be accepted off and presented onto the Network; and
 - (ii) is the most appropriate location for such train to use to move onto the Network to reach the Destination of that Service;

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

"Longstop Date" means [*date to be added*];

"Network" means the network of which GBR is the network operator and which is situated in England, Wales and Scotland;

"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];

"Nominated Location" means, in relation to a Service, any of the Origin, Destination, Intermediate Point and such other location where railway vehicles operating that Service under the control of the Train Operator will move onto and off the Network;

"Non-affected Party" has the meaning ascribed to it in Clause 17.1;

"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;

"Operating Constraints" means:

- (a) the Engineering Access Statement;
- (b) the Timetable Planning Rules; and
- (c) the Working Timetable and all appendices to the Working Timetable including the sectional appendices as defined in the Working Timetable and all supplements to the sectional appendices;

"Origin" means, in relation to a Service:

- (a) the location on the Network at which that Service is Planned to commence; or
- (b) if the location at which that Service is Planned to commence is not on the Network, the location on the Network which:
 - (i) will enable the train operating that Service to be presented onto the Network; and
 - (ii) is the most appropriate location for such train to use to move onto the Network to reach the Destination of that Service;

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

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"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;

"Performance Monitoring System" has the meaning ascribed to it in Part B of the GBR Code;

"Planned" means entered in the Working Timetable;

"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),

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 17.1;

"Restriction of Use" means any restriction of use of all or any part of the Network for the purposes of, or in connection with, inspection, maintenance, renewal or repair of the Network or any other works carried out in relation to the Network or any other railway asset or any other works in relation to it;

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

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

"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;

"Service Characteristics" means, in relation to a Service, the characteristics of that Service:

- (a) specified in the Capacity Commitments Register (as defined in Schedule 5); or
- (b) where not specified in the Capacity Commitments Register, specified in a Timetable Proposal, Rolled Over Timetable Proposal, request for Train Slot Variation, or in a

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proposal by the Train Operator of an Alternative Train Slot under paragraphs 4 or 5 of Schedule 4, and accepted by GBR;

"Service Variation Sum" means the Service Variation Sum of £803, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7;

"Services" means the services for the carriage of goods by railway specified in paragraph 4.1 of Schedule 5;

"Short Notice Service" means a Service in respect of which the Operator requests a Train Slot Variation to which it relates is made to GBR later than 10:00 hours on day A and which would, if the request were accepted, be planned to operate between 10:00 hours on day A and 00:01 hours on day C; for the purposes of this definition:

- (a) day A is the first day (excluding Saturdays and Sundays);
- (b) day B is the second day (excluding Sundays); and
- (c) day C is the third day,

of any 3 consecutive days from (and including) the day on which the request is made;

"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 on the Network, as specified in paragraph 4 of Schedule 5;

"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 Information 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 Participant" has the meaning ascribed to it in Part A of the GBR Code;

"Timetable Planning Rules" means the Timetable Planning Rules in force in respect of the Network on *[insert 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;

"Timetable Period" has the meaning ascribed to it in 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 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 Operator Event of Default" has the meaning ascribed to it in paragraph 1.1 of Schedule 6;

"Train Slot Variation" has the meaning ascribed to it in Part A of the GBR Code;

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"Train Slot" 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;

"Week" means a period of 7 days commencing at 00:00 hours on Sunday and ending immediately before 00:00 hours on the next succeeding Sunday;

"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 Railways Act 1993, the 2026 Act the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and 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;

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- (n) words and expressions defined in the GBR Code shall have the same meanings in this contract;
- (o) if there is any conflict of interpretation between this contract and the GBR Code, the GBR Code shall prevail;
- (p) references to "the Agreement" or "this Agreement" shall be construed as references to "the contract" or "this contract";
- (q) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and
- (r) 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).

1.2A CVL Network Code

The parties acknowledge and agree that insofar as matters in Schedules 4 and/or 8 relate to the CVL Network then the CVL Network Code shall apply.

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.

1.4 Schedules

Schedule 1 and Schedule 3 to this contract shall have effect.

2. GBR Code and the Traction Electricity Rules

2.1 Incorporation

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

2.2 Modification 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 the 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:

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- (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 the Network or is exempt from the requirement to be so authorised under 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
- (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) 23:59 hours on the Expiry Date.

3.6 *Suspension and termination*

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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 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 Network

GBR grants the Train Operator permission to use the Network.

5.2 Meaning

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

- (a) to use the track comprised in the Network 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 the Network with or without vehicles; and
- (f) for the Train Operator and its associates to bring things on to the Network and keep them there,

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

- (i) the GBR Code; and
- (ii) the Operating Constraints.

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

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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 on to 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 Engineering Access Statement and Timetable Planning Rules*

Changes to the Engineering Access Statement and the Timetable Planning Rules are subject to the procedures set out in accordance with Part D of the GBR Code.

5.5 *Variations to Services*

Schedule 4 shall have effect.

5.6 *Services*

Schedule 5 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.

5.9 *Information to assist submitting a Timetable Proposal or request for a Train Slot Variation,*

Schedule 2 shall have effect.

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 Network in accordance with the permission to use under this contract; 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 Network using the Specified Equipment in accordance with the permission to use under this contract.

6.2 *Trespass, vandalism and animals*

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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 those parts of the Network on which the Services are provided.

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
- (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 Movements of trains onto and off the Network

6.4.1 Suitable access

In order that railway vehicles under the control of the Train Operator be promptly:

- (a) accepted off the Network; and/or
- (b) presented onto the Network,

the Train Operator shall ensure that in respect of each Nominated Location suitable access has been granted to it in relation to such location by the party which controls the relevant facility connected to the Network at the Nominated Location.

6.4.2 Prompt presentation onto the Network

Where railway vehicles under the control of the Train Operator will move onto and off the Network, the parties shall ensure that in respect of each Nominated Location they will facilitate (to the extent they are able) the prompt presentation of such railway vehicles onto and off the Network.

6.5 Use of Railway Code Systems

6.5.1 General

The parties shall:

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

6.5.2 Provision of train consist data

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Without prejudice to Clause 6.5.1, 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) ensure that such data is true and accurate as far as is reasonable in the circumstances.

6.5.3 *Notification of movement on to and off the Network*

The Train Operator shall notify GBR of any movement onto the Network and off the Network of any railway vehicle under the control of the Train Operator by promptly making a full and accurate train release or acceptance entry to the appropriate Railway Code Systems or Applicable System.

6.5.4 *GBR audit*

Subject to Clauses 6.5.5 and 6.5.6, GBR may:

- (a) carry out checks and inspections necessary to establish whether the Train Operator is complying with its obligations under this Clause 6.5; and
- (b) carry out such inspections of the books and records kept by or on behalf of the Train Operator in connection with the Services as GBR may reasonably consider to be necessary for such purpose.

6.5.5 *Notice of audit*

GBR shall:

- (a) give to the Train Operator reasonable written notice of the checks and inspections to be carried out in accordance with Clause 6.5.4; and
- (b) ensure that the checks and inspections are carried out between 09:00 hours and 17:00 hours on a Working Day.

6.5.6 *Material discrepancy*

If any such check or inspection carried out by GBR in accordance with Clauses 6.5.4 and 6.5.5 reveals a material discrepancy in information previously supplied to GBR by the Train Operator:

- (a) the Train Operator shall pay the reasonable costs incurred by GBR in carrying out the checks and inspections in accordance with Clauses 6.5.4 and 6.5.5; and
- (b) GBR shall:
 - (i) make the appropriate and consequent adjustments to the Track Charges; and
 - (ii) provide to the Train Operator evidence of such costs as the Train Operator may reasonably request.

6.5.7 *Consent to use information*

The Train Operator consents to the use by GBR of any data or information supplied by the Train Operator in the course of complying with its Safety Obligations, for the purpose of:

- (a) monitoring the Train Operator's performance of its obligations under this contract; and
- (b) calculating the amount of Track Charges.

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 13.3 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
- (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 on to 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:

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- (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 any Relevant Losses to the extent that they result from a cancellation of or a delay in commencement to a Restriction of Use; and
- (b) 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;
- (c) 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
- (d) 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
 - (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; 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:

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- (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 7 or 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.

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).

11.6.4 *Further limitation of liability*

In relation to any claim or claims made by a party to which Schedule 9 applies ("**Indemnity Claim**") in addition to the limitations on liability that apply under Schedule 9 the liability of the parties to one another shall also be limited so that:

- (a) for any Indemnity Claim that relates to or results from a single incident, event or circumstance then the other party shall not be liable to make payments that over any period of time exceed an amount equal to the Indemnity Incident Cap;
- (b) if under Clause 11.6.4(a) the Indemnity Incident Cap is exceeded then any Indemnity Claim shall be extinguished to the extent that it relates to such excess and the other party shall have no further liability for that excess; and

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- (c) any Indemnity Claim (or any part of an Indemnity Claim) that is extinguished under Clause 11.6.4(b) shall not be taken into account when calculating the amount of Relevant Losses in respect of any Indemnity Claim that is admitted or determined in a Contract Year under Schedule 9.

11.6.5 Indexation of the Indemnity Incident Cap

The Indemnity Incident Cap for the first Contract Year shall mean the sum of £[●] and 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 Indemnity Incident Cap in the n th subsequent Contract Year;
- (iii) CPI_n is the Consumer Prices Index (defined as CPI 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 (defined as CPI in Schedule 7) published or determined with respect to the first month of the first Contract Year.

11.6.6 Applicable Contract Year for indexation

For the purposes of determining the Indemnity Incident Cap under Clause 11.6.5, the applicable Contract Year shall be the Contract Year in which the relevant incident, event or circumstance begins to occur.

12. Governing law

This contract 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 with the 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 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, insofar as applicable, are modified by this clause 13.

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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, subject to Clause 16.1.1:

- (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);
- (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 he 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 Clauses 8.1 and 9, 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.

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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

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 the Secretary of State;
- (c) to any Affiliate of either party;
- (d) 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;

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- (e) 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;
- (f) 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;
- (g) 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;
- (h) to the extent required by the 1993 and 2026 Acts, 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;
- (i) to the extent that it has become available to the public other than as a result of a breach of confidence;
- (j) under the order of any court or tribunal of competent jurisdiction (including the relevant Dispute Resolution Body); and
- (k) to London Underground Limited, to the extent that;
 - (i) such information is in respect of the interaction between the operation of the Services and the provision and/or operation of railway passenger services by London Underground Limited on the Network; and
 - (ii) it is necessary to divulge such information for the safe and efficient operation of railway services on the Network.

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 Traction Electricity Rules

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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 to do so under the GBR Code or the Traction Electricity Rules.

15. Assignment

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 except with the consent of the other party.

16. Payments, interest and VAT

16.1 Payment

16.1.1 No deduction

All amounts due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off, except:

- (a) as may be required by law; or
- (b) as expressly provided in this contract.

16.1.2 Delivery of invoices

All invoices or statements of amounts payable issued under any provision of this contract 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 Payment and content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall, unless otherwise stated in this contract:

- (a) be paid within 28 days of the date of its receipt; and
- (b) 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.

16.1.5 Credit notes

Where a credit note has been issued in accordance with any provision of this contract, the party in receipt of the credit note shall be entitled to apply the amount specified in it against any amount payable by it under this contract or any future invoice or statement of amounts payable it may receive under this contract.

16.2 Disputed amounts

16.2.1 Notification of a dispute

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Except as otherwise provided in this contract, within 14 days of receipt of an invoice or statement of amounts payable issued under any provision of this contract, the recipient shall notify the issuer of any aspects of the invoice or statement which it disputes, giving reasons for any dispute. Except to the extent that disputes are so notified, the recipient shall be deemed to have agreed the contents of the invoice or statement.

16.2.2 *Payment in full*

Subject to Clause 16.2.3 and except as otherwise provided in this contract, where any amount contained in an invoice in accordance with Schedule 7 is in dispute under Clause 16.2.1:

- (a) the Train Operator shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice;
- (b) payment of the disputed amount shall be without prejudice to the determination of whether such amount is properly due or not; and
- (c) Clause 16.3.2 shall apply.

16.2.3 *Right to withhold payment of disputed amount*

If:

- (a) any amount which is payable under any provision of this contract other than Schedule 7 is in dispute under Clause 16.2.1; or
- (b) an invoice or statement of amounts payable under any provision of this contract contains an error and the recipient of such invoice or statement has notified the issuer of any aspects of the invoice or statement which contain an error and which it disputes under Clause 16.2.1,

then:

- (i) the undisputed amount shall be paid in accordance with Clause 16.1.3, or as otherwise provided for in this contract;
- (ii) 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 Charging Period in which the dispute is resolved or determined; and
- (iii) Clause 16.3.1 shall apply also in respect of the disputed balance, or such part of it as has been agreed or determined to be payable.

16.3 *Interest*

16.3.1 *Amounts not paid by due date*

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(b).

16.3.2 *Amounts paid which were not properly due*

Where a disputed amount is paid under Clause 16.2.2 and it is subsequently determined that such amount, or part of it, was not properly due, the payee shall repay the disputed amount, or relevant part, to the payer together with interest (to accrue daily and to be compounded monthly)

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at the Default Interest Rate from the date of actual payment until the date of actual repayment (as well after judgment as before).

16.4 VAT

16.4.1 *Payment of VAT*

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.

16.4.2 *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.

16.4.3 *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, subject to Clause 17.9, 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;

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"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;

"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 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

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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 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

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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.

17.9 Not Used

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 Incident Cap Access Charge Supplement Rate set out in paragraph 11.2 and Appendix 1 of Schedule 8 in accordance with paragraph 13 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 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

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(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 or not to proceed with the proposed variation.
- 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 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.

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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.

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*

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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, 3 Working Days after posting unless otherwise proven;
- (c) not used; and
- (d) if sent by email (subject to confirmation of receipt of delivery) before 17:00 hours on a Working Day, on the day of transmission and, in any other case, at 09:00 hours on the next 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), 9 (Local Outputs - Performance Orders), 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 *Contract amendments*

Subject to Clause 18.2, GBR and the Train Operator shall not, after [***insert the date on which Services may first be operated by the Train Operator under this contract***] enter into any agreement with a third party that requires the consent of any third party in order to amend this contract.

18.7.3 *Application of 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 (Rights of

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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:

- (i) 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:
 - (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;
- (ii) 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;
- (iii) any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made which:
 - (A) 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
 - (B) relate to a right under the Previous Access Agreement which is the subject of a Corresponding Right,
 - shall:
 - 1) cease to have effect under the Previous Access Agreement as from the Transition Date; and
 - 2) be deemed to have effect under this contract as from the Transition Date; and
- (iv) in applying Schedule 4, effect shall be given:
 - (A) in relation to any Restriction of Use which was notified before the Transition Date, to any Previous Notification Factor;

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- (B) in relation to any Significant Restrictions of Use, to any bespoke compensation arrangements established under the Previous Access Agreement; and
- (C) 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:

- (v) relates to the permission of the Train Operator to use the Routes; and
- (vi) corresponds to a right which:
 - (A) existed under the Previous Access Agreement; and
 - (B) ceased to have effect under the Previous Access Agreement as from the Transition Date;

"Previous Access Agreement" means the track access agreement 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 Agreement; and

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

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Schedule 1

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

Great British Railways Limited

Address: [●]

Tel: [●]

Email: [●]

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to: [●]

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: [●]

Tel: [●]

Email: [●]

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Schedule 2

(Information to assist submitting a Timetable Proposal or request for Train Slot Variation)

1. Information Request

If the Train Operator considers that:

- (a) it requires information in relation to the Network from GBR, including information about the available capacity of the Network;
- (b) the information is not contained in the Operating Constraints and could not reasonably be derived from the Operating Constraints by the Train Operator; and
- (c) the information is reasonably required in connection with a Timetable Proposal or request for a Train Slot Variation it is considering making,

the Train Operator may serve a request on GBR for information (an **"Information Request"**).

2. Contents of the Information Request

The Information Request shall contain:

- (a) a list of the specific information which the Train Operator considers reasonably necessary in order for it to inform its decision on whether to submit a Timetable Proposal or a request for a Train Slot Variation and, if so, for which Train Slot; and
- (b) the timescale within which the Train Operator considers it is reasonable for GBR to provide the information requested.

3. Agreement of the Information Request

3.1 Notification by GBR

GBR shall, within 5 Working Days of the service of the Information Request by the Train Operator, notify the Train Operator of:

- (a) the specific information which it is able to provide within the suggested timescale;
- (b) any information which it is not able to provide within the suggested timescale and its alternative timescale for the provision of such information; and
- (c) any information which it is not able to provide at all, giving reasons for such non-provision.

3.2 Failure to agree on provision of specific information

Following notification by GBR pursuant to paragraphs 3.1(b) or (c), if the parties fail to agree on the information to be provided by GBR in response to the Information Request and the timescales for the provision of such information within 5 Working Days of such notification by GBR, those issues shall be resolved in accordance Clause 13.

3.3 Relevant Dispute Resolution Body

The parties to any dispute referred under paragraph 3.2 above shall agree that the relevant Dispute Resolution Body which is to resolve the dispute shall:

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

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- (b) have regard to:
 - (i) the reasonableness of the Train Operator's request for the specific information; and
 - (ii) the reasonable timescale for the provision of the information in the Information Request;
- (c) not make a determination which is inconsistent with the provisions of the GBR Code; and
- (d) provide reasons.

3.4 *Provision of information by GBR*

Following agreement or determination of the information to be provided by GBR in response to the Information Request and the timescale for the provision of such information, GBR shall provide such information to the Train Operator within the timescale so agreed or determined.

4. *Parts D and G of the GBR Code*

The provisions of this Schedule 2 shall neither affect nor replace the rights and obligations of the parties contained in:

- (a) Part D of the GBR Code concerning the provision of information about changes to the Timetable Planning Rules and/or the Engineering Access Statement; and
- (b) Part G of the GBR Code concerning the provision of information about Network Change, as defined in Part A.

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Schedule 3

(Collateral agreements)

1. 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.
2. An accession agreement to the document entitled Emergency Access Code and, for the purpose of Schedule 6, the Emergency Access Code.

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Schedule 4

(Variations to Services)

Explanatory Note:

- (a) ***Where there is a CVL TAC (Freight Services), matters concerning variations to services for the CVL Network will be administered by GBR through (and as part of) Schedule 4 of this contract.***
- (b) ***On or around the date of the CVL TAC (Freight Services), the CVL IM and GBR will enter into a bilateral agreement which will attribute performance matters, including payments arising due to variations to services, as appropriate, between the CVL IM and GBR.***
- (c) ***This explanatory note does not form part of this contract.***

PART 1 - GENERAL PROVISIONS

1. Definitions

1.1 Definitions

In this Schedule 4 unless the context otherwise requires:

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

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

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

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

"Base Service" means:

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

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

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

- (a) the Planned departure time from Origin of the Revised Base Service differs from that of the Base Service by more than 60 minutes;
- (b) the Planned arrival time at Destination of the Revised Base Service differs from that of the Base Service by more than 60 minutes;
- (c) the end to end journey of the Revised Base Service exceeds that of the Base Service by more than 10 miles;
- (d) the imposition of more demanding length or weight restrictions for the Revised Base Service compared to the Base Service; or
- (e) the Revised Base Service departs its Origin but does not arrive at its Destination, going forward to its Destination on a further Revised Base Service,

provided that:

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

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

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

provided that:

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

"Category 3 Disruption" means a variation to any Base Service which would otherwise have

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operated, where such variation has one or more of the following effects:

- (a) there is no Revised Base Service and the access from the Origin or to the Destination of the Base Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route);
- (b)
 - (i) there is no Revised Base Service due to the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or
 - (ii) the Revised Base Service does not have an applicable gauge cleared route between the Origin and the Destination where:
 - (A) the lack of such applicable gauge cleared route has lasted or lasts in total for more than 60 hours; and
 - (B) the Revised Base Service operates in whole, or in part, at the relevant location within this 60 hour period;
- (c) all or part of the goods planned to be carried by the Base Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination;
- (d) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service;
- (e) a diesel locomotive is required to be used for the Revised Base Service in circumstances where GBR has agreed to provide electricity for traction purposes for the Base Service as apparent from the column headed "Timing Load" in the Capacity Commitments Register; or
- (f) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the Revised Base Service and such requirement has come about as a direct result of the exceptional nature of the variation to the Base Service,

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

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

"Combined Network" has the meaning ascribed to it in paragraph 1 of Schedule 8;

"Combined Network Access Proposal" means (as the case may be):

- (a) a Timetable Proposal; or
- (b) a CVL Access Proposal;

"Combined Network Alternative Train Slot" means (as the case may be):

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- (a) an Alternative Train Slot; or
- (b) a CVL Alternative Train Slot;

“Combined Network Applicable Service” means (as the case may be):

- (a) an Applicable Service; or
- (b) a CVL Applicable Service;

“Combined Network Base Service” means (as the case may be):

- (a) a Base Service; or
- (b) a CVL Base Service;

“Combined Network Cancellation” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“Combined Network Category 1 Disruption” means (as the case may be):

- (a) a Category 1 Disruption; or
- (b) a CVL Category 1 Disruption;

“Combined Network Category 2 Disruption” means (as the case may be):

- (a) a Category 2 Disruption; or
- (b) a CVL Category 2 Disruption;

“Combined Network Category 3 Disruption” means (as the case may be):

- (a) a Category 3 Disruption; or
- (b) a CVL Category 3 Disruption;

“Combined Network Category 3 Disruption Trigger” means (as the case may be):

- (a) a Category 3 Disruption Trigger; or
- (b) a CVL Category 3 Disruption Trigger;

“Combined Network Disruptive Event” means (as the case may be):

- (a) a Disruptive Event; or
- (b) a CVL Disruptive Event;

“Combined Network Diverted Service” means (as the case may be):

- (a) a Diverted Service; or
- (b) a CVL Diverted Service;

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“Combined Network Early Notice Possession” means (as the case may be):

- (a) an Early Notice Possession; or
- (b) a CVL Early Notice Possession;

“Combined Network Environmental Damage” means (as the case may be):

- (a) Environmental Damage; or
- (b) CVL Environmental Damage;

“Combined Network Late Notice Cancellation” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“Combined Network Original Service” means (as the case may be):

- (a) an Original Service; or
- (b) a CVL Original Service;

“Combined Network Restriction of Use” means (as the case may be):

- (a) a Restriction of Use; or
- (b) a CVL Restriction of Use;

“Combined Network Rolled Over Access Proposal” means (as the case may be):

- (a) a Rolled Over Timetable Proposal; or
- (b) a CVL Rolled Over Access Proposal;

“Combined Network Round Trip” means (as the case may be):

- (a) a Round Trip; or
- (b) a CVL Round Trip;

“Combined Network Services” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“Combined Network Short Notice Service” means (as the case may be):

- (a) a Short Notice Service; or
- (b) a CVL Short Notice Service;

“Combined Network Train Operator Variation” means (as the case may be):

- (a) a Train Slot Variation; or
- (b) a CVL Train Operator Variation;

“Combined Network Train Operator Variation Request” means (as the case may be):

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- (a) a request for a Train Slot Variation; or
- (b) a CVL Train Operator Variation Request;

“Combined Network Train Slot” means (as the case may be):

- (a) a Train Slot; or
- (b) a CVL Train Slot;

“Combined Network Variable Charge” means (as the case may be):

- (a) the Variable Charge; or
- (b) a CVL Variable Charge;

“CVL Access Proposal” has the meaning ascribed to the term **“Access Proposal”** in Part D of the CVL Network Code;

“CVL Alternative Train Slot” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Ancillary Movements” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Applicable Service” means a CVL Revised Base Service, a CVL Diverted Service or any CVL Service which suffers a CVL Cancellation;

“CVL Base Service” means:

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

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

“CVL Cancellation” has the meaning ascribed to it in paragraph 1 of Schedule 8;

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

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

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provided that:

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

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

- (a) there is no CVL Revised Base Service;
- (b) the imposition of more demanding gauge restrictions for the CVL Revised Base Service compared to the CVL Base Service; or
- (c) at least one additional locomotive is used for the CVL Revised Base Service over the number used for the CVL Base Service,

provided that:

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

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

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

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- (d) at least one additional locomotive is used for the CVL Revised Base Service over the number used for the CVL Base Service; or
- (e) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the CVL Revised Base Service and such requirement has come about as a direct result of the exceptional nature of the variation to the CVL Base Service,

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

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

"CVL Decision Criteria" has the meaning ascribed to the term **"Decision Criteria"** in Part D of the CVL Network Code;

"CVL Disruptive Event" has the meaning ascribed to the term **"Disruptive Event"** in Part H of the CVL Network Code;

"CVL Diverted Service" means a CVL Service, as defined in paragraph 1.2 of this Schedule 4, operated using a CVL Alternative Train Slot established under paragraphs 4 or 5 of this Schedule 4;

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

"CVL Engineering Access Statement" has the meaning ascribed to that term in clause 1 of the CVL TAC (Freight Services);

"CVL Environmental Damage" has the meaning ascribed to **"Environmental Damage"** in Part E of the CVL Network Code;

"CVL Force Majeure Event" has the meaning ascribed to it in paragraph 1 of Schedule 8;

"CVL Freight Access Right" has the meaning ascribed to the term **"Freight Access Right"** in paragraph 1 of Schedule 5 of the CVL TAC (Freight Services);

"CVL IM" has the meaning ascribed to it in paragraph 1 of Schedule 8;

"CVL Network" has the meaning ascribed to it in paragraph 1 of Schedule 8;

"CVL Network Change" has the meaning ascribed to that term in Part G of the CVL Network Code;

"CVL Network Code" has the meaning ascribed to it in paragraph 1 of Schedule 8;

"CVL New Working Timetable" has the meaning ascribed to the term **"New Working Timetable"** in clause 1 of the CVL TAC (Freight Services);

"CVL Original Service" means a Planned CVL Service which:

- (a) is affected by a CVL Disruptive Event as described in paragraph 4.1; or

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- (b) is not able to operate because of the non-availability of any part of the CVL Network as described in paragraph 5.1;

“CVL Railway Operational Code” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Restriction of Use” means any restriction of use of all or any part of the CVL Network for the purposes of, or in connection with, inspection, maintenance, renewal or repair of the CVL Network or any other works carried out in relation to the CVL Network or any other railway asset or any other works in relation to it;

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

“CVL Rights Table” has the meaning ascribed to the term **“Rights Table”** in paragraph 1 of Schedule 5 of the CVL TAC (Freight Services);

“CVL Rolled Over Access Proposal” has the meaning ascribed to the term **“Rolled Over Access Proposal”** in Part D of the CVL Network Code;

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

“CVL Short Notice Service” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL TAC (Freight Services)” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Train Operator Variation” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Train Operator Variation Request” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Train Slot” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Variable Charge” has the meaning ascribed to the term **“Variable Charge”** in Schedule 7 of the CVL TAC (Freight Services);

“CVL Working Timetable” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“Destination” has the meaning ascribed to it in paragraph 1A of Schedule 8;

“Disruption Claim Notice” has the meaning specified in paragraph 3.4.2;

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

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

“Empty Service” has the meaning ascribed to it in paragraph 1A of Schedule 8;

“Enhanced Planned Disruption Sum” means the Enhanced Planned Disruption Sum specified in Appendix 1;

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

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

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

"Late Notice Actual Costs Claim Trigger" means:

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

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

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

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

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

- (a) required as a result of any damage to the Combined Network or Combined Network 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 or the CVL TAC (Freight Services) (as the case may be); and
 - (ii) GBR demonstrates is in excess of fair wear and tear arising from use of the Combined Network by the Train Operator; or
- (b) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the Combined Network); or
- (c) required in connection with a:
 - (i) Network Change proposed by the Train Operator under Part G of the GBR Code; or
 - (ii) CVL Network Change proposed by the Train Operator under Condition G3 of the CVL Network Code;

"Origin" has the meaning ascribed to it in paragraph 1A of Schedule 8;

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"Original Service" means a Planned Service which:

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

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

"Planned" has the meaning ascribed to it in paragraph 1A of Schedule 8;

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

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

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

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

"Revised Base Service" means a Base Service which is varied and/or operated using a revised Train Slot established in accordance with Part D of the GBR Code;

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

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

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

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

1A. Treatment of other defined terms used in this Schedule 4

1A.1 In this Schedule 4 only, the following capitalised terms shall have the following meanings (disregarding, for the avoidance of doubt, the definitions ascribed to these capitalised terms elsewhere in this contract):

- (a) **"Service Characteristics"** means:
 - (i) in relation to a Service, the characteristics of that Service:
 - (A) specified in the Capacity Commitments Register (as defined in Schedule 5); or
 - (B) where not specified in the Capacity Commitments Register, specified in a Timetable Proposal, Rolled Over Timetable Proposal, request for a Train Slot Variation, or in a proposal by the Train Operator of an Alternative Train Slot under paragraphs 4 or 5 of Schedule 4, and accepted by GBR;

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- (ii) in relation to a CVL Service, the characteristics of that CVL Service:
 - (A) specified in the CVL Rights Table; or
 - (B) where not specified in the CVL Rights Table, specified in a CVL Access Proposal, CVL Rolled Over Access Proposal, CVL Train Operator Variation Request, or in a proposal by the Train Operator of a CVL Alternative Train Slot under paragraphs 4 or 5 of Schedule 4, and accepted by GBR.

1.1 Interpretation

References in this Schedule to:

- (a) a **"Service"**, except in the definition of "Round Trip", shall include, in relation to any Planned Service, any Empty Services or Ancillary Movements associated with such Planned Service; and
- (b) a **"CVL Service"**, except in the definition of "CVL Round Trip", shall include, in relation to any Planned CVL Service, any Empty Services or CVL Ancillary Movements associated with such Planned CVL Service.

1.2 CVL Force Majeure Events

The parties hereby acknowledge and agree that the occurrence of a CVL Force Majeure Event affecting the CVL IM shall be treated for the purposes of this Schedule 4 as the occurrence of a Force Majeure Event affecting GBR in respect of which the provisions of Clause 17 of this contract shall apply

2. Payment

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

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

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

PART 2 - COMPENSATION FOR NOTIFICATION BEFORE THE POSSESSION NOTICE DATE

3. Disruption compensation

3.1 Combined Network Category 1 Disruption

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

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Capacity Commitment or CVL Freight Access Right (as the case may be) as described in sub-paragraph "(a)" of either such definition (as applicable) contained in Schedule 5 or Schedule 5 of the CVL TAC (Freight Services) which but for a GBR Early Notice Possession a Train Slot or CVL Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

3.2 Combined Network Category 2 Disruption

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

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Capacity Commitment or CVL Freight Access Right (as the case may be) as described in sub-paragraph "(a)" of either such definition (as applicable) contained in Schedule 5 or Schedule 5 of the CVL TAC (Freight Services) which but for a GBR Early Notice Possession a Train Slot or CVL Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

3.3 Combined Network Category 3 Disruption

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

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Capacity Commitment or CVL Freight Access Right (as the case may be) as described in sub-paragraph "(a)" of either such definition (as applicable) contained in Schedule 5 or Schedule 5 of the CVL TAC (Freight Services) which but for a GBR Early Notice Possession a Train Slot or CVL Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

3.3.2 If the Train Operator reasonably believes or expects that the Combined Network Category 3 Disruption Trigger will be satisfied then the Train Operator will be entitled to serve an Actual Costs Claim Notice.

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- 3.3.3 Within 56 days (or such other period as the parties may agree) of receipt by GBR of an Actual Costs Claim Notice, GBR shall notify the Train Operator that either:
- (a) it agrees that the Combined Network Category 3 Disruption Trigger is satisfied and agrees to the amount of Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case GBR shall also pay such Actual Costs to the Train Operator within 56 days of receipt by GBR of the relevant Actual Costs Claim Notice; or
 - (b) it agrees that the Combined Network Category 3 Disruption Trigger is satisfied but does not agree to the amount of the Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case GBR shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Combined Network Base Service(s) affected by a GBR Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator its Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be); or
 - (c) it does not agree that the Combined Network Category 3 Disruption Trigger is satisfied, in which case the matter shall be immediately referred for determination in accordance with Clause 13, and if it is determined in accordance with Clause 13 that the Combined Network Category 3 Disruption Trigger is satisfied then GBR shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Combined Network Base Service(s) affected by a GBR Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator such Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be).

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

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

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

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

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

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

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

GBR shall not be liable to the Train Operator for more than one Planned Disruption Sum in respect of any Combined Network Round Trip.

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

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

PART 3 - PROCESSES AND COMPENSATION FOR NOTIFICATION AFTER THE POSSESSION NOTICE DATE

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

4.1 ***Establishing an Alternative Train Slot or CVL Alternative Train Slot***

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Where there is a Combined Network Disruptive Event:

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

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

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

On receiving GBR 's nomination (if any) of a Combined Network Alternative Train Slot as referred to in paragraph 4.1, the Train Operator shall promptly by notice to GBR either:

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

4.3 ***Rejection of Combined Network Alternative Train Slot***

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

4.4 ***Measure of performance***

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

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

4.5 ***Combined Network Cancellation***

4.5.1 Where:

- (a) GBR is not able to nominate a Combined Network Alternative Train Slot as referred to in paragraph 4.1;

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- (b) the Train Operator rejects the Combined Network Alternative Train Slot nominated by GBR as referred to in paragraph 4.2(b) and does not propose a different Combined Network Alternative Train Slot as referred to in paragraph 4.3; or
- (c) the Train Operator proposes a different Combined Network Alternative Train Slot under paragraph 4.3 and this is not accepted by GBR,

the relevant Combined Network Service shall be treated as a Combined Network Cancellation for the purposes of paragraph 8.1(d) of Schedule 8 or paragraph (d) of the definition of CVL Cancellation (as such term is defined in Schedule 8) (as the case may be) and paragraph 2 of Schedule 4 and paragraphs 8 and 9 of Schedule 8 shall apply.

4.5.2 Where a Combined Network Alternative Train Slot is:

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

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

4.6 ***Part H of the GBR Code and CVL Network Code***

This paragraph 4 is subject to the rights and obligations of the parties under Part H of the GBR Code, the Railway Operational Code, the rights and obligations of the Train Operator and the CVL IM under the CVL Network Code and the CVL Railway Operational Code.

5. **Other variations to Planned Combined Network Services**

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

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

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

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

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

5.2 ***Establishing a Combined Network Alternative Train Slot***

To the extent that there is appropriate capacity available on the relevant part of the Combined Network, and subject to Parts D and H of the GBR Code and the Decision Criteria and Parts D and H of the CVL Network Code and the CVL Decision Criteria, GBR shall promptly nominate

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a Combined Network Alternative Train Slot which most nearly accommodates the Combined Network Service as Originally Requested and notify the Train Operator of it.

5.3 *Train Operator's response*

On receiving GBR 's nomination (if any) of a Combined Network Alternative Train Slot as referred to in paragraph 5.2, the Train Operator shall promptly by notice to GBR either:

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

5.4 *Rejection of Combined Network Alternative Train Slot*

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

5.5 *Measure of performance*

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

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

5.6 *Combined Network Cancellation*

5.6.1 Where:

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

the relevant Combined Network Service shall be treated as a Combined Network Cancellation for the purposes of paragraph 8.1(d) of Schedule 8 or paragraph (d) of the definition of CVL Cancellation (as such term is defined in Schedule 8) (as the case may be), paragraph 2 of Schedule 4 shall apply and GBR shall be liable for the Late Notice Cancellation Sum in respect of that Combined Network Cancellation in accordance with paragraphs 8.2.3 and 9 of Schedule 8.

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5.6.2 Where a Combined Network Alternative Train Slot is:

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

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

PART 4 - COMBINED NETWORK RESTRICTIONS OF USE BEFORE POSSESSION NOTICE DATE

6. Combined Network Restrictions of Use before Possession Notice Date

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

PART 5 - SERVICE VARIATION

7. Service Variation

7.1 Service Variation

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

- (a) the Train Operator has accepted under paragraphs 4 or 5, and which is Attributable to GBR (as defined in Schedule 8); and
- (b) has one or more of the following effects:
 - (i) the end to end journey of the Combined Network Diverted Service exceeds that of the Combined Network Original Service by more than five miles;
 - (ii) the addition of at least one Planned reversing movement for the Combined Network Diverted Service over the number of Planned reversing movements for the Combined Network Original Service;
 - (iii) the imposition of any more demanding length, weight or gauge restrictions for the Combined Network Diverted Service compared with the Combined Network Original Service;
 - (iv) the use of:

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- (A) at least one additional locomotive for the Combined Network Diverted Service over the number for the Combined Network Original Service; or
- (B) a diesel locomotive for the Combined Network Diverted Service in circumstances where GBR has agreed to provide Electricity for Traction for that Combined Network Original Service as shown in Schedule 5;
- (v) the Planned departure time from Origin of the Combined Network Diverted Service differs from that of the Combined Network Original Service by more than 30 minutes but less than 12 hours;
- (vi) the Planned arrival time at Destination of the Combined Network Diverted Service differs from that of the Combined Network Original Service by more than 30 minutes but less than 12 hours; and
- (vii) while the Train Operator Originally Requested the Combined Network Train Slot in accordance with Part D of the GBR Code or Part D of the CVL Network Code, the nomination and acceptance of the Combined Network Alternative Train Slot which is established for the Combined Network Diverted Service is treated as a Combined Network Short Notice Service because an act or omission of GBR resulted in the Originally Requested Combined Network Train Slot not being Planned in accordance with the applicable Part D.

7.2 GBR liability

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

7.3 Service Variation Sum on Combined Network Round Trip

GBR shall not be liable to the Train Operator for more than one Service Variation Sum in respect of any Combined Network Round Trip.

7.4 Service Variation / Cancellation

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

PART 6 - NOT USED

8. Not Used

PART 7 - LATE NOTICE ACTUAL COSTS CLAIMS

9. Late Notice Actual Costs Claims

9.1 Late Notice Actual Costs Claim arising from Relevant Cancellation

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

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

9.2 Late Notice Actual Costs Claim arising from Relevant Service Variation

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

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

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

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

9.3 Late Notice Actual Costs Claim Notice

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

9.4 Late Notice Actual Costs Claim Process

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

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

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APPENDIX 1: PERFORMANCE

The Normal Planned Disruption Sum shall be £405 (amount to be expressed in pounds sterling and rounded to zero decimal places).

The Enhanced Planned Disruption Sum shall be £1,080 (amount to be expressed in pounds sterling and rounded to zero decimal places).

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Schedule 5

(Services)

1. Definitions

1.1 Definitions

"Arrival Window" means the period of time during which a Service shall be Planned to arrive at its Destination;

"Association" means a Special Term linking the planning of two Services at any location or locations;

"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;

"Contract Miles" has the meaning ascribed to it in Schedule 7;

"Day" means any period of 24 hours beginning at 00:00 hours and ending immediately before the next succeeding 00:00 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day. The following convention shall be used to denote days of the week:

M - Monday; T - Tuesday; W - Wednesday; Th - Thursday; F - Friday;

S - Saturday; SUN - Sunday; EWD - Monday to Saturday inclusive;

O indicates Services are run on that day alone (e.g. MFO - Monday and Friday only); and

X indicates Services are run on days other than the day or days shown with the exception of Sunday (e.g. MX - Monday excepted);

"Days per week" means the Days on which the Train Operator has a Freight Capacity Commitment to a Train Slot to operate that Service, expressed as the Day on which that Service is to be Planned to commence from its Origin;

"Departure Window" means the period of time during which the Service shall be Planned to depart from its Origin;

"Destination Stanox" means a numeric reference used in GBR systems to describe the physical location, either part of the Network or a facility adjoining the Network, to which the Service will be Planned to operate;

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

"Flexing Rights" has the meaning ascribed to it in Part A of the GBR Code;

"Freight Capacity Commitment" means either:

- (i) a Firm Capacity Commitment to a Train Slot relating to a Service with the characteristics set out in the Capacity Commitments Register; or
- (ii) a Contingent Capacity Commitment to a Train Slot relating to a Service with the characteristics set out in the Capacity Commitments Register (and which is

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identified in the Capacity Commitments Register by the notation "Contingent" in the column headed "Type of Commitment");

"Loading Gauge" has, in relation to any Service, the meaning ascribed to it by Section D2 of the "Working Manual for Rail Staff - Section 2 - Loading and Conveyance of Freight Traffic" (as defined for each section of the Network within the various sectional appendices to the Working Timetable), and as denoted in the Capacity Commitments Register by the equivalent W number of the Specified Equipment, where this exceeds that permitted by the Operating Constraints;

"Maximum Length of Train" means, in relation to any Service, the train length, excluding the length of a locomotive and brake van, expressed in standard length units ("**SLUs**") of 21 feet, to be used in the compilation of the New Working Timetable as denoted in the Capacity Commitments Register where the length exceeds that permitted by the Operating Constraints;

"Minimum Dwell Time at Intermediate Point" means the minimum period of time that the Service shall be Planned to stay at any relevant Intermediate Point;

"Minimum Turn Around Time at Destination" means the minimum time (expressed in minutes) that the Service shall be Planned to stay at its Destination;

"Minimum Turn Around Time at Origin" means the minimum time (expressed in minutes) that the Service shall be Planned to stay at its Origin;

"Origin Stanox" means a numeric reference used in GBR's systems to describe the physical location, either part of the Network or a facility adjoining the Network, from which the Service will be Planned to originate;

"Revised Base Service" has the meaning ascribed to it in Schedule 4;

"Route Acceptance" [].

"Route Availability" has, in relation to any Service, the meaning ascribed to it in the "Working Manual For Rail Staff - Freight Train Operations", and as denoted in the Capacity Commitments Register by the equivalent RA number, where this exceeds that permitted by the Operating Constraints;

"Routing" means the route which GBR is to use for a Service in preparing the New Working Timetable or the Working Timetable;

"Special Terms" means any special characteristic of a Service which is specified as such in the Special Terms column of the Capacity Commitments Register;

"Timing Load" has the meaning ascribed to it in Part A of the GBR Code;

"Y Path" means, in relation to a specified Service, where the Train Operator has a Freight Capacity Commitment for that service to that Service to:

- (a) depart from one or more Origins to the same Destination; and/or
- (b) arrive at one or more Destinations from the same Origin,

as set out in the Capacity Commitments Register, provided that the Train Operator shall not be entitled to more than one Y Path Option within any one Y Path on any particular Day, such rights being identified by the letter "Y" in the column headed "Days per Week" and "Y with *[insert the relevant train reporting number]*" in the column headed "Special Terms"; and

"Y Path Option" means in relation to a Y Path, one Origin and one Destination from a combination of one or more Origins and one or more Destinations.

2. Capacity Commitments

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2.1 Train Slots

The Train Operator has:

- (i) Firm Capacity Commitments to Train Slots in the Working Timetable, but only to the extent that such Capacity Commitment is assigned to the Train Operator in [column X] of the Capacity Commitments Register and relating to Services which are not Contingent Capacity Commitments; and
- (ii) Contingent Capacity Commitments to Train Slots in the Working Timetable (and which are identified in the Capacity Commitments Register by the notation "Contingent" in the column headed "Type of Commitment", but only to the extent that such Commitment is assigned to the Train Operator in [column X] of the Capacity Commitments Register.

2.2 Ancillary Movements

2.2.1 The Train Operator has:

- (a) 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; and
- (b) Contingent Capacity Commitments to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Contingent Capacity Commitments of the Train Operator.

2.2.2 For the purposes of paragraph 2.2.1, Ancillary Movements shall include movements:

- (a) to and from maintenance depots for the purpose of maintaining rolling stock;
- (b) for driver training purposes; and
- (c) which do not convey loaded wagons or empty passenger rolling stock;

but shall not include movements of rolling stock for the purpose of testing in furtherance of vehicle acceptance procedures

2.3 Uncommitted Freight Services

2.3.1 Uncommitted Freight Services are services for which the Train Operator does not hold a Capacity Commitment and where the Train Operator has made either:

- (a) a Timetable Proposal which has resulted in a Train Slot being included in the New Working Timetable; or
- (b) a request for a Train Slot Variation which GBR has:
 - (i) accepted or been deemed to have accepted; or
 - (ii) modified, and that modification has been accepted or been deemed to have been accepted by the Train Operator.

2.3.2 For the purposes of paragraph 2.3.1, Uncommitted Freight Services:

- (a) shall not include Services for the purpose of testing under vehicle acceptance procedures; but

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- (b) shall include Services for the purpose of testing rolling stock (including testing for the purpose of mileage accumulation) which has secured an engineering acceptance certificate and a certificate of interim operation.

2.4 Public holidays

[Arrangements specifying the treatment of Public Holidays – whether as Saturday, Sunday or Weekday services or mixture – to be developed]

3. GBR's Flexing Rights

3.1 Associations

Where Associations are shown as Special Terms in the Capacity Commitments Register relating to a Firm Capacity Commitment, GBR's Flexing Rights shall not be used to break such Associations.

4. Services

4.1 Services

The Services under this contract comprise:

- (a) Services with the characteristics set out in the Capacity Commitments Register in columns [X] for which the Train Operator has Firm Capacity Commitments or Contingent Capacity Commitments in accordance with Clause 2.2.1;
- (b) any Diverted Services;
- (c) Ancillary Movements;
- (d) any Uncommitted Freight Service; and
- (e) any Revised Base Service.

4.2 Specified Equipment

- 4.2.1 Subject to paragraph 4.2.3, the Train Operator has, in relation to a Service with a Firm Capacity Commitment, a Firm Capacity Commitment to use any equipment registered with RSSB's R2 system which has performance characteristics identical to or better than the Timing Load specified in the Capacity Commitment Register for such Service.
- 4.2.2 Subject to paragraph 4.2.3, the Train Operator has, in relation to a Service (excluding an Uncommitted Freight Service), a Contingent Capacity Commitment to use any equipment registered with RSSB's R2 system.
- 5.2.2A Subject to paragraph 4.2.3, the Train Operator has, in relation to an Uncommitted Freight Service a right to use any equipment registered with RSSB's R2 system.
- 4.2.3 No rolling stock may be used unless and until it has achieved vehicle and route acceptance necessary for its use on the Network.

4.3 Information

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 & 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.

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Annex 1

(Not used)

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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 the Network by a licence granted under section [s7B/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
 - (ii) any event or circumstance which is reasonably likely to result in any such breach,

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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 Network or any parts of it;
- (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 amounts due, 7 days shall be a reasonable grace period).

2.3 Effect of a 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;
- (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;

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- (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 purpose 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 Network to provide the Services to the extent specified in the Suspension Notice;
- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to GBR under paragraph 2.5.4; and
- (c) the service of the Suspension Notice shall not affect the Train Operator's Firm Capacity Commitments (as defined in Schedule 5) for the purpose 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; and
- (c) categories of train movements or railway vehicles,

or 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; and
- (c) categories of train movements or railway vehicles,

or 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

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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) 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;
- (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:

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- (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);

3.5 *Unilateral right of termination*

The Train Operator may at any time serve a notice on GBR to terminate this contract (a "**unilateral termination notice**").

3.6 *Contents of unilateral termination notice*

The unilateral termination notice shall specify a date and time on which termination of this contract is to take effect (which shall not be earlier than 12 months from the date on which the unilateral termination notice is served on GBR).

3.7 *Effect of unilateral termination notice*

Where the Train Operator has served a unilateral termination notice on GBR:

- (a) the service of the unilateral termination notice shall not affect the parties' continuing obligations under this contract up to the date of termination specified in the unilateral termination notice; and
- (b) the contract shall terminate under Clause 3.5 on the date and time specified in the unilateral termination notice.

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.

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Schedule 7

(Track Charges and other payments)

1. Definitions

In this Schedule 7 unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

- (a) has requested that GBR make the modification to the Operating Constraints; and
- (b) continues to utilise the modification;

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

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

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"Disruption Sum" has the meaning ascribed to it in Schedule 8;

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

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

"Enhanced Planned Disruption Sum" has the meaning ascribed to it in Schedule 4;

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

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

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

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

"Freight Specific Charge Rate" means in respect of each ESI Biomass Vehicle, ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle used in a Service the rate per kgkm for that ESI Biomass Vehicle, ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Biomass Vehicle, ESI Coal Vehicle, IO Vehicle or SNF Vehicle and, being an Indexed Figure B, adjusted in accordance with paragraph 2.7.1 and 2.7.2;

"GBR Cap" has the meaning ascribed to it in Schedule 8;

"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;

"GBR Payment Rate" has the meaning ascribed to it in Schedule 8;

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

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

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

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

- (a) any loss of income on the part of GBR; and

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- (b) freight-specific fixed and common costs for which GBR has already received funding from the Secretary of State, or any other body or person;

"Indexed Figures A" means the Cancellation Sum, the Disruption Sum, the Incident Cap Access Charge Supplement Rate, the GBR Cap, the GBR Payment Rate, the Train Operator Cap, and the Train Operator Payment Rate;

"Indexed Figures B" means the Enhanced Planned Disruption Sum, the Late Notice Cancellation Sum, the Normal Planned Disruption Sum, the Service Variation Sum, the VUC Default Rate, the Electrification Asset Usage Rate, and the Freight Specific Charge Rate;

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

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

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

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

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

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

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

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

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

as specified in Appendix 3 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 2.4.1.1 but in relation to which no train category i, and no modelled consumption rate, is shown in the table in the Traction Electricity Modelled Consumption Rates List entitled "Freight Traction Electricity Modelled Consumption Rates for CP7";

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

"Normal Planned Disruption Sum" has the meaning ascribed to it in Schedule 4;

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

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

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

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"Qualifying Modification" means a modification to the Operating Constraints in excess of their level as at 1 April 2024, which:

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

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

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

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

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

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

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

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

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

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail (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 2.2.10 of Schedule 7 to this contract or a freight track access contract previously held by the Train Operator;

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

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail (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";

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"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 3 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 DC System, or is being powered by an alternative source of energy;

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

"train category" means train category i as identified in the table in the Traction Electricity Modelled Consumption Rates List entitled "Freight Traction Electricity Modelled Consumption Rates for CP7";

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

"Train Operator Cap" has the meaning ascribed to it in Schedule 8;

"Train Operator Payment Rate" has the meaning ascribed to it in Schedule 8;

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

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

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

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

until the date on which a supplement to the Track Usage Price List under paragraph 2.2.10 in respect of that New Registered Equipment is published by GBR;

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

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

- (a) in respect of the Relevant Year commencing on 1 April 2024 the total of the amount set out in the Track Usage Price List relating to the freight variable usage charge rate for the corresponding vehicle type and commodity for that year, multiplied by the Phased in Charges Indexation Adjustment calculated in accordance with paragraph 2.7.3(a); and
- (b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight variable usage charge rate for the corresponding vehicle type and commodity for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b); and

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

2. Track Charges and invoices

2.1 *Obligation on Train Operator to pay*

- 2.1.1 In respect of each Charging Period, the Train Operator shall pay or procure payment of the Variable Charge, the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incremental Costs, the Incident Cap Access Charge Supplement and the Qualifying Modification Benefit Charge. In respect of each Relevant Year t , the Train Operator shall pay the amount of any sum $S1_{tw}$ and/or $S2_{tw}$ and/or any Charge Correction Amount payable, as provided in paragraph 18 of the Traction Electricity Rules. The charges will be rounded to the nearest penny. Where a calculation ends up exactly half way between whole numbers it will be adjusted upward.
- 2.1.2 No Track Charges shall be payable by the Train Operator in respect of a Train Slot when the train has not reached its Planned Destination for a reason which is Attributable to GBR.
- 2.1.3 GBR shall issue to the Train Operator an invoice as soon as practicable, or as otherwise agreed, following the expiry of each Charging Period in respect of the Variable Charge, the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incident Cap Access Charge Supplement and any Incremental Costs or Qualifying Modification Benefit Charge which is or are payable in respect of that Charging Period.
- 2.1.4 If, at the time that GBR issues any invoice pursuant to paragraph 2.1.3, any amount under the Traction Electricity Rules is payable by either party to the other, that invoice shall also reflect any amount under the Traction Electricity Rules payable by either party to the other.

2.2 *Variable Charges*

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

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

where:

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

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

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

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

5 has a value of zero;

6 has a value of zero;

7 has a value of zero;

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

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

Bilateral supplements to the Track Usage Price List

- 2.2.2 Where the Train Operator intends to use New Registered 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.
- 2.2.3 Subject to paragraph 2.2.7, no supplement to the Track Usage Price List shall have effect unless it has been agreed between the parties.
- 2.2.4 Either the Train Operator or GBR shall be entitled to propose that the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.
- 2.2.5 Any proposal of a kind referred to in paragraph 2.2.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.
- 2.2.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 2.2.7 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 2.2.5, 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.
- 2.2.8 The supplement shall have retrospective effect from the first day of the VUC Default Period.
- 2.2.9 GBR shall:
- (a) apply the supplement from the date in accordance with paragraph 2.2.12 above; and
 - (b) within 28 days of the date of the date specified in paragraph 2.2.8:
 - (i) issue any adjusting invoice or credit note to the Train Operator. In the case of a supplement to the Track Usage Price List, this will reflect the difference between:
 - (A) the total amount paid by the Train Operator during the VUC Default Period under item '9' of the formula in paragraph 2.2.1; and
 - (B) the amount the Train Operator would have paid during this period under items '1' to '4' of the formula in paragraph 2.2.1 had the supplement been in place when the Train Operator first used the relevant railway vehicle on the Network; and

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

2.3 Not used

2.4 Traction Electricity Charge

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

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

where:

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

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

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

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

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

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

Calculation of modelled consumption

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

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

where:

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

E_{tmog} is derived from the following formula:

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

where:

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

C_i means

- (a) the modelled consumption rate:

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

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

- (b) for New Modelled Trains, the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption Rates List;

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

UE_{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.

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 this paragraph, during the Traction Electricity Modelled Default Rate Period.

Calculation of consumption using metered consumption data

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

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

where:

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

E_{tmeg} is derived from the following formula:

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

where:

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

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

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

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

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2.4.1.4

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

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

where:

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

E_{tmugAC} is derived from the following formula:

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

where:

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

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

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

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

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

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

where:

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

E_{tmugDC} is derived from the following formula:

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

where:

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

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

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

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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

2.4.1.5

- (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 such 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 2.4.1.3 and 2.4.1.4 shall apply in respect of all such mileage.

2.4.2 *Not used.*

2.4.3 *Not used.*

2.4.4 *Not used.*

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

- 2.4.5 If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by GBR for traction electricity, it shall notify GBR of any required changes to the contract in connection with that proposal.
- 2.4.6 Any notice under paragraph 2.4.5 shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and GBR shall respond in writing within 56 days of service of any such notice.
- 2.4.7 Promptly following any response served by GBR under paragraph 2.4.6, the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- 2.4.8 If the parties fail to reach agreement within 90 days after service of a notice under paragraph 2.4.5, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter may be referred for Dispute in accordance with Clause 13.
- 2.4.9 Any agreed amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, shall apply with effect from the date agreed by the parties or the date on which the amendment is determined by conclusion of the Dispute resolution procedure, as the case may be.

2.4.10 *Electrification Asset Usage Charge*

The Electrification Asset Usage Charge is an amount for electrification asset usage which is derived from the following formula:

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$$\text{Electrification Asset Usage Charge} = \sum (EV_{tk} \cdot UV_{tk})$$

where:

$\sum$ means the summation across all Services using electric traction;

EV_{tk} means an amount in respect of the Electrification Asset Usage Rate, expressed in pounds sterling per electrified kgtm and rounded to four decimal places;

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

- (i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is operating in a Traction-Train Compatible situation and is not a Metered Train m, in accordance with the proviso to the definition of UE_{igt} in paragraph 2.4.1.2 above; or
- (ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 2.4.1.5 above.

2.5 Not used

2.6 Incident Cap Access Charge Supplement

The Incident Cap Access Charge Supplement shall be calculated in accordance with the following formula:

$$\text{Incident Cap Access Charge Supplement} = CMCP \times ICACSR$$

where:

CMCP means the sum of the Contract Miles operated in a Charging Period; and

ICACSR means the Incident Cap Access Charge Supplement Rate.

2.7 Price variation

2.7.1 For each Relevant Year commencing on and from 1 April 2024, the Indexed Figures A and the Indexed Figures B shall be adjusted in accordance with paragraph 2.7.2.

2.7.2

- (a) For the Relevant Year, Indexed Figures A shall be adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 2.7.2(a), the Adjustment Factor in respect of a Relevant Year shall be calculated in accordance with the following formula:

$$\text{Adjustment Factor} = 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}}$$

where:

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CPI_{t-1} means the average value of the monthly CPI figures for the 12 months up to and including the month of December immediately preceding 1 April in the Relevant Year in question; and

CPI_{2022} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2022.

- (b) For the Relevant Year commencing on and from 1 April 2024, Indexed Figures B shall be adjusted as at 1 April 2024 by multiplying them by the Adjustment Factor (rounded to three decimal places). In subsequent years, the adjusted Indexed Figures B from the preceding Relevant Year shall be further adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 2.7.2(b), the Adjustment Factor in respect of a Relevant Year shall be calculated in accordance with the following formula:

$$\text{Adjustment Factor} = 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}}$$

where:

CPI_{t-1} has the same meaning as set out in paragraph 2.7.2(a) above; and

CPI_{t-2} means the average value of the monthly CPI figures for the 12 months up to and including the month of December which falls 16 months before 1 April in the Relevant Year in question.

- (c) If this contract takes effect after 1 April 2024, the Indexed Figures A and the Indexed Figures B shall be adjusted in accordance with paragraphs 2.7.2(a) and (b) respectively as if this contract had been in effect on and from 1 April 2024.

2.7.3 The Phased in Charges Indexation Adjustment shall be derived:

- (a) not used;
- (b) in respect of any Relevant Year t commencing on or after 1 April 2024, from the following formula:

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

where:

$PCIA_t$ means the Phased in Charges Indexation Adjustment in respect of the Relevant Year t ;

CPI_{t-1} has the same meaning as set out in paragraph 2.7.2 above;

CPI_{2022} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2022.

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

2.8 **Incremental Costs**

2.8.1 Where:

- (a) the Train Operator makes a Timetable Proposal, Rolled Over Timetable Proposal or request for a Train Slot Variation;

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- (b) the operation of the Service requested would exceed the Operating Constraints applying as at 1 April 2024;
- (c) the Train Operator notifies GBR at the time of requesting the Service that it wishes GBR to modify the Operating Constraints applying as at 1 April 2024 in a manner so as to permit the operation of the Service requested under this contract;
- (d) GBR is reasonably able to effect such modifications in a timescale that meets the Train Operator's requirements; and
- (e) the Incremental Costs of any such modifications are not estimated by GBR to exceed £300,000 in any Financial Year,

then paragraph 2.8.2 shall apply.

2.8.2 GBR shall, as soon as reasonably practicable following receipt of the Train Operator's notification under paragraph 2.8.1, notify the Train Operator that:

- (a) it shall effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c); or
- (b) it shall not effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c) for one of the following reasons:
 - (i) it is not reasonably able to effect such modification in a timescale that meets the Train Operator's requirements; or
 - (ii) the Incremental Costs of such modification are estimated by GBR to exceed £300,000 in any Financial Year.

2.8.3 If GBR fails to notify the Train Operator under paragraph 2.8.2, it shall be deemed to have accepted the Train Operator's request under paragraph 2.8.1(c).

2.8.4 Where GBR notifies the Train Operator under paragraph 2.8.2(a), paragraph 2.8.6 shall apply.

2.8.5 Where GBR notifies the Train Operator under paragraph 2.8.2(b), if the Train Operator disputes GBR's reasons under paragraphs 2.8.2(b)(i) or (ii), it shall be entitled to refer the matter for Dispute in accordance with Clause 13.

2.8.6 Where GBR incurs Incremental Costs pursuant to paragraph 2.8.1, then such Incremental Costs shall be payable to GBR by the Train Operator in such amounts as are either:

- (a) agreed between the parties prior to operation of the relevant Service; or
- (b) if not so agreed between the parties, reasonable in the circumstances.

2.8.7 Where:

- (a) the Train Operator makes a Timetable Proposal, Rolled Over Timetable Proposal or request for a Train Slot Variation; and
- (b) the operation of the Service requested:
 - (i) would exceed the Operating Constraints applying as at 1 April 2024; and
 - (ii) is permitted under the Operating Constraints applying as at the date of the request by reason of a Qualifying Modification,

then paragraph 2.8.8 shall apply.

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2.8.8 The Train Operator shall, if it wishes to operate the Service requested under paragraph 2.8.7, pay to GBR a Qualifying Modification Benefit Charge of such amount as shall be determined to be reasonable by GBR using the criteria and guidance that are applicable to the Qualifying Modification Benefit Charge.

2.8.9 Where:

- (a) the Train Operator pays for Incremental Costs under paragraph 2.8.6 in respect of any modification (in its capacity as a Contributing Train Operator); and
- (b) another freight train operator pays a Qualifying Modification Benefit Charge to GBR in respect of such modification,

then GBR shall notify the Train Operator of the sum which it proposes to rebate to it and subject to paragraph 2.8.11, make a rebate to the Train Operator in respect of such Incremental Costs equal to the Qualifying Modification Benefit Charge so paid.

2.8.10 If the parties have failed to agree the Incremental Costs in accordance with paragraph 2.8.6 within 20 Working Days of the date of the relevant request under paragraph 2.8.1(a) either party shall be entitled to refer the determination of the Incremental Costs for Dispute in accordance with Clause 13.

2.8.11 If the Train Operator disputes:

- (a) the amount of any Qualifying Modification Benefit Charge payable by it under paragraph 2.8.8; or
- (b) the amount of any rebate payable to it under paragraph 2.8.9,

within 20 Working Days of the date of its receipt from GBR of details of the amount of the charge or rebate respectively, it shall be entitled to refer the matter for Dispute in accordance with Clause 13.

2.8.12 If a reference for resolution is made under paragraph 2.8.11, the parties shall serve a written notice on the freight train operator benefiting from the Qualifying Modification:

- (a) notifying such freight train operator of the referral for resolution; and
- (b) giving to such freight train operator the opportunity to become a party to the proceedings in respect of such resolution.

2.8.13 If a reference for resolution is made under paragraphs 2.8.5, 2.8.10 or 2.8.11, the parties shall agree that the relevant Dispute Resolution Body shall:

- (a) reach a decision which is fair and reasonable;
- (b) have regard to:
 - (i) the policy which GBR has most recently published in relation to track access charges for freight train operators and the funding of enhancements to the Network;
- (c) not make a determination which is inconsistent with any provisions of the GBR Code; and
- (d) give its reasons.

2.8.14 GBR undertakes to the Train Operator that, in any access agreement granting Capacity Commitments [or Uncommitted Freight Services] which are subject to the Operating Constraints and entered into by GBR with a freight train operator after the date of signature of

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this contract, it will insert provisions that are, with only the necessary changes, the same as the terms set out in this paragraph 2.8.

2.8.15 Where, in relation to any Qualifying Modification, the determination of any Qualifying Modification Benefit Charge, or corresponding rebate of Incremental Costs, is referred to expert determination by any person under the provisions of any regulated access agreement (other than this contract):

- (a) such determination shall be binding on GBR and the Train Operator; and
- (b) GBR and the Train Operator shall make any necessary adjustments of payments between them under this contract to give effect to such determination.

2.8.16 GBR shall be the legal and beneficial owner of all modifications to Operating Constraints effected by or on behalf of GBR under this paragraph 2.8.

2.9 GBR's Qualifying Modification Criteria

2.9.1 GBR may at any time issue criteria:

- (a) specifying how the QM Threshold for any Qualifying Modification shall be determined, which may vary for different types of Qualifying Modification; and
- (b) setting out any guidance in relation to the funding of modifications to the Operating Constraints.

2.9.2 GBR's criteria under paragraph 2.9.1(a) above shall not have effect unless GBR has:

- (a) consulted the parties in relation to the issues to be dealt with in such criteria;
- (b) taken into account any representations made by the parties in response to the consultation under paragraph 2.9.2(a); and
- (c) notified the parties as to its conclusions in relation to the issues to be dealt with in such criteria and the reasons for those conclusions.

2.10 ***Not used.***

2.11 ***Not used.***

2.12 ***Not used.***

3. **Not Used [DN: This remains under review].**

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Appendix 1

(Not used)

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Appendix 2

(Not used)

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Appendix 3

"Metered Trains M" for the purposes of paragraph 2.4.1.1 of Part 2

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

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Schedule 8

(Performance regime)

Explanatory Note:

- (a) *Where there is a CVL TAC (Freight Services), the performance regime for the CVL Network will be administered by GBR through (and as part of) Schedule 8 of this contract.*
- (b) *The CVL Network will be considered to be part of the GBR network for the purposes of Schedule 8 of this contract and the performance regime of the CVL Network so that after the date that the CVL IM becomes the infrastructure manager of the CVL Network ("Transfer Date") the delay attribution on the CVL Network shall remain broadly consistent with the delay attribution prior to the Transfer Date.*
- (c) *On or around the date of this contract, the CVL IM and GBR will enter into a bilateral agreement which will attribute performance matters, as appropriate, between the CVL IM and GBR.*
- (d) *This explanatory note does not form part of this contract.*

1. Definitions

In this Schedule 8 unless the context otherwise requires:

"100 Train Operator Miles" means the distance travelled by the Combined Network Services operated by the Train Operator on the Combined Network in any Charging Period as recorded in GBR's billing systems (unless there is a manifest error in such figure), divided by 100;

"Actual Mileage t" has the meaning ascribed to it in paragraph 10.1.4(a);

"Adjusted MDGBR" has the meaning ascribed to it in paragraph 6.2.1;

"Adjusted MDTO" has the meaning ascribed to it in paragraph 4.2.1;

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

"Aggregate Net Liability" has the meaning ascribed to it in paragraph 9.1.7;

"Annual Contract Mileage" has the meaning ascribed to it in paragraph 10.2.2(a);

"Annual Contract Mileage Variation" has the meaning ascribed to it in paragraph 10.2.2(b);

"Attributable to both the Train Operator and GBR" means, in respect of any delay to or cancellation of a Combined Network Service or a Third Party Train, a delay or cancellation in relation to which the parties have agreed or it is otherwise determined, having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Principles and Rules, that both the Train Operator and GBR are to be jointly responsible (in which case the delay or cancellation shall not fall within the definitions of "Attributable to the Train Operator" or "Attributable to GBR");

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"Attributable to GBR" means, in respect of any delay to or cancellation of a Combined Network Service or any other matter:

- (a) any delay or cancellation or other matter, occurring on or off the Combined Network, which is not Attributable to the Train Operator;
- (b) any delay to, or cancellation of, a Combined Network Restriction of Use, which is not Attributable to the Train Operator;
- (c) that portion of any such delay to or cancellation of a Combined Network Service that would otherwise be Attributable to both the Train Operator and GBR, but which the parties agree, or it is otherwise determined, is Attributable to GBR;
- (d) any delay or cancellation occurring on or off the Combined Network, caused by an Other Train Operator Train on the Combined Network; or
- (e) prior to the implementation of any ETCS Amendments in accordance with paragraph 12, any delay to or cancellation of a Combined Network Service occurring on the Combined Network or that prevents that Combined Network Service accessing the Combined Network caused by the failure, defect or miscommunication of ETCS Equipment fitted to the Specified Equipment (excluding any such failure, defect or miscommunication directly caused by the Deliberate Act of the Train Operator) that has been allocated as the responsibility of the Train Operator in the Performance Monitoring System in accordance with the guidance on allocation of responsibility for incidents set out in the Delay Attribution Principles and Rules,

and which excludes any such delay to or cancellation of a Combined Network Service or any other matter arising as a result of a Planned Incident, in all cases having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Principles and Rules;

"Attributable to the Train Operator" means:

- (a) in respect of any delay to or cancellation of a Combined Network Service, any such delay or cancellation arising as a result of:
 - (i) any acts or omissions of the Train Operator's staff or its agents, contractors or sub-contractors;
 - (ii) any Train Operator Omission;
 - (iii) any failure or defect in the Specified Equipment (with the exception of those failures, defects or miscommunications contemplated in sub-paragraph (e) of the definition of "Attributable to GBR ") relating to a Combined Network Service (including where GBR or the CVL IM (as the case may be) shall have refused to permit the Combined Network Service to move over the Network or the CVL Network because the contents of the railway wagons have escaped, or there is pollution arising from the operation of such railway wagons);
 - (iv) any improperly loaded railway wagons which form the whole or part of any Combined Network Service;

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- (v) any Combined Network Service not being promptly accepted off the Combined Network at a Destination or Intermediate Point for reasons not caused by:
 - (A) GBR (in its capacity as operator of the Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for GBR in its capacity as operator of the Network) (other than the Train Operator); or
 - (B) the CVL IM (in its capacity as operator of the CVL Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for the CVL IM in its capacity as operator of the CVL Network) (other than the Train Operator);
 - (vi) any failures or delays arising off the Combined Network, other than those which are caused by:
 - (A) GBR (in its capacity as operator of the Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for GBR in its capacity as operator of the Network) (other than the Train Operator); or
 - (B) the CVL IM (in its capacity as operator of the CVL Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for the CVL IM in its capacity as operator of the CVL Network) (other than the Train Operator); or
 - (vii) that portion of any such delay to or cancellation of a Combined Network Service that would otherwise be Attributable to both the Train Operator and GBR, but which the parties agree or it is otherwise determined is Attributable to the Train Operator;
- (b) in respect of any delay to or cancellation of a Third Party Train, or of a Combined Network Restriction of Use, any such delay or cancellation arising as a result of:
- (i) any delay to or cancellation of a Combined Network Service Attributable to the Train Operator;
 - (ii) any Train Operator Omission; or
 - (iii) that portion of any such delay to, or cancellation of, a Combined Network Service that would otherwise be Attributable to both the Train Operator and GBR, but which the parties agree or it is otherwise determined is Attributable to the Train Operator,
- in all cases:
- (aa) having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Principles and Rules; and
 - (bb) ignoring any delay or cancellation under paragraph (d) of the definition of "Attributable to GBR ";

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"Baseline Annual Contract Mileage" has the meaning ascribed to it in paragraph 10.2.2(b);

"Benchmarks" means the Train Operator Benchmark and the GBR Benchmark;

"Cancellation" has the meaning ascribed to it in paragraph 8.1;

"Cancellation Threshold" has the meaning ascribed to it in Appendix 1;

"Combined Network" means (together):

- (a) the Network; and
- (b) the CVL Network;

"Combined Network Ancillary Movement" means (as the case may be):

- (a) an Ancillary Movement (as such term is defined in clause 1 of this contract); or
- (b) a CVL Ancillary Movement;

"Combined Network Cancellation" means (as the case may be):

- (a) a Cancellation (as such term is defined in paragraph 8.1 of this Schedule 8); or
- (b) a CVL Cancellation;

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

"Combined Network Diverted Service" has the meaning ascribed to it in paragraph 1 of Schedule 4;

"Combined Network Late Notice Cancellation" means (as the case may be):

- (a) a Late Notice Cancellation; or
- (b) a CVL Late Notice Cancellation;

"Combined Network Restriction of Use" has the meaning ascribed to it in paragraph 1 of Schedule 4;

"Combined Network Services" means (together):

- (a) the Services; and
- (b) the CVL Services,

and reference in this Schedule 8 to a **"Combined Network Service"** shall mean, as the context requires, a Service or a CVL Service;

"Contract Miles" has the meaning ascribed to it in Schedule 7;

"CVL Alternative Train Slot" has the meaning ascribed to the term **"Alternative Train Slot"**

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in clause 1 of the CVL TAC (Freight Services);

“CVL Ancillary Movements” has the meaning ascribed to the term **“Ancillary Movements”** in clause 1 of the CVL TAC (Freight Services);

“CVL Cancellation” means any CVL Service:

- (a) which does not depart from its Origin within 12 hours after the time at which it is Planned to depart;
- (b) which departs from its Origin within 12 hours after the time at which it is Planned to depart and arrives at its Destination more than 12 hours after the time at which it is Planned to arrive, and in respect of which no CVL Diverted Service has been agreed; or
- (c) which departs from its Origin within 12 hours after the time at which it is Planned to depart but does not arrive at its Destination, and in respect of which no CVL Diverted Service has been agreed,

in each case where at least 6 hours of the delay to the CVL Service is Attributable to GBR (by virtue of the application of this Schedule 8); or

- (d) in respect of which GBR:
 - (i) nominates a CVL Alternative Train Slot for a reason which is Attributable to GBR (by virtue of the application of this Schedule 8) as referred to in paragraphs 4 or 5 of Schedule 4 and the Train Operator reasonably rejects such CVL Train Slot and:
 - (A) does not propose a different CVL Alternative Train Slot; or
 - (B) proposes a different CVL Alternative Train Slot and this is not accommodated by GBR as a CVL Train Operator Variation;
 - (ii) is not able to nominate a CVL Alternative Train Slot as referred to in paragraphs 4 or 5 of Schedule 4;

“CVL Diverted Service” has the meaning ascribed to it in paragraph 1 of Schedule 4;

“CVL Force Majeure Event” has the meaning ascribed to the term **“Force Majeure Event”** in clause 17.1 of the CVL TAC (Freight Services);

“CVL IM” means Seilwaith Amey Cymru/Amey Infrastructure Wales Limited, a company registered in England under number 11389544 having its registered office at Transport For Wales CVL Infrastructure Depot, Ty Trafnidiaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, United Kingdom, CF27 5UT (including its successors and permitted assigns);

“CVL Late Notice Cancellation” means any CVL Service which, pursuant to paragraph 5.6.1 of Schedule 4, is treated as a CVL Cancellation for the purposes of paragraph (d) of the definition of **“CVL Cancellation”**;

“CVL Network” has the meaning ascribed to the term **“CVL”** in Part A of the CVL Network Code;

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“CVL Network Code” means the document by that name published by the CVL IM;

“CVL Railway Operational Code” has the meaning ascribed to that term in Part H of the CVL Network Code;

“CVL Rights Table” has the meaning ascribed to it in Schedule 4;

“CVL Services” has the meaning ascribed to the term **“Services”** in clause 1 of the CVL TAC (Freight Services);

“CVL Short Notice Service” has the meaning ascribed to the term **“Short Notice Service”** in clause 1 of the CVL TAC (Freight Services);

“CVL TAC (Freight Services)” means the track access contract (freight services) between the CVL IM and the Train Operator that grants the Train Operator permission to use the CVL Network;

“CVL Timetable Planning Rules” has the meaning ascribed to the term **“Timetable Planning Rules”** in clause 1 of the CVL TAC (Freight Services);

“CVL Train Operator Variation” has the meaning ascribed to the term **“Train Operator Variation”** in clause 1 of the CVL TAC (Freight Services);

[“CVL Train Operator Variation Request” has the meaning ascribed to the term **“Train Operator Variation Request”** in clause 1 of the CVL TAC (Freight Services);]

“CVL Train Slot” has the meaning ascribed to the term **“Train Slot”** in clause 1 of the CVL TAC (Freight Services);

“CVL Working Timetable” has the meaning ascribed to the term **“Working Timetable”** in clause 1 of the CVL TAC (Freight Services);

“Deliberate Act” means any act or omission committed by the Train Operator which:

- (a) is a serious and substantial departure from good industry practice; and
- (b) shows a material disregard for any harmful, foreseeable and avoidable consequences that would be reasonably likely to result from such act or omission,

but shall not include an act or omission arising solely by way of an error of judgement or mistake unless such error of judgement or mistake is repeated on more than one occasion; and in the case of a Relevant Staff Member where such error of judgement or mistake occurs at least 6 months after the Relevant Staff Member has received training on the operational control of the relevant ETCS Equipment;

“Disruption Sum” means the Disruption Sum specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

“Enhanced Planned Disruption Sum” has the meaning ascribed to it in Schedule 4;

“Empty Third Party Train” means any empty passenger train or any Combined Network Ancillary Movement;

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"ETCS" means the European Train Control System;

"ETCS Amendments" means any amendments made to this Schedule 8 and to any other provisions of this contract in accordance with paragraph 12 as a consequence of the introduction of ETCS NTC Mode on any part of the Network that is used by the Train Operator provided that the Train Operator's Specified Equipment has triggered the ETCS NTC Mode Reliability Target;

"ETCS Equipment" means the line replaceable units or equipment specified and described in Appendix 4, including all parts of such ETCS Equipment;

"ETCS Final Amendments" means any amendments made to this Schedule 8 and to any other provisions of this contract, in accordance with paragraph 12 as a consequence of the introduction of ETCS Level 2 Mode on any part of the Network that is used by the Train Operator provided that the Train Operator's Specified Equipment has triggered the ETCS Level 2 Mode Reliability Target;

"ETCS Level 2 Mode" means a level of ETCS application that allows movement authority to be passed to the train by GSM-R radio whilst track-based detection systems continue to be used to support safe train separation;

"ETCS Level 2 Mode Reliability Target" means the achievement of 50,000 hours MTBSAF and 500,000 hours MTBMF;

"ETCS NTC Mode" means a level of ETCS application that allows the operation of the Specified Equipment with the National Train Control System;

"ETCS NTC Mode Reliability Target" means the achievement of 50,000 hours MTBSAF and 500,000 hours MTBMF across all track access contracts that include this definition;

"Financial Year t" has the meaning ascribed to it in paragraph 10.1.4;

"Financial Year t-1" means the Financial Year preceding Financial Year t;

"Financial Year t+1" has the meaning ascribed to it in paragraph 10.2.2;

"Full Cancellation" means, in relation to a Third Party Train, a cancellation of a train resulting in the train not operating at all;

"Incident Cap" in respect of each Financial Year, means the Incident Cap selected by the Train Operator in accordance with paragraph 11.1;

"Incident Cap Notice" has the meaning ascribed to it in paragraph 11.1.2;

"Initial Incident Cap Notice" has the meaning ascribed to it in paragraph 11.1.1;

"Late Notice Cancellation" means any Service which, pursuant to paragraph 5.6.1 of Schedule 4, is treated as a Cancellation for the purposes of paragraph 8.1(d);

"Late Notice Cancellation Sum" means the Late Notice Cancellation Sum specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;

"MDGBR" has the meaning ascribed to it in paragraph 6.2.1(b);

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"MDTO" has the meaning ascribed to it in paragraph 4.2.1(b);

"Minutes Delay" means, in respect of a Trigger of a Recording Point, the number of minutes delay in respect of that Trigger calculated in accordance with Appendix 2;

"Mission Failure" means any irrecoverable incident that is deemed to have occurred as a result of ETCS functional failure where the Train Operator has taken all reasonable steps to correct such functional failure but has been unsuccessful, the occurrence of which during any operational day or before the start of the operational day, results in the Combined Network Cancellation of the Combined Network Service. Mission Failures are a sub-set of the Service Affecting Failures;

"MTBMF" or **"Mean Time Between Mission Failures"** means the arithmetic mean of the time (measured using In Service Operating Hours) between successive independent Mission Failures;

"MTBSAF" or **"Mean Time Between Service Affecting Failures"** means the arithmetic mean of the time (measured using In Service Operating Hours) between successive independent Service Affecting Failures;

"National Train Control System" means the traditional system used by GBR to control trains on its network using non-train based equipment which includes but is not limited to fixed signalling and track circuits;

"GBR Benchmark" or **"GBRB"** means, in relation to each Charging Period within the relevant Financial Year, the GBR Benchmark in Minutes Delay per 100 Train Operator Miles specified in Appendix 1;

"GBR Cap" means the GBR Cap specified in Appendix 1 and in respect of the first and last Financial Year means the GBR Cap specified in Appendix 1 multiplied by the Adjustment Fraction, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7 and paragraph 10.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"GBR Charging Period Limit" means 1/13th of the GBR Cap;

"GBR Payment Rate" means the GBR Payment Rate specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7;

"Normal Planned Disruption Sum" has the meaning ascribed to it in Schedule 4;

"Other Train Operator Train" means any train operated pursuant to a permission to use granted to the Train Operator by an agreement other than this contract or the CVL TAC (Freight Services);

"Part Cancellation" means, in relation to a Third Party Train, a cancellation of a train resulting in the train either not commencing at its Origin or not arriving at its Destination;

"Performance Data Accuracy Code" has the meaning ascribed to it in Part B of the GBR Code;

"Performance Sum" means an amount for which the Train Operator or GBR is liable under one of paragraphs 4 and 6 following a Charging Period in relation to Minutes Delay in that Charging Period and the preceding Charging Periods, as adjusted in accordance with paragraph 10;

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"Planned Incident" means an incident in connection with a Combined Network Restriction of Use to the extent that there is Recovery Time in respect of that Combined Network Restriction of Use incorporated in the Working Timetable and/or CVL Working Timetable (as the case may be);

"Railway Operational Code" has the meaning ascribed to it in Part A of the GBR Code;

"Recording Point" means a location at which GBR records the times at which trains arrive at, pass or depart from that location;

"Recovery Time" means additional time incorporated in the Working Timetable and/or the CVL Working Timetable (as the case may be) to allow a train to regain time lost in delay during an earlier part of its journey;

"Relevant Staff Member" means the person(s) appointed from time to time by the Train Operator to be in operational control of the relevant Specified Equipment;

"Service Affecting Failures" means an independent failure(s) that disrupts or delays a Combined Network Service;

"Service Operating Hours" means the hours accumulated by Specified Equipment fitted with ETCS Equipment whilst operational. In the case of such Specified Equipment powered by diesel engines 'operational' means when the diesel engine is running and in the case of such Specified Equipment powered by electricity 'operational' means when the pantograph or collector shoe is connected to the overhead catenary or third rail as applicable;

"Service Variation" has the meaning ascribed to it in Schedule 4;

"Third Party Train" means a train other than a train operated by the Train Operator under this contract or the CVL TAC (Freight Services);

"Train Operator Benchmark" or "TOB" means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Charging Period, as specified in Appendix 1;

"Train Operator Cap" means the Train Operator Cap specified in Appendix 1 and in respect of the first and last Financial Year means the Train Operator Cap specified in Appendix 1 multiplied by the Adjustment Fraction, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7 and paragraph 10.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"Train Operator Charging Period Limit" means 1/13th of the Train Operator Cap;

"Train Operator Payment Rate" means the Train Operator Payment Rate specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7;

"Train Operator Omission" means any failure of or defect in or damage to the Combined Network (excluding fair wear and tear) arising from:

- (a) the improper operation of trains under this contract and/or the CVL TAC (Freight Services);
- (b) a breach of the Train Operator's Safety Obligations or of the terms of this contract and/or the CVL TAC (Freight Services); or

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- (c) any act or omission of the Train Operator's staff or agents, contractors or sub-contractors in breach of this contract and/or the CVL TAC (Freight Services);

"Trigger" means the act of a train arriving at, passing or departing from a Recording Point; and

1A. ***Treatment of other defined terms used in this Schedule 8***

1A.1 In this Schedule 8 only (except where expressly provided otherwise), the following capitalised terms shall have the following meanings (disregarding, for the avoidance of doubt, the definitions ascribed to these capitalised terms elsewhere in this contract):

- (a) **"Destination"** means:

- (i) in relation to a Service:

(A) the location on the Network at which that Service is Planned to terminate; or

(B) if the location at which that Service is Planned to terminate is not on the Network, the location on the Network which:

(i) will enable the train operating that Service to leave the Network; and

(ii) is the most appropriate location for such train to use to terminate that Service on the Network;

- (ii) in relation to a CVL Service:

(A) the location on the CVL Network at which that CVL Service is Planned to terminate; or

(B) if the location at which that CVL Service is Planned to terminate is not on the CVL Network, the location on the CVL Network which:

(i) will enable the train operating that CVL Service to leave the CVL Network; and

(ii) is the most appropriate location for such train to use to terminate that CVL Service on the CVL Network;

- (b) **"Empty Service"** means a Combined Network Service which does not convey:

(i) loaded wagons; or

(ii) empty passenger rolling stock;

- (c) **"Intermediate Point"** means:

- (i) in relation to a Service:

(A) a location on the Network at which that Service is Planned to call; or

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- (B) if the location at which that Service is Planned to call is not on the Network, a location on the Network which:
 - (i) will enable the train operating that Service to be accepted off and presented onto the Network; and
 - (ii) is the most appropriate location for such train to use to move onto the Network to reach the Destination of that Service;
- (ii) in relation to a CVL Service:
 - (A) a location on the CVL Network at which that CVL Service is Planned to call; or
 - (B) if the location at which that CVL Service is Planned to call is not on the CVL Network, a location on the CVL Network which:
 - (i) will enable the train operating that CVL Service to be accepted off and presented onto the CVL Network; and
 - (ii) is the most appropriate location for such train to use to move onto the CVL Network to reach the Destination of that CVL Service;
- (d) **“Origin”** means:
 - (i) in relation to a Service:
 - (A) the location on the Network at which that Service is Planned to commence; or
 - (B) if the location at which that Service is Planned to commence is not on the Network, the location on the Network which:
 - (i) will enable the train operating that Service to be presented onto the Network; and
 - (ii) is the most appropriate location for such train to use to move onto the Network to reach the Destination of that Service;
 - (ii) in relation to a CVL Service:
 - (A) the location on the CVL Network at which that CVL Service is Planned to commence; or
 - (B) if the location at which that CVL Service is Planned to commence is not on the CVL Network, the location on the CVL Network which:
 - (i) will enable the train operating that CVL Service to be presented onto the CVL Network; and
 - (ii) is the most appropriate location for such train to use to move onto the CVL Network to reach the Destination of that CVL Service; and

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- (e) **“Performance Monitoring System”** has the meaning ascribed to it in Part B of the GBR Code, it being acknowledged that GBR has agreed to additionally operate such Performance Monitoring System so as to accurately monitor train performance on the CVL Network and record:
- (i) the times at which trains arrive at, depart from and pass specified points on the CVL Network;
 - (ii) the difference between the time at which a train arrives at, departs from or passes a specified point on the CVL Network and the time published for such arrival, departure or passing in the CVL Working Timetable;
 - (iii) all cancelled trains and trains failing to pass any specified point on the CVL Network; and
 - (iv) the cause of train delays and cancellations on the CVL Network; and
- (f) **“Planned”** means entered in the Working Timetable or CVL Working Timetable (as the case may be).

2. **General**

2.1 ***Performance monitoring system recordings***

For the purposes of this Schedule 8, GBR shall use recordings made using the Performance Monitoring System, including the times at which Combined Network Services and Third Party Trains Trigger a Recording Point. In respect of Combined Network Services only, and where appropriate, GBR may require the Train Operator to make the relevant entry to record such times on the Performance Monitoring System. GBR and the Train Operator shall each comply with and be bound by the Performance Data Accuracy Code, and the provisions of the Performance Data Accuracy Code shall apply to this Schedule 8.

2.2 ***Liability for Short Notice Service***

Notwithstanding that (as the case may be):

- (a) GBR shall have accepted a request for a Train Slot Variation which is a Short Notice Service; and/or
- (b) GBR shall have accepted a CVL Train Operator Variation Request for a CVL Train Slot which is a CVL Short Notice Service,

GBR shall have no liability under any provision of this Schedule 8 to the Train Operator in respect of delays to any Short Notice Service or CVL Short Notice Service (as the case may be) where such delay arises as a result of GBR meeting its commitments in terms of train regulation as set out in any relevant Train Regulation Policies established pursuant to the Railway Operational Code or the CVL Railway Operational Code (as the case may be).

2.3 ***Mitigation of delays***

The parties shall take reasonable steps to avoid and mitigate the effects of any incidents which cause delay to or cancellation of any trains, and any failure to take such steps shall be regarded as a separate incident.

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2.4 Calculation of Minutes Delay

Appendix 2 (Calculation of Minutes Delay) shall have effect.

2.5 CVL Force Majeure Events

The parties hereby acknowledge and agree that the occurrence of a CVL Force Majeure Event affecting the CVL IM shall be treated for the purposes of this Schedule 8 as the occurrence of a Force Majeure Event affecting GBR in respect of which the provisions of Clause 17 of this contract shall apply.

3. Diagnosis of delays

3.1 Attributing delays

GBR shall, using the information recorded under paragraph 2.1, identify whether each minute of delay included in Minutes Delay in respect of a Combined Network Service or Third Party Train is:

- (a) Attributable to the Train Operator;
- (b) Attributable to GBR; or
- (c) Attributable to both the Train Operator and GBR.

3.2 Delays Attributable to both the Train Operator and GBR

If a delay is Attributable to both the Train Operator and GBR, the associated Minutes Delay shall be allocated equally to the Train Operator and to GBR.

3.3 Unexplained delays Attributable to GBR

If the cause of the delay to or cancellation of a Combined Network Service which occurs on the Combined Network cannot be explained, the responsibility for such delay or cancellation shall be deemed to be Attributable to GBR.

3.4 Unexplained delays Attributable to the Train Operator

If the cause of the delay to or cancellation of a Combined Network Service which occurs off the Combined Network cannot be explained, the responsibility for such delay or cancellation shall be deemed to be Attributable to the Train Operator.

3.5 Identifying delaying incidents

The parties shall co-operate with each other by providing all such information to one another as is reasonably practicable regarding the identification of the incidents which cause delay to or cancellation of any Combined Network Service or Third Party Train.

3.6 Performance statements

Appendix 3 (Performance statements) shall have effect.

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3.7 Minutes Delay in respect of Train Operator performance

4.1 Prescribed delay period

4.1.1 For the purposes of this paragraph 4, the aggregate Minutes Delay to Third Party Trains Attributable to the Train Operator arising as a result of any one incident or event shall be capped at the Incident Cap, so that any such minutes in excess of the Incident Cap shall be disregarded.

4.1.2 Any Full Cancellation of a Third Party Train (other than an Empty Third Party Train) which is Attributable to the Train Operator shall equate to 30 Minutes Delay and any Part Cancellation of a Third Party Train (other than an Empty Third Party Train) which is Attributable to the Train Operator shall equate to 15 Minutes Delay.

4.2 Train Operator performance against TOB

4.2.1 In respect of each Charging Period:

- (a) the Minutes Delay to Third Party Trains which are Attributable to the Train Operator; and
- (b) that portion of Minutes Delay to Third Party Trains which are Attributable to both the Train Operator and GBR which is allocated to the Train Operator (the aggregate Minutes Delay under (a) and (b) being referred to as "**MDTO**"),

in each case as adjusted in accordance with paragraph 4.1, shall be converted into a per 100 Train Operator Miles figure (the "**Adjusted MDTO**") using the formula below:

$$\text{Adjusted MDTO} = \frac{\text{MDTO}}{100 \text{ Train Operator Miles}}$$

4.2.2 The Adjusted MDTO calculated in accordance with paragraph 4.2.1 shall then be compared with the TOB and:

- (a) if the Adjusted MDTO is less than TOB, GBR shall be liable to the Train Operator for a Performance Sum equal to:

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

where:

CPCM means the total number of Combined Network Contract Miles operated by the Train Operator in the relevant Charging Period;

- (b) if the Adjusted MDTO exceeds TOB, the Train Operator shall be liable to GBR for a Performance Sum equal to:

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

Where:

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CPCM has the meaning ascribed to it in paragraph 4.2.2(a); and

- (c) if the Adjusted MDTO is equal to TOB, neither party shall be liable to the other for a Performance Sum under this paragraph 4.2.

5. **Cancellations of or delays to Combined Network Restrictions of Use Attributable to the Train Operator**

If a Combined Network Restriction of Use is cancelled or the commencement of a Combined Network Restriction of Use is delayed, in either case for a reason Attributable to the Train Operator, then, in respect of the cancellation of or delay to such Combined Network Restriction of Use, the Train Operator shall be liable to pay GBR I a sum equal to:

- (a) in the case of a cancellation of a Combined Network Restriction of Use, the Disruption Sum; or
- (b) in the case of a delay to the commencement of a Combined Network Restriction of Use, one quarter of the Disruption Sum multiplied by the number of hours by which the commencement is delayed, up to a maximum of 4 hours. For the purposes of this paragraph 5(b) part of an hour shall be treated as an entire hour.

6. **Minutes Delay in respect of GBR performance**

6.1 ***Combined Network Cancellations***

For the purposes of this paragraph 6, in respect of any Combined Network Service which is a Combined Network Cancellation:

- (a) if the Combined Network Service is a Combined Network Cancellation:
 - (i) as defined in paragraph 8.1(a) of this Schedule 8; or
 - (ii) falling within paragraph (a) of the definition of “CVL Cancellation”,there shall not be any Minutes Delay in respect of the Combined Network Service Attributable to GBR;
- (b) if the Combined Network Service is a Combined Network Cancellation:
 - (i) as defined in paragraph 8.1(b) of this Schedule 8; or
 - (ii) falling within paragraph (b) of the definition of “CVL Cancellation”,there shall be disregarded any Minutes Delay in respect of the Combined Network Service after the first 12 hours aggregate of Minutes Delay; and
- (c) if the Combined Network Service is a Combined Network Cancellation:
 - (i) as defined in paragraph 8.1(c) of this Schedule 8; or
 - (ii) falling within paragraph (c) of the definition of “CVL Cancellation”,there shall be disregarded any Minutes Delay in respect of the Combined Network

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Service after the time at which the Combined Network Service arrives at the point on or off the Combined Network where it subsequently becomes a Combined Network Cancellation.

6.2 GBR performance against GBRB

6.2.1 In respect of each Charging Period:

- (a) the Minutes Delay to Combined Network Services which are Attributable to GBR; and
- (b) that portion of Minutes Delay to Combined Network Services which are Attributable to both the Train Operator and GBR which is allocated to GBR (the aggregate Minutes Delay under (a) and (b) being referred to as "**MDGBR**"),

in each case as adjusted in accordance with paragraph 6.1, shall be converted into a per 100 Train Operator Miles figure (the "**Adjusted MDGBR**") using the following formula:

$$\text{Adjusted MDGBR} = \frac{\text{MDGBR}}{100 \text{ Train Operator Miles}}$$

6.2.2 the Adjusted MDGBR calculated in accordance with paragraph 6.2.1 shall then be compared with the GBRB and:

- (a) if the Adjusted MDGBR is less than GBRB, the Train Operator shall be liable to GBR for a Performance Sum equal to:

$$((\text{GBRB} - \text{the Adjusted MDGBR}) \times \text{GBR Payment Rate}) \times \left(\frac{\text{CPCM}}{100}\right)$$

where:

CPCM means the total number of Combined Network Contract Miles operated by the Train Operator in the relevant Charging Period;

- (b) if the Adjusted MDGBR exceeds GBRB, GBR shall be liable to the Train Operator for a Performance Sum equal to:

$$((\text{the Adjusted MDGBR} - \text{GBRB}) \times \text{Network Rail Payment Rate}) \times \left(\frac{\text{CPCM}}{100}\right)$$

where CPCM has the meaning ascribed to it in paragraph 6.2.2(a); and

- (c) if the Adjusted MDGBR is equal to GBRB, neither party shall be liable to the other for a Performance Sum under this paragraph 6.2.

7. Not used

8. Combined Network Cancellation

8.1 Definition of Cancellation

"Cancellation" means any Service:

- (a) which does not depart from its Origin within 12 hours after the time at which it is Planned to depart;

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- (b) which departs from its Origin within 12 hours after the time at which it is Planned to depart and arrives at its Destination more than 12 hours after the time at which it is Planned to arrive, and in respect of which no Diverted Service has been agreed; or
- (c) which departs from its Origin within 12 hours after the time at which it is Planned to depart but does not arrive at its Destination, and in respect of which no Diverted Service has been agreed,

in each case where at least 6 hours of the delay to the Service is Attributable to GBR; or

- (d) in respect of which GBR:
 - (i) nominates an Alternative Train Slot for a reason which is Attributable to GBR under paragraphs 4 or 5 of Schedule 4 and the Train Operator reasonably rejects such Train Slot and:
 - (A) does not propose a different Alternative Train Slot; or
 - (B) proposes a different Alternative Train Slot and this is not accommodated by GBR as a Train Slot Variation; or
 - (ii) is not able to nominate an Alternative Train Slot under paragraphs 4 or 5 of Schedule 4.

8.2 ***GBR liability***

8.2.1 Subject to:

- (a) paragraphs 8.2.2, 8.2.3 and 8.3 below; and
- (b) paragraphs 4.5, 5.6 and 7.4 of Schedule 4,

GBR shall be liable in any Charging Period for the Cancellation Sum in respect of each Combined Network Cancellation of a Combined Network Service Planned to depart its Origin in that Charging Period.

8.2.2 GBR shall not be liable under this paragraph 8 for any Cancellation Sum in respect of:

- (a) an Empty Service (save that, for the purpose of this paragraph 8, a service, pursuant to a contract with a third party (other than, for the avoidance of doubt, the CVL TAC (Freight Services)), conveying empty wagons and/or coaching stock will not be an Empty Service);
- (b) a Short Notice Service or CVL Short Notice Service; or
- (c) an Ancillary Movement or CVL Ancillary Movement.

8.2.3 In respect of any Combined Network Cancellation which is a Combined Network Late Notice Cancellation, GBR shall not be liable for the Cancellation Sum in respect of that Combined Network Late Notice Cancellation pursuant to paragraph 8.2.1 above but shall instead be liable for the Late Notice Cancellation Sum in respect of that Combined Network Late Notice Cancellation.

8.3 ***Late presentation of Combined Network Service***

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GBR shall have no liability to the Train Operator under the terms of this Schedule 8 where a Combined Network Service is presented to GBR after the time at which it is Planned to depart its Origin to the extent such late presentation leads to:

- (a) a Combined Network Cancellation as a result of:
 - (i) GBR meeting its commitments in terms of train regulation as set out in any relevant Train Regulation Policies established pursuant to the Railway Operational Code; or
 - (ii) GBR meeting its commitments in terms of train regulation as set out in any relevant Train Regulation Policies established pursuant to the CVL Railway Operational Code; or
- (b) a conflict with any restrictions on the use of:
 - (i) the Network contained in the Timetable Planning Rules; or
 - (ii) the CVL Network contained in the CVL Timetable Planning Rules.

9. Payment

9.1 *Aggregate Net Liability of GBR and the Train Operator for Performance Sums*

- 9.1.1 The Aggregate Net Liability of GBR for a Performance Sum in respect of any Charging Period shall not exceed the GBR Charging Period Limit.
- 9.1.2 Subject to paragraph 9.1.3, if GBR would otherwise be liable for a Performance Sum which exceeds the GBR Charging Period Limit, then the amount by which such claim exceeds the GBR Charging Period Limit shall be taken into account when calculating GBR's Aggregate Net Liability for a Performance Sum in respect of the subsequent Charging Period or Charging Periods in that Financial Year.
- 9.1.3 In respect of any Financial Year, the Aggregate Net Liability of GBR under this paragraph 9.1 shall not exceed the GBR Cap.
- 9.1.4 The Aggregate Net Liability of the Train Operator for a Performance Sum in respect of any Charging Period shall not exceed the Train Operator Charging Period Limit.
- 9.1.5 Subject to paragraph 9.1.6, if the Train Operator would otherwise be liable for a Performance Sum which exceeds the Train Operator Charging Period Limit, then the amount by which such claim exceeds the Train Operator Charging Period Limit shall be taken into account when calculating the Train Operator's Aggregate Net Liability for a Performance Sum in respect of the subsequent Charging Period or Charging Periods in that Financial Year.
- 9.1.6 In respect of any Financial Year, the Aggregate Net Liability of the Train Operator under this paragraph 9.1 shall not exceed the Train Operator Cap.
- 9.1.7 In this paragraph 9.1, the "**Aggregate Net Liability**" of a party means, in respect of a Charging Period or Financial Year, its liability after setting off the liability of the other party to it under the same provisions in respect of the same period.

9.2 *Issue of invoice or credit note*

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9.2.1 In respect of each Charging Period, subject to paragraph 9.1, GBR shall:

- (a) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the period final statement provided in accordance with paragraph 11 of Appendix 3 within 28 days after the provision of such period final statement;
- (b) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the period final statement provided in accordance with paragraph 12 of Appendix 3, within 28 days after the provision of such period final statement;
- (c) issue a credit note in respect of the aggregate of all Normal Planned Disruption Sums and Enhanced Planned Disruption Sums for which GBR is liable in accordance with Schedule 4, if any, within 28 days after agreement of such liability.

9.2.2 In the event that (i) any of the period final statements referred to in sub-paragraphs 9.2.1(a) and 9.2.1(b) have not been provided within 28 days after the end of the Charging Period to which they relate or (ii) agreement referred to in sub-paragraph 9.2.1(c) has not been reached within those same 28 days, in both cases GBR may agree with the Train Operator that an interim payment be made. If such agreement is reached then the invoice or credit note (as appropriate) issued shall detail which of the relevant sums are thus settled and which remain outstanding; and any subsequent invoice or credit note (as appropriate) issued in respect of the same Charging Period under sub-paragraphs 9.2.1(a), 9.2.1(b) or 9.2.1(c) shall take account of the interim payments as well as remaining subject to paragraph 9.1.

9.3 ***Resolution of disputes***

9.3.1 Without prejudice to Clause 13, Part B of the GBR Code and/or Part B of the CVL Network Code (as the case may be) shall apply to any dispute under this Schedule 8 in relation to the attribution of delay or cancellation.

9.3.2 The Train Operator shall not dispute any matter which it has agreed or is deemed to have agreed under Appendix 3.

10. **Reviews of GBR Cap and Train Operator Cap**

10.1 ***Not used***

10.2 ***Adjustments to the GBR Cap and Train Operator Cap***

10.2.1 The GBR Cap and the Train Operator Cap that shall apply from 1 April in each Financial Year in relation to each Charging Period in that Financial Year shall be the GBR Cap and the Train Operator Cap, in each case as specified in Appendix 1 and as adjusted in accordance with this paragraph 10.2 and paragraphs 2.7.1 and 2.7.2 of Schedule 7, provided that no adjustment shall be made to the GBR Cap or the Train Operator Cap pursuant to the following subparagraphs of this paragraph 10.2 prior to 1 April 2025.

10.2.2 Within 28 days after the last day of Financial Year t, GBR shall notify the Train Operator in writing of:

- (a) the total number of Combined Network Contract Miles operated by the Train Operator during Financial Year t (the "**Annual Contract Mileage**");
- (b) GBR's determination as to whether or not the Annual Contract Mileage for Financial

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Year t exceeds or is less than the Baseline Annual Contract Mileage (as determined in accordance with paragraph 10.2.3 below ("**Baseline Annual Contract Mileage**") by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Contract Mileage (the "**Annual Contract Mileage Variation**"); and

- (c) if GBR determines that there has been an Annual Contract Mileage Variation, GBR's proposal for an adjusted GBR Cap and/or Train Operator Cap in respect of the Financial Year immediately following Financial Year t ("**Financial Year t+1**").

10.2.3

- (a) The Baseline Annual Contract Mileage that shall apply from 1 April in each Financial Year shall be the Baseline Annual Contract Mileage specified in Appendix 1, unless it is adjusted in accordance with paragraph 10.2.3(b).
- (b) If, in accordance with paragraph 10.2.2(b), GBR determines that there has been an Annual Contract Mileage Variation, then the Baseline Annual Contract Mileage for Financial Year t+1 and each subsequent Financial Year until any further adjustment is made to the Baseline Annual Contract Mileage pursuant to this paragraph 10.2.3(b) shall be the Annual Contract Mileage for the Financial Year t in which the Annual Contract Mileage Variation has occurred.

10.2.4 Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information and notice from GBR required to be provided pursuant to paragraph 10.2.2, the parties shall endeavour to agree whether the GBR Cap and/or the Train Operator Cap should be adjusted in accordance with this paragraph 10.2.

10.2.5 If, within 56 days of receipt by the Train Operator of the information and notice from GBR required to be provided pursuant to paragraph 10.2.2, the Train Operator and GBR reach agreement as to any adjustment to the GBR Cap and/or the Train Operator Cap, the parties shall make the necessary amendments to the contract.

10.2.6 If, within 56 days of receipt by the Train Operator of the information and notice from GBR required to be provided pursuant to paragraph 10.2.2, either:

- (a) the parties fail to reach agreement; or
- (b) prior to the expiry of that 56 day period both parties agree that agreement is unlikely to be reached prior to expiry of that period,

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.

10.2.7 Promptly following any adjustment to the GBR Cap and/or the Train Operator Cap pursuant to this paragraph 10.2, and in order to give effect to that adjustment, GBR shall issue to the Train Operator a statement showing the necessary adjustments to:

- (a) any invoices and credit notes already issued; and
- (b) any payments already made in respect of Performance Sums,

in each case relating to the Charging Periods in Financial Year t+1.

10.2.8 Any statement issued by GBR pursuant to paragraph 10.2.8 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 9.2.

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11. Selection by the Train Operator of the Incident Cap

11.1 Selection by the Train Operator of the Incident Cap

11.1.1 On or before the date on which this paragraph 11.1 takes effect, the Train Operator shall notify GBR in writing of the level of Incident Cap it wishes to apply (the "**Initial Incident Cap Notice**"). The Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in the column adjacent to the Incident Cap selected by the Train Operator in the Initial Incident Cap Notice until it is replaced by a different level of Incident Cap selected by the Train Operator in an Incident Cap Notice issued pursuant to paragraph 11.1.2.

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

11.2 Level of Incident Cap and Incident Cap Access Charge Supplement Rate

For the purposes of paragraph 11.1, the Train Operator shall select one of the following Incident Caps:

Incident Cap	Incident Cap Access Charge Supplement Rate (£ per Combined Network Contract Mile operated in a Charging Period) expressed in pounds sterling and rounded to four decimal places
1,000 Minutes	0.1034
2,000 Minutes	0.0537
3,000 Minutes	0.0315
4,000 Minutes	0.0222
5,000 Minutes	0.0174
6,000 Minutes	0.0147
7,000 Minutes	0.0128
8,000 Minutes	0.0110
9,000 Minutes	0.0094
10,000 Minutes	0.0078

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Incident Cap	Incident Cap Access Charge Supplement Rate (£ per Combined Network Contract Mile operated in a Charging Period) expressed in pounds sterling and rounded to four decimal places
No Incident Cap	None

12. ETCS Amendments and ETCS Final Amendments

12.1 *Circumstances in which ETCS Amendments and ETCS Final Amendments can be made*

Either party may by notice to the other propose ETCS Amendments or ETCS Final Amendments.

12.2 *ETCS Amendments and ETCS Final Amendments agreed by the parties*

- (a) A party that wishes to make ETCS Amendments or ETCS Final Amendments shall serve a notice on the other party that:
 - (i) specifies as far as possible the proposed ETCS Amendments or proposed ETCS Final Amendments and the date from which they are to have effect;
 - (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments or proposed ETCS Final Amendments and setting out the reasons for making them; and
 - (iii) gives broad effect to the principle that the liability of the parties under this Schedule 8 (all other things being equal) is no greater after the implementation of any ETCS Amendments or ETCS Final Amendments than it was prior to the implementation of those ETCS Amendments or ETCS Final Amendments.
- (b) The party receiving a notice under paragraph 12.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.
- (c) Promptly, and in any event within 20 Working Days following service of a response pursuant to paragraph 12.2(b), the parties shall use reasonable endeavours to agree the wording of the proposed ETCS Amendments or proposed ETCS Final 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 12.2(c), GBR shall be entitled to decide on the wording of the ETCS Amendments or ETCS Final 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.

12.3 *Amendments to sub-paragraph (e) of the definition of “Attributable to GBR” as a consequence of ETCS Amendments*

With effect from the implementation of any ETCS Amendments in accordance with paragraph

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12.2, sub-paragraph (e) of the definition of “Attributable to GBR” in paragraph 1 shall be replaced with the following wording:

“any delay or cancellation occurring on or off the Network caused by the failure, defect or miscommunication of ETCS Equipment fitted to the Specified Equipment (excluding any such failure, defect or miscommunication of such ETCS Equipment when operating in NTC Mode or directly caused by the Deliberate Act of the Train Operator) that has been allocated as the responsibility of the Train operator in the Performance Monitoring System in accordance with the guidance on allocation of responsibility for incidents set out in the Delay Attribution Principles and Rules”

12.4 *Amendments to Schedule 8 as a consequence of ETCS Final Amendments*

With effect from the implementation of any ETCS Final Amendments in accordance with paragraph 12.2, the amendments to Schedule 8 listed in Appendix 5 shall have effect.

12.5 *Amendments to Schedule 8 as a consequence of ETCS Amendments or ETCS Final Amendments*

The parties acknowledge and agree that any amendments made to Schedule 8 pursuant to this paragraph 12 must also apply to any other operator whose Access Agreement in relation to track includes a provision similar to this paragraph 12 and, accordingly, each party agrees to participate in any referral for resolution under paragraph 12.2(d)(ii) even if, pursuant to paragraph 12.2, the Train Operator has notified GBR that it agrees with GBR’s proposed ETCS Amendments or proposed ETCS Final Amendments.

13. *Circumstances in which GBR may amend the Incident Cap Access Charge Supplement Rate and Appendix 1*

13.1 GBR may amend the Incident Cap Access Charge Supplement Rate set out in paragraph 11.2 and Appendix 1 of Schedule 8 where it considers that there has been a material change in circumstances. In such event, GBR shall issue a notice to the parties setting out the amendments to be made and the date, which shall not be retrospective, from which they shall take effect.

13.2 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.

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APPENDIX 1: PERFORMANCE

Train Operator Performance

Train Operator Payment Rate	£32.33 per Minutes Delay to Third Party Trains which are Attributable to the Train Operator.
Train Operator Cap	£[●]
Disruption Sum	£2,868

GBR Performance

GBR Payment Rate	£25.81 per Minutes Delay to Services which are Attributable to GBR.
GBR Cap	£[●]

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Benchmarks

Train Operator Benchmark

The Train Operator Benchmark (TOB) in relation to each Charging Period shall be 2.74 Minutes Delay per 100 Train Operator Miles.

GBR Benchmark

The **GBR** Benchmark (GBRB) in relation to a Charging Period shall be 7.67 Minutes Delay per 100 Train Operator Miles;

Cancellation Sum

The Cancellation Sum shall be calculated as follows:

- (a) the Cancellation Sum shall be £2,444 for each Combined Network Cancellation below the Cancellation Threshold;
- (b) the Cancellation Sum shall be £6,520 for each Combined Network Cancellation equal to or above the Cancellation Threshold; and
- (c) the "**Cancellation Threshold**" in any Charging Period shall be 0.56 per cent of the total number of Combined Network Services operated by the Train Operator in that Charging Period.

Late Notice Cancellation Sum

The Late Notice Cancellation Sum in respect of each Combined Network Late Notice Cancellation shall be £2,111.

Baseline Annual Contract Mileage

The Baseline Annual Contract Mileage shall be ●.

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APPENDIX 2: CALCULATION OF MINUTES DELAY

1. Subject to paragraph 2 below, the Minutes Delay for a train in respect of the Trigger of a Recording Point shall be equal to:
 - (a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train Triggers the Recording Point is later than the time at which the train is Planned to Trigger the Recording Point; and
 - (b) in respect of each other recorded Trigger, the lesser of:
 - (i) the number of minutes in respect of the first recorded Trigger calculated in accordance with paragraph 1(a); and
 - (ii) the greater of $((A1-A2) + B)$ and zero,

where:

- A1 is the number of minutes between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);
- A2 is the Planned time between the Triggers mentioned in (A) above; and
- B is any Recovery Time between such Triggers.

2. The Minutes Delay calculated in accordance with paragraph 1 above shall be allocated to the incidents causing those Minutes Delay as described in paragraph 3 of this Schedule 8. Any minutes of delay which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero and for the purposes of this Schedule 8 shall not be included in the Minutes Delay.

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APPENDIX 3: PERFORMANCE STATEMENTS

Interim statements provided by GBR

1. Using all reasonable endeavours, GBR shall provide to the Train Operator an interim statement listing all incidents which are in connection with Combined Network Services which were Planned to depart from their Origin during each day. Such interim statements shall be issued on the eighth day after the end of each particular day (or, if the eighth day is not a Working Day, on the next Working Day thereafter) indicating:
 - (a) which incidents are Attributable to the Train Operator and, in respect of such incidents, the Minutes Delay to Third Party Trains;
 - (b) which incidents are Attributable to GBR and, in respect of such incidents, the Minutes Delay to Combined Network Services;
 - (c) which incidents are Attributable to both the Train Operator and GBR, and in respect of such incidents (i) that portion of Minutes Delay to Third Party Trains which is allocated to the Train Operator and (ii) that portion of Minutes Delay to Combined Network Services which is allocated to GBR; and
 - (d) which incidents in categories (a) to (c) above remain, at the time of production of the interim statement, under further investigation following a referral by the Train Operator under Condition B2.3.2 of the GBR Code or condition B2.3.2 of the CVL Network Code (as the case may be).
2. As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, GBR shall provide to the Train Operator an interim statement listing all Disruption Sums arising during that Week for which it believes the Train Operator is liable under paragraph 5 of Schedule 8.
3. As soon as reasonably practicable after the end of each Charging Period, and using all reasonable endeavours to provide such interim statement within six Working Days after the end of each Charging Period, GBR shall provide to the Train Operator an interim statement listing:
 - (a) the total Combined Network Contract Miles; and
 - (b) the total number of Combined Network Services,

in each case operated by the Train Operator during that Charging Period.

Interim statements provided by the Train Operator

4. As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, the Train Operator shall provide to GBR the following interim statements:
 - (a) an interim statement listing (i) all Combined Network Cancellations occurring during that Week for which the Train Operator considers it is entitled to a Cancellation Sum, and (ii) any Combined Network Late Notice Cancellations for which the Train Operator

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considers it is entitled to a Late Notice Cancellation Sum, in each case under paragraph 8 of Schedule 8; and

- (b) an interim statement listing all Service Variations arising during that Week for which the Train Operator considers it is entitled to a Service Variation Sum under Schedule 4.

Dispute of interim statement

- 5. Within two Working Days of receipt of any interim statement under paragraph 1, 2, 3 or 4 of this Appendix the recipient shall notify the provider of the interim statement of any reason why it disputes the interim statement by endorsing the interim statement and returning it to the provider of such statement.
- 6. Within the next five Working Days after notification of any dispute under paragraph 5 above, nominated representatives of the parties shall meet and attempt to resolve that dispute.
- 7. If any matter is still in dispute ten Working Days after the meeting held under paragraph 6 above, either party may refer such matter for resolution under paragraph 9.3.1 of Schedule 8.

Deemed agreement

- 8. Except to the extent that it has, within two Working Days of receipt, notified the provider of an interim statement under paragraph 5 above that it disputes the contents of such interim statement, the recipient shall be deemed to have agreed the contents of that statement.

Period final statements

- 9. After the resolution of any investigations listed in an interim statement in accordance with paragraph 1(d) above, and of any disputes notified under paragraph 5 above, GBR shall provide to the Train Operator a final statement in respect of each Charging Period, listing:
 - (a) the total Combined Network Cancellations and the aggregate of the Cancellation Sums payable under Schedule 8;
 - (b) the total Combined Network Late Notice Cancellations and the aggregate of the Late Notice Cancellation Sums payable under Schedule 8;
 - (c) the total Service Variations and the aggregate of the Service Variation Sums payable under Schedule 4; and
 - (d) the aggregate of the Disruption Sums payable under Schedule 8,in each case applicable to Combined Network Services Planned to depart from their Origin during that Charging Period.
- 10. After the resolution of any incidents referred for further investigation under Condition B2.3.2 of the GBR Code or condition B2.3.2 of the CVL Network Code (as the case may be), GBR shall provide to the Train Operator a final statement in respect of each Charging Period, listing:
 - (a) the total Performance Sum for which GBR is liable under Schedule 8; and
 - (b) the total Performance Sum for which the Train Operator is liable under Schedule 8 in each case including such relevant calculations as the parties shall agree from time to time.

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Statement of adjustment

11. If Condition B3.3 of the GBR Code (Adjustment to prior results) or condition B3.3 of the CVL Network Code (as the case may be) applies in respect of all or part of a Charging Period, GBR shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to any Performance Sums, Cancellation Sums, Late Notice Cancellation Sums, Normal Planned Disruption Sums, Enhanced Planned Disruption Sums and Disruption Sums already paid in respect of the Charging Period.
12. Any statement issued by GBR under paragraph 11 above shall be accompanied by an adjusting invoice or credit note.

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APPENDIX 4: ETCS EQUIPMENT

European Vital Computer (EVC)
European Vital Computer
EVC fan
Driver Machine Interface (DMI)
Single DMI
DMI switch
ETCS Loudspeaker
Train Interface Unit (TIU)
Cabinets (EVC, NVC, JRU housings)
Safe relays module
Braking Activation Device
Balise Antenna
Eurobalise Antenna
Juridical Recorder Unit (JRU)
JRU
JRU health indicator
Non-Vital Computer (NVC)
Non-Vital Computer
GSM-R roof antennas
Odometry System
Radar type I (Siemens)

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Radar type II (Deuta)
Odometry Pulse Generator type I
Odometry Pulse Generator type II (if applicable)
Control and Maintenance Workstations
Maintenance laptop SW
Power Supply Units (PSU)
DC-DC converter
Overvoltage protection
Mini circuit breaker
Interface Equipment
Additional speed display
Cab holdover button
ETCS acknowledge button
ETCS isolation switch
Klip station
AWS/TPWS Equipment
TPWS Control Unit 4 th generation
TPWS Driver Machine Interface 4th generation
TPWS full isolation indicator
AWS visual indicator unit
AWS audible indicator and speech unit
AWS isolation/fault indicator
Cables, connections, labelling and other miscellaneous items

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Cables
Brackets
Sundries
Junction boxes

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APPENDIX 5: AMENDMENTS TO SCHEDULE 8 AS A CONSEQUENCE OF ETCS FINAL AMENDMENTS

1. From the effective date of any ETCS Final Amendments agreed in accordance with paragraph 12, the following amendments to Schedule 8 shall also take effect:

(i) Paragraph 1: Definition of “Attributable to GBR ”;

delete “; or” from the end of sub-paragraph (d) and replace with a full-stop.

delete sub-paragraph (e) in its entirety.

(ii) Paragraph 1: Definition of “Attributable to the Train Operator”;

delete the following wording from sub-paragraph (iii):

“(with the exception of those failures, defects or miscommunications contemplated in sub-paragraph (e) of the definition of “Attributable to GBR ”)”

(iii) Paragraph 1: Delete the following definitions:

“Deliberate Act”

“ETCS”

“ETCS Amendments”

“ETCS Final Amendments”

“ETCS Level 2 Mode”

“ETCS Level 2 Mode Reliability Target”

“ETCS NTC Mode”

“ETCS NTC Mode Reliability Target”

“Mission Failure”

“MTBMF”

“MTBSAF”

“National Train Control System”

“Relevant Staff Member”

“Service Affecting Failures”

“Service Operating Hours”

(iv). Delete paragraph 12 in its entirety.

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Schedule 9

(Limitation on liability)

1. Definitions

In this Schedule 9:

"Liability Cap" means:

the sum calculated in accordance with the following formula:

$$C_t = C_1 \bullet \left(1 + \left[\frac{CPI_{t-1} - CPI_{2022}}{CPI_{2022}} \right] \right)$$

where:

- (i) C_t is the relevant figure in Relevant Year t;
- (ii) C_1 is the sum of £8,300,000;
- (iii) CPI_{t-1} is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the month of November in Relevant Year t-1; and
- (iv) CPI_{2022} is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to November 2022.

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:

- (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

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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.

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Schedule 10

(Not used)

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In witness whereof the duly authorised representatives of GBR and the Train Operator have executed this contract on the day 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
[Name of Train Operator]