

RAILWAYS ACT 1993

ACCESS CHARGES REVIEW 2008

REVIEW NOTICE:

FRANCHISED PASSENGER TRACK ACCESS CHARGES

TO:

- (1) the persons whose names are set out in Annex 1 to this Review Notice;
- (2) Network Rail Infrastructure Limited ("**Network Rail**"); and
- (3) the Secretary of State for Transport, the Scottish Ministers and the Treasury.

1 GENERAL

1.1 This review notice (the "**Review Notice**") is given in accordance with paragraph 4 of Schedule 4A to the Railways Act 1993 (the "**Act**").

1.2 The Office of Rail Regulation ("**ORR**") has undertaken a review of:

(a) the amounts payable by Network Rail and each of the Train Operators to each other under each of the access agreements listed in Part 1 of Annex 1 to this Review Notice (the "**Track Access Agreements**"); and

(b) the times at which, and the manner in which, those amounts are payable, (the "**Review**").

1.3 The ORR's conclusions on the Review, and its reasons for those conclusions, are:

(a) set out in a document entitled "Periodic review 2008 - Determination of Network Rail's outputs and funding for 2009-14" and published by the ORR on 30 October 2008 (the "**Review Document**"); and

(b) hereby incorporated into this Review Notice.

- 1.4 By publishing this Review Notice and serving it on each of the addressees, the ORR is now initiating the implementation of the Review.

2 Proposed Relevant Changes

- 2.1 For or in connection with giving effect to the ORR's conclusions on the Review, the ORR proposes to direct the parties to each of the Track Access Agreements to amend each Track Access Agreement on the terms specified in Annexes 2 and 3 to this Review Notice (the "**proposed relevant changes**").
- 2.2 The ORR proposes that, subject to paragraph 3, the proposed relevant changes will come into operation on and from 1 April 2009.

3 Regulated Amendments

If, before the proposed relevant changes come into operation in relation to any Track Access Agreement, such Track Access Agreement is amended in a manner which is:

- (a) approved by the ORR under section 22 of the Act; or
- (b) directed by the ORR under section 22A or section 22C of the Act,

(each a "**regulated amendment**"), then:

- (i) the proposed relevant changes shall come into operation in relation to that Track Access Agreement subject to the regulated amendments; and
- (ii) if there is any conflict between the proposed relevant changes and the regulated amendments, the regulated amendments shall take precedence.

4 Objections

4.1 Subject to paragraph 4.2, any person specified in paragraph (4)(a) or (b) of Schedule 4A to the Act may make objections with respect to:

- (a) any of the proposed relevant changes; or
- (b) the date on which it is proposed that any such proposed relevant changes should come into operation.

4.2 Any objection made under paragraph 4.1 must be:

- (a) made in writing;
- (b) received by the ORR on or before 5 February 2009; and
- (c) addressed to the ORR as follows:

John Thomas
Office of Rail Regulation
One Kemble Street
London WC2B 4AN

5 Definitions and Interpretation

5.1 In this Review Notice, unless the context otherwise requires:

- (a) references to “this Review Notice” include the Annexes to this Review Notice;
- (b) references to the singular include the plural and *vice versa*;
- (c) words and phrases defined in:
 - (i) the Act;
 - (ii) the Network Code (formerly known as the Railtrack Track Access Conditions 1995 (as amended)); or
 - (iii) each Track Access Agreement,

shall have the same meanings in this Review Notice; and

(d) any general rules of interpretation contained in:

(i) Condition A1 of the Network Code; or

(ii) each Track Access Agreement,

shall also apply to this Review Notice.

BILL EMERY

FOR AND ON BEHALF OF

THE OFFICE OF RAIL REGULATION

Dated 18 December 2008

ANNEX 1

ADDRESSEES AND TRACK ACCESS AGREEMENTS

Part 1 - Train Operators

Train Operator (collectively, the “Train Operators” and each a “Train Operator”)	Original Date of Track Access Agreement
Arriva Trains Wales/Trenau Arriva Cymru Limited	5 February 2004
c2c Rail Limited	23 May 2003
The Chiltern Railway Company Limited	5 February 2004
East Midlands Trains Limited	11 November 2007
First Capital Connect Limited	9 February 2006
First Greater Western Limited	8 December 2006
First/Keolis Transpennine Limited	30 January 2004
First ScotRail Limited	10 December 2004
London & Birmingham Railway Limited	11 November 2007
London & South Eastern Railway Limited	6 December 2007
London Eastern Railway Limited	10 December 2004
London Overground Rail Operations Ltd	9 November 2007
Merseyrail Electrics 2002 Limited	17 July 2003
New Southern Railway Limited	21 May 2004
Northern Rail Limited	4 February 2005
NXEC Trains Limited	4 February 2005
Stagecoach South Western Trains Limited	20 May 2004
West Coast Trains Limited	10 December 2008
XC Trains Limited	11 November 2007

Part 2 - Other Addressees

Transport for London

Merseyside Passenger Transport Executive

ANNEX 2

STANDARD AMENDMENTS

Explanatory Note:

In order to give effect to the ORR's conclusions on the Review, amendments need to be made to Schedules 4 (Rules of the Route, Rules of the Plan and Restrictions of Use), 7 (Track Charges) and 8 (Performance Regime) to each Track Access Agreement and any consequential amendments to definitions in each Track Access Agreement.

*This Annex 2 sets out the standard form proposed relevant changes to be made to Schedules 4, 7 and 8 and clause 1 of each Track Access Agreement (the "**standard amendments**").*

In some Track Access Agreements, some of the provisions which are to be amended are not in standard form. Where this is the case, Part 1 of Annex 3 to this Review Notice sets out how the standard amendments will need to be modified, or certain other bespoke amendments will be required.

In certain instances, where this is appropriate because of the nature of the amendments, the standard amendments for an individual Train Operator (e.g. Schedule 7 for First ScotRail Limited) are set out in this Annex 2.

In certain instances, the publication of certain proposed relevant changes would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of each Train Operator and/or Network Rail for the purpose of section 71(2) of the Act; they are therefore not being published. Where this is the case, such proposed relevant changes will be attached to Part 2 of Annex 3 to this Review Notice and will be sent only to the parties to the relevant Track Access Agreement, the Secretary of State for Transport, the Scottish Ministers and the Treasury and any relevant addressees listed in Part 2 of Annex 1 to this Review Notice.

Save as otherwise specified in Annex 3 to this Review Notice, the following amendments shall be made to the Track Access Agreements:

1 Definitions in each Track Access Agreement

In clause 1.1 of each Track Access Agreement that does not contain a definition of the term “relevant ADRR Panel”, insert the following new definition in alphabetical order:

“**relevant ADRR Panel**” has the meaning ascribed to it in Part A of the Network Code;”.

2 Schedule 4 to each Track Access Agreement

Schedule 4 to each Track Access Agreement shall be deleted and replaced in its entirety by the Schedule set out in Appendix 1 to this Annex 2. The wording to be inserted into Annexes B and C of Part 3 to Schedule 4 specific to each Train Operator is attached separately (see Part 2 of Annex 3 to this Review Notice).

3 Schedule 7 to each Track Access Agreement

3.1 With the exception of Appendix 7C to Schedule 7 (which shall not be deleted and which shall continue to remain in full force and effect in accordance with its terms), Schedule 7 to each Track Access Agreement (other than the Track Access Agreement between Network Rail and First ScotRail Limited) shall be deleted and replaced in its entirety by the Schedule set out in Appendix 2 to this Annex 2.

3.2 With the exception of Appendix 7C to Schedule 7 (which shall not be deleted and which shall continue to remain in full force and effect in accordance with its terms), Schedule 7 to the Track Access Agreement between Network Rail and First ScotRail Limited shall be deleted and replaced in its entirety by the Schedule set out in Appendix 3 to this Annex 2.

4 Schedule 8 to each Track Access Agreement

4.1 In paragraphs 9.1 and 19.2 of Schedule 8 to each Track Access Agreement:

(a) each reference to “RPI 2003” shall be deleted and replaced with “RPI 2008”;
and

(b) the reference to “November 2003” shall be deleted and replaced with
“November 2008”.

4.2 In paragraph 13 of Schedule 8 to each Track Access Agreement, the reference to
“1 April 2004” shall be deleted and replaced with “1 April 2009”.

4.3 Paragraphs 17.1 and 17.2 of Schedule 8 to each Track Access Agreement shall
be deleted and replaced in their entirety by the following:

“17.1 Circumstances in which parties agree to amend Appendix 1

Either party may by notice to the other propose that Appendix 1 be amended in
accordance with this paragraph 17.

17.2 Procedure for amendments to Appendix 1

(a) The party who wishes to amend Appendix 1 shall notify the
other party of any such proposed change and the date from
which it proposes that such change will have effect:

(i) where such change relates to a forthcoming timetable change,
on or before the first day of the month 6 months before the
relevant Principal Change Date or Subsidiary Change Date on
which that timetable change is due to occur; and

(ii) in any other case, prior to the date from which it proposes such
change shall have effect.

(b) Any notice under paragraph 17.2(a) shall:

(i) specify as far as possible that party’s proposed amendments to
Appendix 1; and

(ii) be accompanied by information and evidence in reasonable detail
supporting the change proposed and setting out the reasons for it.

(c) The party receiving a notice issued under paragraph 17.2(a) shall
respond to that notice in writing, in reasonable detail and with reasons
for its response, within 56 days of service of such notice.

- (d) Promptly (and in any event within 34 days) following the service of any response under paragraph 17.2(c), the parties shall endeavour to agree whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.
- (e) If the parties fail to reach agreement within 90 days after service of the relevant notice under paragraph 17.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the parties shall notify the ORR. If the ORR elects to determine the matter, the parties shall furnish the ORR with such information and evidence as the ORR shall require to determine the matter and shall abide by any determination issued by the ORR. If the ORR does not so elect within 56 days of receipt by the ORR of notification in accordance with this paragraph 17.2(e), the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:
 - (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as the expert sees fit having regard to that timescale;
 - (ii) each of the parties shall abide by the rules and procedures established by the expert; and
 - (iii) the parties shall direct the expert to (A) have regard to any relevant criteria and/or policy statement most recently issued by the ORR and/or any guidance issued by the ORR in relation to the reference of the matter to the expert, including in relation to the introduction of any capped value in respect of any Service Group in Appendix 1, and (B) set out in its determination the reasons for that determination.
- (f) Any amendment to Appendix 1 shall take effect only when it has been approved by the ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or

determined in accordance with this paragraph 17 (other than a determination by the ORR pursuant to paragraph 17.2(e)), the parties shall ensure that the ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.

- (g) Any amendment to Appendix 1 shall apply with effect from:
 - (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 17.2(a)(i) applies); or
 - (ii) subject to paragraph 17.2(f), the date proposed by the party requesting the change in accordance with paragraph 17.2(a)(ii) (unless otherwise agreed by the parties or determined by the ORR or the expert in relation to the change).”

4.4 Columns B to I (inclusive) of Appendix 1 to Schedule 8 to each Track Access Agreement shall be deleted and replaced in their entirety with the Columns B to I (inclusive) of Appendix 1 to Schedule 8 specific to each Train Operator and attached separately (see Part 2 of Annex 3 to this Review Notice).

4.5 Appendix 3 to Schedule 8 to each Track Access Agreement shall be deleted and replaced in its entirety with the Appendix 3 to Schedule 8 specific to each Train Operator and attached separately (see Part 2 of Annex 3 to this Review Notice).

Appendix 1 to Annex 2

Schedule 4

SCHEDULE 4: RULES OF THE ROUTE, RULES OF THE PLAN AND RESTRICTIONS OF USE

PART 1
NOT USED

PART 2
NOT USED

PART 3: COMPENSATION FOR RESTRICTIONS OF USE

1 Definitions

1.1 *Defined terms*

In this Part 3 and its Appendices, unless the context otherwise requires:

- “Applicable Timetable”** means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D1.6.1 as at 22:00 hours on the day prior to that day;
- “Bi-annual Timetable”** means either of the following:
- (a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or
 - (b) the Corresponding Day Timetable for all days from and including the Subsidiary Change Date up to but excluding the immediately following Subsidiary Change Date or Principal Change Date, as the case may be;
- “Cancellation Minutes”** shall have the meaning ascribed to it in Schedule 8;
- “Cap”** shall have the meaning ascribed to it in Schedule 8;
- “Corresponding Day”** means, in respect of any day (the **“first day”**):
- (a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the First Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the First Working Timetable for the first day; or
 - (b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately

	preceding the Timetable Period which includes the first day and on which the Services scheduled in the First Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the First Working Timetable for the first day; or
	(c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;
“Corresponding Day Timetable”	means, in relation to a Corresponding Day, the First Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;
“Day 42 Statement”	shall have the meaning ascribed to it in paragraph 13.1(a);
“Disrupted”	means: <ul style="list-style-type: none"> (a) cancelled; (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or (c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;
“First Restriction”	shall have the meaning ascribed to it in paragraph 2.12(a)(i);
“First Restriction Period”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii);
“First Working Timetable”	means, in respect of any day, the version of the Working Timetable for that day provided by Network Rail in accordance with Condition D3.2.7, as amended pursuant to Condition D3.2.9;
“Further Restriction”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);
“High Speed Diversion”	means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the First Working Timetable;
“Monitoring Point”	shall have the meaning ascribed to it in Schedule 8;
“Network Rail Restriction of Use”	means any Restriction of Use other than an Operator Restriction of Use;
“Notification Factor” or “NF”	shall have the meaning ascribed to it in paragraph 9;
“Operator Restriction of Use”	means a Restriction of Use of the type referred to in paragraph 2.3;

“Over-run”	shall have the meaning ascribed to it in paragraph 2.12(a);
“Period”	shall have the meaning ascribed to it in Schedule 8;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Recovery Allowance”	means an allowance for additional time incorporated in the First Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the First Working Timetable and Network Rail complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;
“Restriction of Use”	<p>means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Rules of the Plan relevant to that day notified to each Bidder on or before the end of the Drafting Period under Part D of the Network Code) which results in:</p> <ul style="list-style-type: none"> (a) a difference between the Applicable Timetable on that day as compared with the First Working Timetable in respect of that day; and/or (b) a difference between the First Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;
“Restriction of Use Day”	means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;
“RoU Claim Notice”	means a notice issued by either party pursuant to paragraph 2.8;
“RoU Direct Costs”	<p>means the aggregate amount of:</p> <ul style="list-style-type: none"> (a) bus and taxi hire costs; (b) publicity costs; (c) train planning and diagramming costs; and (d) other costs directly related to the organisation and management of the Train Operator’s response to a Type 2 Restriction of Use, <p>reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by:</p> <ul style="list-style-type: none"> (i) adding any increase in RoU Variable Costs; and (ii) deducting any decrease in RoU Variable Costs;
“RoU Liability”	means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the

	taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim;
“RoU Losses”	means any RoU Direct Costs or RoU Liability (as applicable);
“RoU Trigger Date”	means, in respect of any Period, the later to occur of the following: <ul style="list-style-type: none"> (a) the date on which Network Rail issues a Day 42 Statement; and (b) in the event of any dispute in respect of Network Rail's Day 42 Statement, the date on which such dispute is agreed or determined;
“RoU Variable Costs”	means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge, the Variable Track Usage Charge and the Capacity Charge;
“SPD Claim”	has the meaning specified in paragraph 2.10(c);
“SPD Notice”	means a notice issued by either party pursuant to paragraph 2.10(a);
“SPD Period”	means the period of any 3 or 7 (as the case may be) consecutive Periods in which it is agreed or determined that Sustained Planned Disruption has occurred in respect of the Train Operator, together with any subsequent consecutive Period up to but excluding the first Period to occur in respect of which it is agreed or determined that the test for Sustained Planned Disruption is not satisfied in respect of the Train Operator;
“SPD Cost Threshold No.1”	means £552,000;
“SPD Cost Threshold No.2”	means £1,104,000;
“SPD Revenue Threshold No.1”	means 20%;
“SPD Revenue Threshold No.2”	means 15%;
“SPD Termination Notice”	has the meaning specified in paragraph 2.10(c);
“Sustained Planned Disruption” or	means a circumstance where:
“SPD”	<ul style="list-style-type: none"> (a) the aggregate of the compensation payable in respect of a Service Group calculated in accordance with paragraph 3 for any Restriction of Use during: <ul style="list-style-type: none"> (i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or (ii) 7 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2, and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the

compensation calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or

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

"Service Code"

shall have the meaning ascribed to it in Schedule 8;

"Service Group"

shall have the meaning ascribed to it in Schedule 8;

"Train"

shall have the meaning ascribed to it in Schedule 8;

"Train-Bus-Train Pattern"

means a situation where:

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

"Type 1 Restriction of Use"

means any single Restriction of Use which does not fall within the definition of Type 2 Restriction of Use or Type 3 Restriction of Use;

"Type 2 Restriction of Use"

means:

- (a) a single Restriction of Use of more than 60 consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and
- (b) which results in a Service being Disrupted

	but excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use;
“Type 3 Liability Claim”	has the meaning specified in paragraph 2.7(b);
“Type 3 Restriction of Use”	means a single Restriction of Use of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);
“Unplanned Over-run Period”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A);
“Viable Transfer Point”	a station normally served by the services operated by the Train Operator, and equipped to enable the efficient and safe transfer of trainloads of passengers to and from alternative modes of transport, and/or services operated by other Train Operators, and which the parties have agreed, and set out in Annex B, shall be used for the purpose of providing bus substitution services, and for calculating the costs of bus substitution services in accordance with the provisions of paragraph “4 Cost Compensation for Network Rail Restrictions of Use”;
“Week”	means a period commencing at 00:00:00 hours on any Saturday and ending at 23:59:59 hours on the next following Friday; and
“White Period”	means any period during which the taking of a Restriction of Use would not result in any compensation being payable in accordance with paragraph 3.

1.2 *Suspension Notices*

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

1.3 *Possession*

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

1.4 *White Period*

In respect of any Type 1 Restriction of Use, Type 2 Restriction of Use or Type 3 Restriction of Use, where a Restriction of Use starts before and/or ends after a White Period, the entire length of the Restriction of Use shall be taken into account when counting the cumulative total hours.

2 Application of this Part

2.1 Entry into effect

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

2.2 Applicable Rules of the Route and the Network Code

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

- (a) Network Rail's right to take Restrictions of Use under or pursuant to the Applicable Rules of the Route;
- (b) the establishment of any amended Working Timetable under Part H of the Network Code; and
- (c) any rights pursuant to the Network Code that the Train Operator may have to challenge any decision of Network Rail.

2.3 Operator Restriction of Use

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

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

2.4 Network Rail payments

Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of a Network Rail Restriction of Use calculated in accordance with paragraphs 2.5 to 2.7 and 2.10 where applicable.

2.5 Type 1 Restriction of Use

Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 1 Restriction of Use.

2.6 Type 2 Restriction of Use

- (a) Except where paragraph 2.6(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 2 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 would exceed £10,000 then that party will be entitled to require that the

costs be calculated in accordance with paragraph 6 by serving an RoU Claim Notice within the time periods set out in paragraph 2.8.

- (c) Following a request in accordance with paragraph 2.6(b), if it is agreed or determined that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 6.

2.7 *Type 3 Restriction of Use*

- (a) Except where paragraph 2.7(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 3 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 would exceed £10,000 then that party will be entitled to require that the costs and losses be calculated in accordance with paragraph 7 instead by serving an RoU Claim Notice within the time periods set out in paragraph 2.8 (a "Type 3 Liability Claim").
- (c) Following a request in accordance with paragraph 2.7(b), if it is agreed or determined that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

2.8 *RoU Claim Notice*

- (a) Either party wishing to make a request pursuant to Clause 2.6(b) or Clause 2.7(b) must notify the other that a Restriction of Use is a Type 2 Restriction of Use or a Type 3 Restriction of Use and that the circumstances in paragraph 2.6(b) or 2.7(b) (as applicable) apply within 56 days of the RoU Trigger Date relating to the Period in which that Restriction of Use commences.
- (b) The notice referred to in paragraph 2.8(a) must, if provided by the Train Operator, include details of the estimate of the RoU Direct Costs or RoU Liability (as applicable) which the Train Operator has incurred in respect of the relevant Restriction of Use.

2.9 *Changes to Restrictions of Use*

- (a) Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use occurs as another type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) For the purposes of paragraph 2.9(c), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of "Restriction of Use" when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.

- (c) Where a change to a Restriction of Use reduces the impact of the Restriction of Use and accordingly changes its type or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this Clause 2.9(c), references to "costs" shall mean those categories of costs which the Train Operator would have been entitled to recover under this Schedule 4 for that type of Restriction of Use which the Restriction of Use was classified as prior to its change.

2.10 Sustained Planned Disruption

- (a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use for the relevant services during the relevant SPD Period be calculated in accordance with paragraph 8 by serving a notice on the other (an "SPD Notice") in accordance with paragraph 2.10(b).
- (b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling 56 days after the issue of the Day 42 Statement which followed the end of the relevant SPD Period and must include a short explanation of why it reasonably believes a Sustained Planned Disruption has occurred and a statement of when the SPD Period commenced.
- (c) Following the issue of an SPD Notice, either party may serve a notice (an "SPD Termination Notice") stating that it reasonably believes that the relevant Sustained Planned Disruption is no longer occurring, such notice to include a short explanation of why the party serving it reasonably believes that the Sustained Planned Disruption has ceased and stating the Period in which such cessation has occurred. A party receiving an SPD Termination Notice shall within 30 days of its receipt by notice to the serving party either accept or reject the SPD Termination Notice and where it rejects the notice it shall include with its rejection notice a short explanation of why it reasonably believes the Sustained Planned Disruption is continuing. If the parties fail to reach agreement within 30 days after service of a rejection notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply (save that references to paragraph 13.2 shall be construed as being references to this paragraph).
- (d) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an "SPD Claim"):
 - (i) no later than the day falling 112 days after the issue of the Day 42 Statement for the last Period in the relevant SPD Period; or
 - (ii) where an SPD Period has exceeded 13 consecutive Periods in length or upon the termination or expiry of this Access Agreement, whichever comes first, unless otherwise agreed in writing, no later than the day falling 112 days

after the issue of the Day 42 Statement which followed the 13th consecutive Period or the termination or expiry of this Access Agreement (as applicable),

whichever is the earlier.

- (e) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(d) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:
 - (i) each such SPD Claim relates to a different period within the said SPD Period (so there is no double-counting); and
 - (ii) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(d).
- (f) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:
 - (i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or
 - (ii) if the claim is made by Network Rail, the reasons why Network Rail reasonably believes that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.
- (g) Following the service of an SPD Claim, if and to the extent it is agreed or determined that a Sustained Planned Disruption has occurred in the period covered by the claim then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8 in respect of the SPD Period (or where applicable the part of the SPD Period) covered by the SPD Claim.

2.11 *Early notice of RoU Losses*

The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Losses and shall use reasonable endeavours to agree whether such RoU Losses calculated in accordance with paragraph 6, 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Losses. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Losses will arise or mitigating actions should be contemplated. Following any agreement or determination that such RoU Losses are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption including any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption. Nothing in this Agreement shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use. Unless otherwise agreed, the timescales for claiming RoU Losses shall still apply.

2.12 *Over-runs*

- (a) For the purposes of this paragraph 2.12, an over-run ("Over-run") occurs where:

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

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

- (b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.
- (c) Where there is an Over-run which results in a Service being Disrupted which:
 - (i) is not part of either a Type 2 or Type 3 Restriction of Use;
 - (ii) lasts for more than one hour; and
 - (iii) results in the Train Operator incurring costs in the category of RoU Direct Costs in relation to the Over-run in excess of £10,000,

then the Unplanned Over-run Period element of that Over-run (but not the relevant First Restriction Period or the period of any Further Restriction) shall for the purposes only of calculating RoU Direct Costs be deemed to constitute a Type 2 Restriction of Use.

- (d) For the purposes of calculating RoU Liability under paragraph 7 (when it is agreed or determined that the requirements of paragraph 2.7(c) are satisfied) or paragraph 8 when there is agreed or determined to be a Sustained Planned Disruption, the amount of the RoU Liability shall be calculated:

- (i) including costs, direct losses and expenses (including loss of revenue and any increase in RoU Variable Costs) reasonably incurred or reasonably expected to be incurred by the Train Operator as a consequence of any Unplanned Over-run Period; and
- (ii) offsetting any benefit as a consequence of the Unplanned Over-run Period including:
 - (A) any reduction in RoU Variable Costs;
 - (B) any payments made as result of paragraph 2.12(c); and
 - (C) any payments received by the Train Operator under Schedule 8.
- (e) This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4.

3 Revenue loss compensation for Network Rail Restrictions of Use

3.1 Basis for calculations

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

3.2 Separate calculations

In applying the formula in paragraph 3.4, Network Rail shall calculate the compensation payable separately in respect of all:

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

3.3 Meaning of T1 and T2

In paragraph 3.4:

- (a) where Network Rail is making the calculation for the purpose of paragraph 3.2(a), T1 shall mean the Corresponding Day Timetable and T2 shall mean the First Working Timetable for the Restriction of Use Day; and

- (b) where Network Rail is making the calculation for the purpose of paragraph 3.2(b), T1 shall mean the First Working Timetable for the Restriction of Use Day and T2 shall mean the Applicable Timetable for the Restriction of Use Day.

3.4 Formula

The formula referred to in paragraph 3.1 is as follows:

$$RP = \Sigma((WACM + NREJT) \bullet BF \bullet MRE \bullet NF)$$

where:

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

$$WACM = (CM - NRPP) \bullet \Sigma \frac{(MPW \bullet CS)}{SS}$$

where:

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

NRPP is the Network Rail performance point for the Service Group in question specified in column B of Appendix 1 to Schedule 8;

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

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

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

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

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

$$NREJT = EJT \bullet (1 - \Sigma \frac{(MPW \bullet CS)}{SS})$$

where:

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

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

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

if otherwise,

EJT is the lesser of:

- (i) the number of minutes specified as the Cap for the Service Group in column K of Appendix 1 to Schedule 8; and
- (ii) $AJT \bullet ((u-v)/v)$,

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

where:

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

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

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

and for the purposes of this paragraph 3.4:

“Journey”

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

“Journey Time”

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

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

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

where:

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

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

- (e) MRE is the marginal revenue effect specified in column C of Appendix 1 to Schedule 8, as indexed according to the relevant provisions of Schedule 8.

3.5 *High Speed Diversions*

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

$$ANRP = \frac{TDR_{SG}}{TDT_{SG}} \bullet (CM - NRPP) \bullet MRE \bullet BF \bullet NF$$

where:

ANRP is the additional Network Rail payment;

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

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

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

CM, NRPP, MRE and BF shall have the meanings ascribed to them in paragraph 3.4.

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

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

3.6 *Train-Bus-Train Patterns*

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

$$ANRP = \frac{TTS_{SG}}{TTR_{SG}} \bullet (CM - NRPP) \bullet DV \bullet MRE \bullet BF \bullet NF$$

where:

ANRP is the additional Network Rail payment;

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

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

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

CM, NRPP, MRE and BF shall have the meanings ascribed to them in paragraph 3.4; and

DV shall have the value of 0.125,

provided that if:

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

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

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

4 Costs compensation for Network Rail Restrictions of Use

4.1 Basis for calculations

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

4.2 Cost compensation formula

The formula referred to in paragraph 4.1 is as follows:

$$\text{Cost compensation} = \sum (\text{RRBC} + \text{TMC})$$

where:

- (a) \sum is the sum across all applicable Network Rail Restrictions of Use and all Restriction of Use Days in the Period;

- (b) RRBC is the rail replacement bus cost, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$\text{RRBC} = \text{EBM} \times \text{EBMPR}$$

- EBM is the number of estimated bus miles for the Train Operator; and
EBMPR is the payment rate per EBM, which is £9.19.

If there is full bus replacement

$$\text{EBM} = \text{EBMW} \times \text{FBRmiles}$$

If there is partial bus replacement

$$\text{EBM} = \text{EBMW} \times 0.5 \times \text{PBRmiles} \times \text{ITS}$$

where:

EBMW is the weighting applicable to the affected section of route, as set out in Annex B to this Part 3 of Schedule 4;

FBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which full bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

PBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which partial bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where $\text{EBMW} = 50\%$.
and

- (c) TMC is the cost or saving resulting from train mileage change, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$\text{TMC} = \text{TM} \times \text{TMPR}$$

where:

TM is the change in train mileage; and

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

5 Estimated bus miles change mechanism

5.1 Circumstances in which parties agree to amend Annex B

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

5.2 *Procedure for amendments to Annex B*

- (a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
 - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls 6 months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
 - (ii) in any other case prior to the date from which it proposes such change shall have effect.
- (b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.
- (c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:
 - (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
 - (ii) each of the parties shall abide by the rules and procedures established by the expert; and
 - (iii) the parties shall direct the expert to have regard to any relevant criteria issued by the Office of Rail Regulation.
- (d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any amendment to Annex B shall apply with effect from:
 - (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 5.2 (a) (i) applies); or
 - (ii) subject to paragraph 5.2 (d) the date proposed by the party requesting the change in accordance with paragraph 5.2 (a) (ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).

5.3 *Costs of implementing amendment*

The party proposing the amendment to Annex B shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) pay 90

percent of costs incurred by or on behalf of the other party in assessing and implementing the amendments to Annex B, provided that those costs shall be the minimum reasonably necessary to assess and implement that amendment.

6 RoU Direct Costs compensation for Type 2 Restrictions of Use

6.1 Compensation arrangements

- (a) Following receipt of an RoU Claim Notice in respect of a Type 2 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Direct Costs compensation to be paid by one party to the other in respect of such Type 2 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 6.1(a) has been agreed or determined (and has been compared against any amounts calculated under paragraph 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:
 - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Direct Costs actually incurred by the Train Operator less any amounts calculated under paragraph 4 which have already been paid or are due for such Restriction of Use and any other amounts in respect of any RoU Direct Costs received by the Train Operator from Network Rail in respect of such Restriction of Use; or
 - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraph 4 and the RoU Direct Costs actually incurred by the Train Operator in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 6 and paragraph 10 to be payable in respect of any Type 2 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

7 RoU Liability compensation for Type 3 Restrictions of Use

7.1 Compensation arrangements

- (a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:

- (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for such Restriction of Use and any other amounts received by the Train Operator from Network Rail in respect of such Restriction of Use; or
 - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraphs 3 and 4 and the RoU Liability actually incurred by the Train Operator in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

8 Sustained Planned Disruption payments

8.1 Payment arrangements

- (a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in respect of such Restriction of Use) then, in the event of:
 - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for Restrictions of Use during the relevant SPD Period and any other amounts received by the Train Operator from Network Rail in respect of such Restrictions of Use; or
 - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator for Restrictions of Use during the relevant SPD Period and the RoU Liability actually incurred by the Train Operator during the same SPD Period.
- (c) Following any agreement or determination of an amount to be paid by one party to the other in respect of a Sustained Planned Disruption that amount shall (subject to

the terms of any compensation arrangements agreed in writing between the parties) be due and payable by one party to the other in accordance with paragraph 13.1.

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

9 Notification Factors

9.1 *Early notification*

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

- (a) the Network Rail Restriction of Use is reflected in the First Working Timetable; or
- (b)
 - (i) details of the Network Rail Restriction of Use are notified to the Train Operator on or before the end of the Drafting Period in the Applicable Rules of the Route for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by Network Rail), are not reflected in the First Working Timetable; and
 - (ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
 - (iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a Revised Bid in accordance with Condition D4.8.3, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.2 *Notification by Revision Notification Date*

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column D of Annex A to this Part 3 if and to the extent that paragraph 9.1 does not apply, and:

- (a) details of the Network Rail Restriction of Use are notified to the Train Operator by the Revision Notification Date; and
- (b)
 - (i) the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
 - (ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a Revised Bid in accordance with Condition

D4.8.3, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.3 *Late Notification*

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Annex A to this Part 3 if and to the extent paragraphs 9.1 and 9.2 do not apply but the Network Rail Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by Network Rail to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i) respectively, notwithstanding the Train Operator having given a Revised Bid in accordance with Condition D4.8.3.

10 **Dispute resolution**

If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.6 (c), 2.7 (c), 2.10 (g), 2.11, 6, 7 or 8 within 28 days following provision of the RoU Claim Notice, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply. Such procedure shall then apply in accordance with its terms (save that references to paragraph 13.2 shall be construed as being references to this paragraph 10).

11 **Schedule 8 application**

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

12 **Restriction of Use Day and Corresponding Day**

12.1 *Information provision*

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

12.2 *Corresponding Day*

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition "Corresponding Day" and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Passenger Change Date then either party may require that the identification of the Corresponding Day be resolved by the relevant ADRR Panel.
- (b) The relevant ADRR Panel's remit shall be that it shall:
 - (i) reach a decision which is fair and reasonable; and

- (ii) identify the day in either any version of the Working Timetable or any Draft Timetable notified to the Train Operator on or before the end of the Drafting Period in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the First Working Timetable for the first day; or
 - (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Panel may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.
- (c) If either party is dissatisfied with the decision of the relevant ADRR Panel or the ruling of the Disputes Chairman (as the case may be), such party shall be entitled to refer the matter for arbitration, pursuant to Part C of the Access Dispute Resolution Rules (except that Condition C6.3 of those rules shall not apply).

13 Payment procedures

13.1 Network Rail Restrictions of Use

- (a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the "Day 42 Statement") showing:
 - (i) all Network Rail Restrictions of Use taken during that Period;
 - (ii) any compensation calculated in accordance with paragraphs 3 and/or 4 payable by Network Rail in respect of the Network Rail Restrictions of Use identified; and
 - (iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Losses in respect of a Type 2 Restriction of Use, a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by one party to the other,

in sufficient detail to enable the Train Operator to make an informed assessment thereof.
- (b) The aggregate liabilities of Network Rail and the Train Operator, in respect of any and all compensation for which either is liable to the other under this Part 3 and under Part 5 in respect of each Period shall, to the extent that such compensation is not under dispute, be set off against each other and the balance (if any) shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of that Period.

13.2 Disputes

Within 10 days of receipt of a statement from Network Rail under paragraph 13.1, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving

reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

13.3 *Dispute resolution*

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

- (a) within seven days of service of any notice under paragraph 13.2; the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;
- (b) if, within seven days of that meeting (the “first meeting”), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;
- (c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;
- (d) if no resolution results within 14 days of that meeting, either party may require that the matter be resolved by the relevant ADRR Panel; and
- (e) if either party is dissatisfied with the decision of the relevant ADRR Panel or the ruling of the Disputes Chairman (as the case may be), such party shall be entitled to refer the matter for arbitration, pursuant to Part C of the Access Dispute Resolution Rules (except that paragraph C6.3 of those rules shall not apply).

13.4 *Payments in the event of a dispute*

Where any amount under paragraph 13.1 is in dispute:

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

14 **Indexation**

14.1 The formula applicable to this paragraph 14 is:

$$R_t = R_{t-1} \left(1 + \frac{RPI_{t-1}}{100} \right)$$

where:

R_t is the relevant rate in the Relevant Year t ;

R_{t-1} is the relevant rate in the Relevant Year $t-1$; and

RPI_{t-1} means the percentage change (whether of a positive or negative value) in the Retail Prices Index published or determined with respect to November in the Relevant Year $t-1$ and the index published or determined with respect to November in the Relevant Year $t-2$.

14.2 Each of the EBMPR and TMPR (respectively defined in paragraph 4.2) shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 so that in relation to the Relevant Year commencing on 1 April 2009, R_t shall have the value specified in:

(a) paragraph 4.2 in respect of the EBMPR; and

(b) in Annex C to this Part 3 of Schedule 4 in respect of TMPR,

and in the next following Relevant R_{t-1} shall respectively have the same value.

14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2 shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 but so that in relation to the Relevant Year commencing on 1 April 2009, R_t shall have the relevant value specified in paragraph 1.1 of this Schedule 4 and in the next following Relevant Year R_{t-1} shall respectively have the same value.

Annex A to Part 3 of Schedule 4 – Notification discount factors

Service Group Description	Service Group Code	Type	To FWT	FWT to ITWTT	from ITWTT
First/Keolis Transpennine Limited					
North TransPennine	EA01	All Trains	0.55	0.7	0.85
South TransPennine	EA02	All Trains	0.55	0.7	0.85
North West	EA03	All Trains	0.55	0.7	0.85
London Eastern Railway Limited					
GE Inner	EB01	Peak/Off Peak	0.55	0.7	0.85
GE Southend/Southminster	EB02	Peak/Off Peak	0.55	0.7	0.85
GE Outer	EB03	Peak/Off Peak	0.55	0.7	0.85
Anglia Main Line	EB04	Peak/Off Peak	0.45	0.65	0.85
Anglia Rural	EB05	All Trains	0.55	0.7	0.85
West Anglia Outer	EB06	Peak/Off Peak	0.55	0.7	0.85
West Anglia Inner	EB07	Peak/Off Peak	0.55	0.7	0.85
Northern Rail Limited					
Tyne, Tees and Wear	ED01	All Trains	0.55	0.7	0.85
Lancashire and Cumbria Locals	ED02	All Trains	0.55	0.7	0.85
West and North Yorkshire Inter Urban	ED04	All Trains	0.55	0.7	0.85
WYPTTE Locals	ED05	All Trains	0.55	0.7	0.85
East Yorkshire	ED06	All Trains	0.55	0.7	0.85
South Yorkshire	ED07	All Trains	0.55	0.7	0.85
North Manchester	ED08	Peak/Off Peak	0.55	0.7	0.85
Mersey Lines	ED09	All Trains	0.55	0.7	0.85
South Manchester	ED10	Peak/Off Peak	0.55	0.7	0.85
Heathrow Express Operating Company Limited					
Hayes & Harlington Shuttle	EE02	All Trains	0.55	0.7	0.85
First Greater Western Limited					
Heathrow Local Service	EE01	Peak/Off Peak	0.55	0.7	0.85
London-Bristol	EF01	All Trains	0.45	0.65	0.85
London-South Wales	EF02	All Trains	0.45	0.65	0.85
London-Cotswolds	EF03	All Trains	0.45	0.65	0.85
London-West Of England	EF04	All Trains	0.45	0.65	0.85
Outer Thames Valley-London	EF05	Peak/Off Peak	0.55	0.7	0.85
Inner Thames Valley-London	EF06	Peak/Off Peak	0.55	0.7	0.85
Reading & Oxford Suburban	EF07	All Trains	0.55	0.7	0.85
Thames Valley Branches	EF08	All Trains	0.55	0.7	0.85
North Downs	EF09	All Trains	0.55	0.7	0.85
Bristol Suburban	EF10	All Trains	0.55	0.7	0.85
Devon	EF11	All Trains	0.55	0.7	0.85
Plymouth & Cornwall	EF12	All Trains	0.55	0.7	0.85
South Wales-South Coast	EF13	All Trains	0.55	0.7	0.85
First Capital Connect Limited					
Bedford Mainline	EG01	Peak/Off Peak	0.55	0.7	0.85
Brighton Mainline	EG02	Peak/Off Peak	0.55	0.7	0.85
South London	EG03	Peak/Off Peak	0.55	0.7	0.85
Northern Inners	EG04	Peak/Off Peak	0.55	0.7	0.85
Northern Outers	EG05	Peak/Off Peak	0.55	0.7	0.85
XC Trains Limited					
CrossCountry Inter City	EH01	All Trains	0.55	0.7	0.85

Cross Country Local & Provincial	EH02	All Trains	0.55	0.7	0.85
London & Birmingham Railway Limited					
West Midlands - Snow Hill	EJ01	Peak/Off Peak	0.55	0.7	0.85
Trent Valley	EJ02	All Trains	0.55	0.7	0.85
West Midlands - New Street Local	EJ03	Peak/Off Peak	0.55	0.7	0.85
West Midlands Inter Urban	EJ04	All Trains	0.55	0.7	0.85
WCML London-Northampton	EJ05	Peak/Off Peak	0.55	0.7	0.85
WCML Branch Lines	EJ06	All Trains	0.55	0.7	0.85
London Overground Rail Operations Limited					
Orbitals	EK01	Peak/Off Peak	0.55	0.7	0.85
London-Watford (DC Lines)	EK02	Peak/Off Peak	0.55	0.7	0.85
East Midlands Trains Limited					
East Midlands Local	EM01	All Trains	0.55	0.7	0.85
East Midlands Regional	EM02	All Trains	0.55	0.7	0.85
Liverpool-Norwich	EM03	All Trains	0.55	0.7	0.85
East Midlands Inter City	EM04	All Trains	0.45	0.65	0.85
East Midlands Inter Urban	EM05	All Trains	0.45	0.65	0.85
First ScotRail Limited					
Express	HA01	All Trains	0.55	0.7	0.85
East Coast Suburban	HA02	All Trains	0.55	0.7	0.85
South West Rural	HA03	All Trains	0.55	0.7	0.85
Highland Rural	HA04	All Trains	0.55	0.7	0.85
Strathclyde Electric	HA06	Peak/Off Peak	0.55	0.7	0.85
Strathclyde Diesel	HA07	All Trains	0.55	0.7	0.85
Qualifying Sleepers	HA11	All Trains	0.55	0.7	0.85
NXEC Trains Limited					
Anglo-Scottish	HB01	All Trains	0.45	0.65	0.85
West Yorkshire	HB02	All Trains	0.45	0.65	0.85
West Yorkshire (King's X-Bradford/Hull)	HB04	All Trains	0.45	0.65	0.85
Anglo-Scottish (Aberdeen/Inverness)	HB05	All Trains	0.45	0.65	0.85
Merseyrail Electrics 2002 Limited					
Northern Lines	HE01	All Trains	0.55	0.7	0.85
Wirral Lines	HE02	All Trains	0.55	0.7	0.85
West Coast Trains Limited					
London Euston-Birmingham/Wolverhampton	HF01	All Trains	0.45	0.65	0.85
London Euston-North Wales	HF02	All Trains	0.45	0.65	0.85
London Euston-Manchester	HF03	All Trains	0.45	0.65	0.85
London Euston-Liverpool	HF04	All Trains	0.45	0.65	0.85
London Euston-Carlisle-Scotland	HF06	All Trains	0.45	0.65	0.85
Birmingham-Scotland	HF08	All Trains	0.45	0.65	0.85
Arriva Trains Wales/Trenau Arriva Cymru Limited					
South, West & Central Wales	HL02	All Trains	0.55	0.7	0.85
Wales to England	HL03	All Trains	0.55	0.7	0.85
Cambrian	HL04	All Trains	0.55	0.7	0.85
Cardiff Valleys	HL05	Peak/Off Peak	0.55	0.7	0.85
Marches	HL06	All Trains	0.55	0.7	0.85
North Wales Rural	HL07	All Trains	0.55	0.7	0.85
Inter Urban North Wales	HL08	All Trains	0.55	0.7	0.85
The Chiltern Railway Company Limited					
Met	HO01	Peak/Off Peak	0.55	0.7	0.85
Birmingham	HO02	Peak/Off Peak	0.55	0.7	0.85
Joint	HO03	Peak/Off Peak	0.55	0.7	0.85

c2c Rail Limited					
London-Southend/Shoeburyness	HT01	Peak/Off Peak	0.55	0.7	0.85
London & South Eastern Railway Limited					
Kent Coast (Off Peak)	HU01	All Trains	0.55	0.7	0.85
Kent Link (Off Peak)	HU02	All Trains	0.55	0.7	0.85
Kent Rural	HU03	All Trains	0.55	0.7	0.85
Kent Coast (Peak)	HU04	All Trains	0.55	0.7	0.85
Kent Link (Peak)	HU05	All Trains	0.55	0.7	0.85
New Southern Railway Limited					
Rural	HW01	All Trains	0.55	0.7	0.85
London-Sussex Coast (Peak)	HW02	All Trains	0.55	0.7	0.85
London-Sussex Coast (Off Peak)	HW03	All Trains	0.55	0.7	0.85
South London Lines (Off Peak)	HW04	All Trains	0.55	0.7	0.85
South London Lines (Peak)	HW05	All Trains	0.55	0.7	0.85
Milton Keynes-Purley	HW06	All Trains	0.45	0.65	0.85
London-Gatwick Airport	HW07	Peak/Off Peak	0.45	0.65	0.85
Stagecoach South Western Trains Limited					
Main Suburban	HY01	Peak/Off Peak	0.55	0.7	0.85
South Hampshire Locals	HY02	All Trains	0.55	0.7	0.85
Waterloo-West of England	HY03	Peak/Off Peak	0.55	0.7	0.85
Waterloo-Farnham/Alton	HY04	Peak/Off Peak	0.55	0.7	0.85
Windsor Inners	HY05	Peak/Off Peak	0.55	0.7	0.85
Windsor Outers	HY06	Peak/Off Peak	0.55	0.7	0.85
Waterloo-Portsmouth	HY07	Peak/Off Peak	0.55	0.7	0.85
Waterloo-Weymouth	HY08	Peak/Off Peak	0.55	0.7	0.85
Hull Trains Company Limited					
Kings Cross-Hull	PF01		0.45	0.65	0.85
Grand Central Railway Company Limited					
Kings X-Sunderland	EC01		0.45	0.65	0.85
Wrexham, Shropshire & Marylebone Railway Company Limited					
London Marylebone-Wrexham	EI01		0.45	0.65	0.85
Eurostar (UK) Limited					
Eurostar	GA01		0.45	0.65	0.85
Nexus					
Metro	PG01		0.55	0.7	0.85

Annex B to Part 3 of Schedule 4 – Lookup Table for EBM Weights

Annex C to Part 3 of Schedule 4 – Payment Rate per train mile

PART 4: NOT USED

PART 5: ACCESS CHARGE SUPPLEMENT FOR RESTRICTIONS OF USE

- 1 The Train Operator shall pay or procure the payment to Network Rail of an Access Charge Supplement for Restrictions of Use (ACSRU) in respect of each Period equal to 1/13 of the amount specified below (as indexed in accordance with paragraph 2) in respect of the Relevant Year commencing 1 April in which the first day of the relevant Period falls:

Year	£
2009-2010	[]
2010-2011	[]
2011-2012	[]
2012-2013	[]
2013-2014	[]

Each such payment shall be made within 35 days after the end of the relevant Period.

- 2 Each such amount specified in paragraph 1 shall be adjusted in respect of payments made relating to Periods in the Relevant Year t in accordance with the following formula:

$$ACSRU_{pt} = ACSRU_t \cdot \frac{(RPI_{t-1})}{RPI[2008]}$$

where:

ACSRU_{pt} is the actual amount payable in the Relevant Year t;

ACSRU_t is the relevant amount specified in paragraph 1 of this Part 5 for the Relevant Year t (before indexation);

RPI_{t-1} means the Retail Prices Index published or determined with respect to November in the Relevant Year t-1; and

RPI[2008] means the Retail Prices Index published or determined with respect to November 2008

but so that in relation to the Relevant Year commencing on 1 April 2009, ACSRU_t shall have the relevant value specified in the relevant column of the table in paragraph 1.

Appendix 2 to Annex 2

Schedule 7 for English and Welsh Train Operators

SCHEDULE 7: TRACK CHARGES

PART 1: INTERPRETATION

1 Definitions

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

“2008 Final Determinations”	means the document entitled “Periodic Review 2008: Determination of Network Rail’s outputs and funding for 2009-14” and published by ORR on 30 October 2008;
“access charges review”	has the meaning ascribed to it by Schedule 4A to the Act;
“Additional Permitted Charges”	means the charges specified in paragraph 2 of Part 5;
“Adjusted Interest Cover Ratio”	means the value of AICR derived from the formula set out in paragraph 2.1.1(c) of Part 7;
“Aggregate Fixed Charges”	means, in any Relevant Year t , the sum of the values of F_t under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;
“Basic Value”	has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;
“Capacity Charge”	means a variable charge, calculated in accordance with paragraph 6 of Part 2;
“Deed of Grant”	means the Deed of Grant made on 18 December 2008 between the Secretary of State and Network Rail;
“Default Train Consist Data”	means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;
“Efficiency Benefit Share”	means the amount determined in accordance with paragraph 3.2 of Part 2;
“Electrification Asset Usage Charge”	means an annual charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;

“English & Welsh Grant Compensation Amount”	has the meaning ascribed to it in paragraph 3.2 of Part 3A;
“English & Welsh Grant Dilution”	has the meaning ascribed to it in paragraph 2.1 of Part 3A;
“English & Welsh Grant Dilution Date”	has the meaning ascribed to it in paragraph 2.2 of Part 3A;
“excluded change”	means, in relation to paragraph 2.1.1(a) of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under sections 6 or 8 of the Railways Act 2005;
“Fixed Track Charge”	means a fixed annual charge, calculated in accordance with paragraphs 1 and 2 of Part 2;
“Fixed Track Charge Indexation”	has the meaning ascribed to it in paragraph 2 of Part 2;
“Geographic Area g”	means, for the purposes of performing the calculations set out in paragraphs 4 and 5 of Part 2, the relevant geographic section of the Network as set out in Appendix 7B;
“Grant Amount”	has the meaning ascribed to it in paragraph 1.2 of Part 3A;
“Gross Tonne Mile”	in relation to a train, means a mile travelled on the Network, by each tonne of the aggregate weight of the train in question;
“kWh”	means kilowatt hours;
“List of Capacity Charge Rates”	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 18 December 2008;
“Network Rail Rebate”	has the meaning ascribed to it in paragraph 7.1 of Part 2;
“Payment Date”	has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;
“Period”	has the meaning ascribed to it in Schedule 8;

“Rebatable Amount”	has the meaning ascribed to it in paragraph 7.2 of Part 2;
“relevant access agreement”	<p>means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:</p> <ul style="list-style-type: none"> (a) a franchise operator; or (b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or (c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or (d) any other person who benefits from a franchise exemption (within the meaning of section 24(13) of the Act) in relation to services for the carriage of passengers by railway; or (e) a relevant franchising authority (as defined in section 30(3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act;
“Relevant Year”	means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;
“Retail Prices Index”	means the general index of retail prices published by National Statistics each month in respect of all items or:

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

“route type k”	means route type k as identified by type of electrification (OLE or DC) in the Track Usage Price List;
“Schedule of Fixed Charges”	means the document entitled “Fixed Track Charges Schedule” published by Network Rail on or about 18 December 2008;
“Service Coded Group”	has the meaning ascribed to it in paragraph 6 of Part 2;
“tariff band”	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 on or about 18 December 2008;
“Traction Electricity Charge”	means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;
“Traction Electricity Consumption Rates List”	means the document entitled “Traction Electricity Consumption Rates List” published by Network Rail on or about 18 December 2008 and specifying freight and passenger traction electricity consumption rates by train category i;
“train category”	means train type i used on the relevant route;

“Train Consist Data”	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
“Train Mile”	in relation to a train, means a mile travelled by that train on the Network;
“Variable Charge”	means the Variable Track Usage Charges and, where the context admits, Traction Electricity Charges;
“Variable Track Usage Charge”	means a variable charge, calculated in accordance with paragraph 3 of Part 2;
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network; and
“Weekday”	has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

2 Interpretation

The provisions of Clause 1.2(e) of this contract shall not apply to any references to the Deed of Grant in this Schedule 7.

PART 2: TRACK CHARGES

1 Principal formula

During each Relevant Year (and, in respect of F_t , prorated for each day of any period of this contract comprising less than a full Relevant Year), Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = F_t + V_t + E_t + K_t + EV_{tk} - BS_t - W_t$$

where:

- T_t means Track Charges in Relevant Year t ;
- F_t means an amount in respect of the Fixed Track Charge in Relevant Year t , which shall be:
- (a) in respect of the Relevant Year commencing on 1 April 2009, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges; and
 - (b) in respect of any other Relevant Year t , the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation for that year calculated in accordance with paragraph 2;
- V_t means an amount in respect of the Variable Track Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;
- E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4;
- K_t means an amount in respect of the Capacity Charge in Relevant Year t which is derived from the formula in paragraph 6;
- EV_{tk} means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8;
- BS_t means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 3.2; and
- W_t means an amount (which shall not be a negative value) in respect of the Network Rail Rebate in Relevant Year t , calculated in accordance with the provisions of paragraph 7.1.

2 Fixed Track Charge Indexation

The Fixed Track Charge Indexation in Relevant Year t shall be derived from the following formula:

$$FTCI_t = 1 + \left(\frac{RPI_{t-1} - RPI_{2008}}{RPI_{2008}} \right)$$

where:

$FTCI_t$ means the Fixed Track Charge Indexation in Relevant Year t;

RPI_{t-1} means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and

RPI_{2008} means the Retail Prices Index published or determined with respect to November 2008.

3 Variable track usage charge and efficiency benefit share

3.1 Variable track usage charge

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

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

where:

V_{it} means an amount in respect of the Variable Track Usage Charge per Vehicle Mile for a category of vehicle i for Relevant Year t which is derived from the following formula:

$$V_{it} = V_{it-1} \left[1 + \frac{RPI_{t-1} - 0}{100} \right]$$

where:

RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2009, V_{it} shall have, in respect of each Vehicle Mile, the

value set out in the Track Usage Price List; and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

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

3.2 *Efficiency Benefit Share*

3.2.1 The Efficiency Benefit Share is an amount (which shall not be a negative value) representing a return of Track Charges which shall be identified in the ORR's annual assessment of Network Rail as the "Efficiency Benefit Share", if any, to be rebated to the Train Operator, such amount to be determined in accordance with the methodology and principles set out in paragraphs 27.34 to 27.53 (inclusive) of the 2008 Final Determinations.

3.2.2 If, pursuant to paragraph 3.2.1, the Train Operator is entitled to payment of an Efficiency Benefit Share in respect of Relevant Year t , then, subject to paragraph 3.2.3, such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which it is determined by the ORR that such payment should be made.

3.2.3 If, in respect of any Relevant Year t , an Efficiency Benefit Share is payable in accordance with paragraph 3.2.2 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t , the Train Operator shall be entitled to a pro rata payment of the Efficiency Benefit Share payable in respect of that Relevant Year t . Such pro rata payment (which shall be payable in accordance with paragraph 3.2.2) shall be calculated as follows:

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

where:

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

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

- (a) where this contract commences during the course of that Relevant Year t , following commencement of this contract; or

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

provided that, in each case:

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

3.2.4 Any such payment of an Efficiency Benefit Share ("**EBS payment**") shall be made on the basis that it is to be treated as a rebate of Track Charges for the purposes of VAT unless the parties agree that the law relating to VAT at the date of the payment requires some other treatment as agreed between the parties or unless, prior to making such payment, Network Rail has notified the Train Operator that, based on advice that Network Rail has received from HM Revenue and Customs, this paragraph 3.2.4 applies. Where this paragraph 3.2.4 applies, the relevant EBS payment is to be treated as being outside the scope of VAT, then paragraphs (a) to (e) inclusive below shall apply, and the EBS payment may be made accordingly:

- (a) the provisions of this contract relating to VAT on rebates or repayments shall be disapplied in relation only to EBS payments and subject to paragraph (e) below;
- (b) no VAT will be charged on the EBS payment;
- (c) in respect of the Track Charges paid or payable by the Train Operator to Network Rail (disregarding the EBS payment) in respect of the period to which the EBS payment relates, Network Rail will account for VAT (where required by law to do so) and will not seek to reclaim any such VAT, except in either case as provided under paragraph (e) below;
- (d) the Train Operator will treat the EBS payment as being outside the scope of VAT; and
- (e) if the treatment of an EBS payment as being outside the scope of VAT is challenged such that the Train Operator is required to account for VAT to HM Revenue and Customs on the EBS payment, then (subject to the Train Operator promptly notifying

Network Rail of that fact) the preceding paragraphs (a) to (d) inclusive will (at the election of the Train Operator) cease to apply to the EBS payment and Network Rail will account to the Train Operator for the amount of VAT on the EBS payment and issue the Train Operator with a VAT credit note in respect of that amount.

- 3.2.5 Network Rail will indemnify the Train Operator in respect of any liability it may incur to HM Revenue and Customs (other than the obligation to account to HM Revenue and Customs for the amount of the VAT credit set out in paragraph 3.2.4(e)) as a result of having treated the EBS payment as being outside the scope of VAT in accordance with paragraph 3.2.4.

4 Traction Electricity Charge

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

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

where:

- Σ means the summation across all relevant train categories i , tariff bands j and/or Geographic Areas g , as appropriate;
- C_i means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category i , shown in the Traction Electricity Consumption Rates List;
- EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2; and
- UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i , in Geographic Area g , in tariff band j and in Relevant Year t , pursuant to this contract.

- 4.2 At least three months prior to the start of each Relevant Year commencing on or after 1 April 2009, Network Rail shall consult with the Train Operator

regarding a strategy for the procurement of traction electricity for the Train Operator in respect of that Relevant Year, and:

- (a) if Network Rail and the Train Operator agree on a strategy for the procurement of traction electricity, Network Rail will procure traction electricity for the Train Operator in accordance with that agreed strategy; or
- (b) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and the Train Operator has, during its consultation with Network Rail under this paragraph 4.2, notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity and it is possible for Network Rail, acting reasonably, to implement that strategy, Network Rail will procure traction electricity for the Train Operator in accordance with the traction electricity procurement strategy so notified to Network Rail by the Train Operator; or
- (c) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and either (y) the Train Operator has not notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity during its consultation with Network Rail in accordance with this paragraph 4.2, or (z) it is not possible for Network Rail, acting reasonably, to implement the Train Operator's preferred strategy for the procurement of traction electricity as notified to Network Rail during its consultation in accordance with this paragraph 4.2, Network Rail will:
 - (i) acting reasonably, determine the procurement strategy for traction electricity for the Train Operator, having regard to whatever information, if any, the Train Operator has supplied to Network Rail during its consultation under this paragraph 4.2; and
 - (ii) procure traction electricity for the Train Operator in accordance with that traction electricity procurement strategy.

4.3 Network Rail shall provide to the Train Operator within 30 days of the end of each calendar month in each Relevant Year, the actual cost of traction electricity consumed by railway vehicles operated by or on behalf of the Train Operator in the relevant calendar month against the budgeted amounts. Network Rail shall also provide to the Train Operator a provisional six month volume reconciliation by region before 30 October of each Relevant Year and a provisional nine month volume reconciliation by region before 30 January of each Relevant Year.

- 4.4 (a) If the Train Operator wishes to propose the introduction of on-train metering to measure traction electricity consumption in a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 4.4(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 4.4(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the parties shall notify ORR. If ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require to determine the matter and shall abide by any determination issued by ORR. If ORR does not so elect, the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:
- (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
 - (ii) each of the parties shall abide by the rules and procedures established by the expert; and
 - (iii) the parties shall direct the expert to have regard to any relevant criteria and/or policy statement most recently issued by the Office of Rail Regulation.
- (e) Any amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) shall take effect only when it has been approved by ORR. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 4.4 (other than a determination by ORR pursuant to sub-paragraph 4.4(d)), the parties shall ensure that ORR is furnished with such amendment and such information and

evidence as it shall require to determine whether or not to approve the amendment.

- (f) Any amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) shall apply with effect from, subject to sub-paragraph 4.4(e), the date proposed by the Train Operator (unless otherwise agreed by the parties or determined by the ORR or the expert in relation to the proposal).

5. Volume and Cost Reconciliation

5.1 Within 90 days after the end of Relevant Year t, Network Rail shall calculate two supplementary amounts $S1_t$ and $S2_t$ which shall be payable by or to the Train Operator in accordance with this paragraph 5.

5.2 $S1_t$ is derived from the following formula:

$$S1_t = \sum E_{gt} \cdot \frac{(A_{gt} - M_{gt})}{M_{gt}}$$

where:

Σ means the summation across all relevant train categories i, tariff bands j and Geographic Areas g for Relevant Year t, as appropriate;

E_{gt} is part of the Traction Electricity Charge payable by the Train Operator for each applicable Geographic Area g in Relevant Year t, determined in accordance with the following formula:

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

where:

C_i means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category i, shown in the Traction Electricity Consumption Rates List;

EF_{gjt} means an amount for traction current (in pence per kWh) determined in accordance with paragraph 4 of this Part 2; and

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated in Relevant Year t by or on

behalf of the Train Operator in train category i, in Geographic Area g and in tariff band j;

M_{gt} means the total modelled electricity consumption in Geographic Area g and in Relevant Year t which is derived from the following formula:

$$M_{gt} = \sum C_i \cdot UE_{igt}$$

where:

Σ means the summation across all train categories i and Geographic Areas g for Relevant Year t, as appropriate; and

C_i has the meaning given to it in this paragraph 5.2; and

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated in Relevant Year t by or on behalf of all train operators in train category i, in Geographic Area g;

A_{gt} means the total actual electricity consumption (in kWh), if any, in Geographic Area g in Relevant Year t by or on behalf of all train operators, assessed by Network Rail (as accurately as possible) as being the appropriate proportion of the electricity consumption billed to Network Rail by its electricity suppliers in that area for traction electricity consumed in accordance with the terms for the purchase of traction electricity entered into by Network Rail,

provided that, if:

- (a) any train operator is charged by Network Rail for its traction electricity consumption based on that train operator's actual metered traction electricity consumption plus an amount in respect of the associated transmission and distribution losses ("**metered traction electricity**"); and
- (b) that train operator's access contract in relation to track provides that no supplementary amount $S1_t$ shall apply to that train operator in respect of that metered traction electricity,

then the values of M_{gt} and A_{gt} shall be calculated excluding:

- (i) in the case of M_{gt} , that train operator's actual volume of usage of metered traction electricity; and
- (ii) in the case of A_{gt} , the metered traction electricity consumption so charged to that train operator.

5.3 $S2_t$ is derived from the following formula:

$$S2_t = (EP_t + S1_t) * (CS_t - CW_t) / CW_t$$

where:

$S1_t$ means the supplementary amount in respect of the Train Operator for Relevant Year t calculated in accordance with paragraph 5.2;

EP_t means the summation of E_{gt} for the Train Operator as referred to in paragraph 5.2 across all Geographic Areas g for Relevant Year t;

CS_t means the total actual cost to Network Rail for traction electricity for each train operator whose access contract incorporates a provision in relation to $S2_t$ in substantially similar terms to this paragraph 5 in Relevant Year t; and

CW_t means the total modelled cost for traction electricity for each train operator whose access contract incorporates a provision in relation to $S2_t$ in substantially similar terms to this paragraph 5 in the Relevant Year t as notified to the Train Operator by Network Rail which is derived from the following formula:

$$CW_t = \Sigma (EP_t + S1_t)$$

where:

Σ means the summation across all train operators whose access contracts incorporate a provision in relation to $S2_t$ in substantially similar terms to this paragraph 5 in Relevant Year t;

EP_t means the summation of E_{gt} for each train operator calculated in accordance with paragraph 5.2 across all Geographic Areas g for Relevant Year t; and

$S1_t$ means (where applicable) the supplementary amount $S1_t$ in respect of each train operator for Relevant Year t calculated in accordance with paragraph 5.2.

5.4 Network Rail shall, within 90 days after the end of Relevant Year t, provide to the Train Operator:

- (a) a statement of the amounts $S1_t$ and $S2_t$ (whether of a positive or negative amount);
- (b) such background workings as may reasonably be required for a proper understanding of the calculation; and
- (c) a certificate of the auditors of Network Rail confirming the accuracy of the calculation.

5.5 Within 30 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 5.4, the amounts $S1_t$ and $S2_t$ shall be invoiced for payment as provided under this contract. If the aggregate of the amounts $S1_t$ and $S2_t$ is positive, the invoice shall be issued by Network Rail and payable by the Train Operator. If the aggregate of the amounts $S1_t$ and $S2_t$ is negative, Network Rail will issue a credit note to the Train Operator.

6 Capacity Charge

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

$$K_t = \left[\sum (Pg_{twd} * Tg_{twd}) + (Pg_{twe} * Tg_{twe}) \right]$$

where:

\sum means the sum across all Service Coded Groups;

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

$$Pg_{twd} = Pg_{twd - 1} \left[1 + \frac{RPI_{t - 1}}{100} \right]$$

where:

$RPI_{t - 1}$ means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year $t-1$ and the index published or determined with respect to November in Relevant Year $t-2$,

but so that in relation to the Relevant Year t commencing on 1 April 2009, Pg_{twd} shall have the value for the Weekday rate per Service Coded Group g shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year, $Pg_{\text{twd}-1}$ shall have the same value;

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

$$Pg_{\text{twe}} = Pg_{\text{twe} - 1} \left[1 + \frac{RPI_{t-1}}{100} \right]$$

where:

RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year t commencing on 1 April 2009, Pg_{tw} shall have the value for the weekend rate per Service Coded Group g shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year, $Pg_{\text{tw}-1}$ shall have the same value;

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

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

“Service Coded Group” means a Service or collection of Services specified as such in the List of Capacity Charge Rates, and any Ancillary Movements relating to such Services.

7 Network Rail Rebate

7.1 For the purpose of paragraph 1, the Network Rail Rebate in respect of any Relevant Year t (W_t) is an amount (which shall not be a negative value) by way of a return of Track Charges paid in Relevant Year t-1, derived from the following formula:

$$W_t = \frac{RA_t \cdot F_t}{AF_t}$$

where:

RA_t means the Rebatable Amount declared by Network Rail in relation to Relevant Year t-1 under paragraph 7.2;

F_t has the meaning ascribed to it in paragraph 1 as if references to "Relevant Year t" in the definition of " F_t " in paragraph 1 were references to "Relevant Year t-1"; and

AF_t means the Aggregate Fixed Charge in Relevant Year t-1, calculated as if references to "Relevant Year t" in the definition of "Aggregate Fixed Charge" and in the definition of " F_t " in paragraph 1 were references to "Relevant Year t-1".

7.2 The Rebatable Amount shall be the amount, if any:

- (a) which represents such proportion of Network Rail's total income for Relevant Year t-1 as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;
- (b) which Network Rail, in its discretion, considers it appropriate, having regard to the matters specified in paragraph 7.3, to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and
- (c) which Network Rail notifies as such to ORR before the end of each Relevant Year t-1.

7.3 In considering the amount of the Rebatable Amount in any Relevant Year, Network Rail shall have regard to:

- (a) its obligations under its network licence and any contracts to which it is a party;
- (b) the extent to which its efficiency and economy in discharging the obligations referred to in paragraph 7.3(a) matches or exceeds any assumption which ORR made in the 2008 Final Determinations;
- (c) its current and foreseeable future financial position; and
- (d) the need for long term investment in the Network.

7.4 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR, having regard to the matters:

- (a) to which Network Rail is to have regard under paragraph 7.3; and
- (b) in respect of which duties are imposed on it under section 4 of the Act,

has consented to such rebate.

7.5 Paragraphs 2.3.4 and 2.3.5 shall apply to a payment of Network Rail Rebate in the same way as they apply in relation to a payment of an Efficiency Benefit Share, as if references in paragraphs 2.3.4 and 2.3.5 to

“Efficiency Benefit Share” and “EBS payment” were instead references to, respectively, “Network Rail Rebate” and “Network Rail Rebate payment”.

8 Electrification Asset Usage Charge

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

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

where:

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t which is derived from the following formula:

$$EV_{tk} = EV_{tk-1} \cdot \left[1 + \frac{RPI_{t-1} - 0}{100} \right]$$

where:

RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2009, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and in relation to the next following Relevant Year EV_{tk-1} shall have the same value; and

UV_{tk} means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator.

9 Changes to the List of Capacity Charge Rates, Traction Electricity Consumption Rates List and Track Usage Price List

9.1 No supplement to the Traction Electricity Consumption Rates List or Track Usage Price List, and no change to the List of Capacity Charge Rates, shall have effect unless the supplement or change has been:

(a) determined in accordance with the procedure set out in this paragraph 9; or

(b) agreed between the parties,

and ORR shall have given its consent to the supplement or change.

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

(a) the Traction Electricity Consumption Rates List shall be supplemented or amended so as to include modelled consumption rates in respect of regenerative braking for any new or additional train category or any relevant route by tariff band (any such being a "relevant category");

(b) the Track Usage Price List shall be amended so as to include a vehicle category which is not included in the list;

(c) the List of Capacity Charge Rates shall be amended so as to take account of changes in the pattern and number of Services; or

(d) the Traction Electricity Consumption Rates List or Track Usage Price List shall be amended to correct any manifest error.

9.3 Any proposition of a kind referred to in paragraph 9.2 shall be made by notice to the other party and shall be accompanied by a specification in reasonable detail of the change proposed and the reasons for it. The parties shall thereafter negotiate in good faith the necessary supplements or changes to the list in question.

9.4 If the parties shall have failed to agree such supplements or changes within 45 days of the date of the notice given under paragraph 9.3, either party shall be entitled to refer the matter to an arbitrator for determination pursuant to Part C of the Access Dispute Resolution Rules. Unless the parties otherwise agree, paragraphs C1.24 to C1.30 inclusive of those rules shall not apply to the arbitration.

9.5 The remit of the arbitrator shall be to determine:

(a) whether any such new relevant category or vehicle category (as the case may be) should be added to the list in question or whether changes in the pattern and/or number of Services warrant a change to the list in question; and, if so,

(b) which new categories should be added and what prices and/or modelled consumption rates and/or appropriate discounts should be

included in relation to each such category or what change to the List of Capacity Charge Rates should be made.

- 9.6 In determining the matter referred to him under paragraph 9.4, the arbitrator shall be required by the parties to reach a decision which is fair and reasonable to them, having regard to:
- (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
 - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.
- 9.7 The parties shall procure that the decision of the arbitrator shall be delivered to ORR within 7 days after the date of the decision.
- 9.8 No decision of an arbitrator appointed under paragraph 9.4 shall have effect without the consent of ORR.
- 9.9 If ORR gives its consent to:
- (a) the decision of an arbitrator appointed under paragraph 9.4; or
 - (b) a supplement of the Traction Electricity Consumption Rates List or the Track Usage Price List, or a change to the List of Capacity Charge Rates, agreed between the parties,

the supplement or change in question shall have effect from such date as ORR shall determine by notice to the parties.

10 Payment of access charges

10.1 Payment of access charges

- (a) The Train Operator shall pay or procure the payment to Network Rail of:
 - (i) the Variable Track Usage Charge;
 - (ii) the Traction Electricity Charge;
 - (iii) the Capacity Charge;
 - (iv) the Electrification Asset Usage Charge; and
 - (v) the Additional Permitted Charges,attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.
- (b) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within 7 days of the invoice date or 7 days after the end of the Period, whichever is later.

- (c) Not used.
- (d) Any invoice issued by Network Rail under paragraph 5.5 of Part 2 (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 *Train Consist Data*

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

10.3 *Invoices and right to object to invoices*

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.
- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges

included in the relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("notice of objection"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within fourteen days following receipt of a notice of objection, the Train Consist Data shall be determined at the request of either party by arbitration in accordance with Part C of the Access Dispute Resolution Rules save that:
 - (i) the parties shall use their respective endeavours to ensure a joint paper setting out their respective positions on the matter in dispute is agreed for delivery to the arbitrator no later than three working days following the expiration of a period of 14 days following receipt of a notice of objection;
 - (ii) the parties shall each request that the arbitrator's decision in writing (following any discussions or meetings between or with the parties that the arbitrator considers necessary) is delivered to the parties no later than 56 days after the expiration of the relevant Period and that the arbitrator establish such rules and procedures for the conduct of the arbitration as he sees fit having regard to such timescale; and
 - (iii) each of the parties shall accept and abide by the rules and procedures established by the arbitrator under paragraph 10.3(d)(ii).
- (e) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 5 of Part 2 shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.

- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 *Unrepresentative Train Consist Data*

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.
- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, the matter shall be referred to expert determination in accordance with Part D of the Access Dispute Resolution Rules.
- (c) Upon the earlier of agreement between the parties or expert determination, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within fourteen days (the "14 day period") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

10.5 *Disputed amounts repayment and interest rate*

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount

of the invoice, including the disputed amount, in accordance with the terms of the invoice.

- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
 - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

PART 3: NOT USED

PART 3A: ENGLISH & WELSH GRANT DILUTION

1 Grant Amounts

1.1 Basic Values and Payment Dates

For the purposes of this Part 3A:

- (a) the Basic Values are the amounts by way of grant under section 6 of the Railways Act 2005 specified in the Deed of Grant as payable by the Secretary of State to Network Rail; and
- (b) the Payment Dates are the dates set out in the Deed of Grant for the payment of grant by the Secretary of State in each of the years 2009, 2010, 2011, 2012, 2013 and 2014, or such other dates for the payment of such grants as may be stipulated in the Deed of Grant.

1.2 Indexation

For the purposes of this Part 3A, the Grant Amount for each Payment Date is the Basic Value specified in the Deed of Grant as payable on that date, adjusted in accordance with any applicable indexation provisions of the Deed of Grant.

2 English & Welsh Grant Dilution

2.1 Meaning of English & Welsh Grant Dilution

For the purposes of this Part 3A, there shall be an “**English & Welsh Grant Dilution**” in respect of a Payment Date if:

- (a) the Secretary of State fails, for any reason, to pay the whole or any part of the Grant Amount on or before that Payment Date; or
- (b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:

- (i) subject to the performance by Network Rail or any other person of any obligation;
- (ii) subject to the exercise by the Secretary of State or any other person of any discretion; or
- (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

2.2 *Meaning of English & Welsh Grant Dilution Date*

In respect of any English & Welsh Grant Dilution:

- (a) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(a), the English & Welsh Grant Dilution Date shall be the Payment Date in respect of which the Secretary of State fails to pay the whole or any part of the Grant Amount due on that date; and
- (b) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
 - (i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or
 - (ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii),

shall be an English & Welsh Grant Dilution Date.

3. **English & Welsh Grant Compensation Amount**

3.1 *Payment obligation*

If an English & Welsh Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that an English & Welsh Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (b) the Train Operator shall:
 - (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;
 - (ii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the English & Welsh Grant Dilution Date; and

- (iii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each English & Welsh Grant Dilution Date.

3.2 Calculation

Any English & Welsh Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:

$$GC = (GA_p - P) \cdot \frac{F_t}{AF_t} \cdot (1.0575^{0.25})$$

where:

GC means the English & Welsh Grant Compensation Amount;

GA_p means the Grant Amount for the Payment Date which is the same date as the English & Welsh Grant Dilution Date;

P means:

- (a) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within 7 days after the English & Welsh Grant Dilution Date, that it has received from the Secretary of State; and
- (b) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F_t has the meaning ascribed to it in paragraph 1 of Part 2; and

AF_t means the Aggregate Fixed Charge in Relevant Year t.

PART 4: NOT USED

PART 5: ADDITIONAL PERMITTED CHARGES

1 Obligation to pay

Network Rail may make and the Train Operator shall be required to pay under this contract, in addition to Track Charges, only such Additional Permitted Charges as are enumerated in paragraph 2.

2 Definition

Additional Permitted Charges shall comprise the following:

- (a) such amounts payable to Network Rail as are specified in, or calculated in accordance with, Schedule 4;

- (b) such amounts payable to Network Rail as are specified in, or calculated in accordance with, Schedule 8; and
- (c) such amounts payable to Network Rail pursuant to any provision of the Network Code.

PART 6: SUPPLEMENTAL PROVISIONS

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

- (a) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;
- (b) the rate of Variable Track Usage Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) the amount of any Efficiency Benefit Share;
- (h) the amount of any sum W_t payable as provided in paragraph 7 of Part 2;
- (i) the amount of any sum $S1_t$ and/or $S2_t$ payable as provided in paragraph 5 of Part 2;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any Additional Permitted Charge, separately the amount payable in respect of each head of charge for Additional Permitted Charges.

PART 7: FUTURE ACCESS CHARGES REVIEWS

1 General

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2014 or such later date as may be specified in that review; and

- (b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation before 1 April 2014.

2 Access charges reviews capable of coming into operation before 1 April 2014

2.1 ORR may carry out an access charges review in relation to any relevant part or parts of this contract at any time:

2.1.1:

- (a) where it considers that there has been a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; or
- (b) at Network Rail's request, where Network Rail considers that it is unable, or is likely to become unable, in the next eighteen month period, to finance itself efficiently; or
- (c) at Network Rail's request, where in any Review Period, the value of the Adjusted Interest Cover Ratio (AICR) derived from the following formula is less than or equal to 1.4:

$$AICR = \frac{1 - 2 - 3 - 4}{5}$$

where:

- 1 means Network Rail's projected income in that Review Period;
- 2 means Network Rail's projected total expenditure (excluding Network Rail's projected renewals expenditure and projected enhancements expenditure to the extent that these are funded through income or the Regulated Asset Base) in that Review Period;
- 3 means the projected corporation tax payable in that Review Period;
- 4 means the regulatory amortisation assumption made by ORR in relation to that Review Period as specified in Table 16.3 of the 2008 Final Determinations; and

5 means the projected net interest payable by Network Rail on its financial indebtedness in that Review Period,

provided that, where part only of a Financial Year falls within the relevant Review Period, each of the component elements of this formula shall be attributed to that Review Period on a pro rata basis reflecting the proportion of that Financial Year falling within that Review Period; and

2.1.2 where ORR considers that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.

3. Definitions and interpretation:

In this Part 7:

- (a) “**corporation tax**” means the amount of corporation tax payable by Network Rail in accordance with the Income and Corporation Taxes Act 1988 net of any group relief;
- (b) “**enhancements expenditure**” has the meaning ascribed to it in the Regulatory Accounting Guidelines dated March 2008;
- (c) “**net interest payable**” is:
 - (i) interest, issuance costs and financing fees payable by Network Rail; less
 - (ii) interest receivable by Network Rail,in each case, on an accruals basis,
and for these purposes, any calculation of interest
 - (iii) shall treat all amounts payable and receivable under interest rate and foreign exchange derivative transactions as though such transactions fully qualified for hedge accounting whether or not they in fact do sobut:
 - (iv) shall not include:

- (x) capital accretion on index-linked debt; or
 - (y) interest that is payable but rolled-up under intercompany loan arrangements;
- (d) “**renewals expenditure**” has the meaning ascribed to it in the Regulatory Accounting Guidelines dated March 2008;
- (e) “**Review Period**” means a period commencing at any time and ending 36 consecutive months later, provided that if a period of 36 consecutive months would, but for this proviso, extend beyond 31 March 2014, the relevant Review Period shall be deemed to end, and shall end on 31 March 2014;
- (f) “**total expenditure**” means any cost Network Rail incurs operating, maintaining, renewing and enhancing the Network where, for the purposes of this definition, the cost is net of other operating income treated by ORR as an operating cost in Table 16.3 of the 2008 Final Determinations;
- (g) “**income**” is as provided in Annex B to the Regulatory Accounting Guidelines dated March 2008 except that income shall not include the final bullet of paragraph 9 of Annex B being “other income – income generated by [Network Rail] from sources other than those described above.”;
- (h) Any calculation of income, expenditure and corporation tax made under or in connection with paragraph 2.1 shall be carried out on an accruals basis; and
- (i) References to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

PART 8: NOT USED

APPENDIX 7A

Not Used

APPENDIX 7B

The Geographic Areas

The table below describes the Geographic Areas g for the purposes of Traction Electricity Charge calculations.

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
M	Merseyside	Comprises the Merseyside third rail electrified system between Liverpool, Southport, Ormskirk, Kirkby, Hunts Cross, Ellesmere Port, Chester, New Brighton and West Kirby
N	Midland Main Line	Comprises the overhead line electrified routes from London St Pancras, Farringdon and Moorgate (Midland) to Bedford
O	London Tilbury & Southend	Comprises the overhead line electrified London Tilbury and Southend routes from Fenchurch Street to Shoeburyness via Laindon, Rainham and Chafford Hundred; the route from Barking to Forest Gate Junction; and the route between Gas Factory Junction and Bow Junction
P	Great Eastern	Comprises the electrified Great Eastern Main Line routes from Liverpool Street to Bow Junction, Upminster, Southend Victoria, Southminster, Braintree, Sudbury, Clacton, Walton-on Naze, Harwich Town and Norwich; the West Anglia route from Liverpool Street to Hackney Downs station; the Lea Valley Line between Stratford and Coppermill Junction, and the ac & dc section of the North London Line route between Stratford and York Way neutral section (north of Kings Cross).

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
Q	West Anglia	Comprises the electrified West Anglia routes from Hackney Downs station to Chingford, Enfield Town, Hertford East, Stansted Airport, Cambridge and Kings Lynn and the electrified route between Cambridge Junction (on the East Coast Main Line near Hitchin) and Cambridge
R	East Coast Main Line South	Comprises the electrified East Coast Main Line from Kings Cross to the neutral section at Tallington (between Peterborough and Grantham), the electrified route between Moorgate and Finsbury Park; the electrified route between Canonbury West Junction and Finsbury Park; and the Kings Cross Incline between Camden Road East Junction and Freight Terminal Junction.
A	East Coast Main Line Central	Comprises the electrified East Coast Main Line between the neutral sections at Tallington (between Peterborough and Grantham), South Kirkby and Hambleton Junction (between Doncaster and York).
B	East Coast Main Line North	Comprises the electrified East Coast Main Line between the neutral sections at Hambleton Junction (between Doncaster and York) and Chathill (between Alnmouth and Belford).
C	East Coast Main Line Leeds	Comprises the electrified East Coast Main Line between the neutral section at South Kirkby and Leeds, Bradford and Skipton.
S	Scotland Glasgow	Comprises the electrified routes in Scotland between the neutral sections at Coatbridge, Rutherglen, Bishopston, Lochwinnoch & Carstairs
D	Scotland East	Comprises the electrified routes in Scotland between the neutral sections at Chathill (between Alnmouth and Belford) and Auchengray (between Edinburgh & Carstairs).

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
E	Scotland North & West	Comprises the electrified routes in Scotland on the North Clyde between the neutral sections at Coatbridge & Rutherglen, the routes from Bishopston neutral section to Gourock & Wemyss Bay and the routes from Lochwinnoch neutral section to Ayr & Largs.
F	Scotland WCML	Comprises the electrified routes in Scotland between the neutral sections at Penrith, Carstairs and Auchengray (between Edinburgh & Carstairs).
T	West Coast Main Line South	Comprises the West Coast Main Line routes from Euston to the neutral sections at Berkswell and Nuneaton; the third rail electrified lines from Euston to Watford Junction; the West London Line to the North Pole junction; the North London Line between South Acton and York Way (north of Kings Cross) and the route between the Primrose Hill tunnels and Camden Road
G	West Coast Main Line Central	Comprises the West Coast Main Line routes between Nuneaton and Liverpool bounded by the neutral sections at Nuneaton, Queensville (Stafford), Stone – Colwich, Stone - Norton Bridge, Kidsgrove, Chelford and Weaver Junction.
H	West Coast Main Line West Midlands	Comprises the West Coast Main Line routes around Birmingham between the neutral sections at Berkswell and Queensville (Stafford).
I	West Coast Main Line Manchester	Comprises the West Coast Main Line routes between Manchester and Stone bounded by the neutral sections at Stone – Colwich, Stone - Norton Bridge, Kidsgrove, Chelford
J	West Coast Main Line North	Comprises the West Coast Main Line routes between Weaver Junction and Penrith (neutral sections).

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
U	Southern	Comprises all third rail electrified routes south from Farringdon, Cannon Street, Charing Cross, London Bridge, Waterloo and Victoria, covering the international route as far as the Network Rail/Eurotunnel boundary; the West London Line to the south of North Pole junction; and the North London Line between Richmond and Acton Central
V	Great Western	Comprises the electrified route from Paddington to Heathrow Airport

Appendix 3 to Annex 2

Schedule 7 for First ScotRail Limited

SCHEDULE 7: TRACK CHARGES

PART 1: INTERPRETATION

1 Definitions

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

“2008 Final Determinations”	means the document entitled “Periodic Review 2008: Determination of Network Rail’s outputs and funding for 2009-14” and published by ORR on 30 October 2008;
“access charges review”	has the meaning ascribed to it by Schedule 4A to the Act;
“Additional Permitted Charges”	means the charges specified in paragraph 2 of Part 5;
“Adjusted Interest Cover Ratio”	means the value of AICR derived from the formula set out in paragraph 2.1.1(c) of Part 7;
“Aggregate Fixed Charges”	means, in any Relevant Year t , the sum of the values of F_t under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;
“Basic Value”	has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;
“Capacity Charge”	means a variable charge, calculated in accordance with paragraph 6 of Part 2;
“Default Train Consist Data”	means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;
“Efficiency Benefit Share”	means the amount determined in accordance with paragraph 3.2 of Part 2;
“Electrification Asset Usage Charge”	means an annual charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;

“excluded change”	means, in relation to paragraph 2.1.1(a) of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under sections 6 or 8 of the Railways Act 2005;
“Fixed Track Charge”	means a fixed annual charge, calculated in accordance with paragraphs 1 and 2 of Part 2;
“Fixed Track Charge Indexation”	has the meaning ascribed to it in paragraph 2 of Part 2;
“Geographic Area g”	means, for the purposes of performing the calculations set out in paragraphs 4 and 5 of Part 2, the relevant geographic section of the Network as set out in Appendix 7B;
“Grant Agreement”	means the Agreement as to Network Grant made on or about 18 December 2008 between the Scottish Ministers and Network Rail;
“Grant Amount”	has the meaning ascribed to it in paragraph 1.2 of Part 3A;
“Gross Tonne Mile”	in relation to a train, means a mile travelled on the Network, by each tonne of the aggregate weight of the train in question;
“kWh”	means kilowatt hours;
“List of Capacity Charge Rates”	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 18 December 2008;
“Network Rail Rebate”	has the meaning ascribed to it in paragraph 7.1 of Part 2;
“Payment Date”	has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;
“Period”	has the meaning ascribed to it in Schedule 8;
“Rebatable Amount”	has the meaning ascribed to it in paragraph 7.2 of Part 2;

“relevant access agreement” means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:

- (a) a franchise operator; or
- (b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or
- (c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or
- (d) any other person who benefits from a franchise exemption (within the meaning of section 24(13) of the Act) in relation to services for the carriage of passengers by railway; or
- (e) a relevant franchising authority (as defined in section 30(3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act;

“Relevant Year” means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

“Retail Prices Index” means the general index of retail prices published by National Statistics each month in respect of all items or:

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

	(b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;
“route type k”	means route type k as identified by type of electrification (OLE or DC) in the Track Usage Price List;
“Schedule of Fixed Charges”	means the document entitled “Fixed Track Charges Schedule” published by Network Rail on or about 18 December 2008;
“Scottish Grant Compensation Amount”	has the meaning ascribed to it in paragraph 3.2 of Part 3A;
“Scottish Grant Dilution”	has the meaning ascribed to it in paragraph 2.1 of Part 3A;
“Scottish Grant Dilution Date”	has the meaning ascribed to it in paragraph 2.2 of Part 3A;
“Service Coded Group”	has the meaning ascribed to it in paragraph 6 of Part 2;
“tariff band”	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 on or about 18 December 2008;
“Traction Electricity Charge”	means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;
“Traction Electricity Consumption Rates List”	means the document entitled “Traction Electricity Consumption Rates List” published by Network Rail on or about 18 December 2008 and specifying freight and passenger traction electricity consumption rates by train category i;
“train category”	means train type i used on the relevant route;

“Train Consist Data”	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
“Train Mile”	in relation to a train, means a mile travelled by that train on the Network;
“Variable Charge”	means the Variable Track Usage Charges and, where the context admits, Traction Electricity Charges;
“Variable Track Usage Charge”	means a variable charge, calculated in accordance with paragraph 3 of Part 2;
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network; and
“Weekday”	has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

2 Interpretation

The provisions of Clause 1.2(e) of this contract shall not apply to any references to the Grant Agreement in this Schedule 7.

PART 2: TRACK CHARGES

1 Principal formula

During each Relevant Year (and, in respect of F_t , prorated for each day of any period of this contract comprising less than a full Relevant Year), Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = F_t + V_t + E_t + K_t + EV_{tk} - BS_t - W_t$$

where:

- T_t means Track Charges in Relevant Year t;
- F_t means an amount in respect of the Fixed Track Charge in Relevant Year t, which shall be:
- (a) in respect of the Relevant Year commencing on 1 April 2009, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges; and
 - (b) in respect of any other Relevant Year t, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation for that year calculated in accordance with paragraph 2;
- V_t means an amount in respect of the Variable Track Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;
- E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4;
- K_t means an amount in respect of the Capacity Charge in Relevant Year t which is derived from the formula in paragraph 6;
- EV_{tk} means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8;
- BS_t means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 3.2; and
- W_t means an amount (which shall not be a negative value) in respect of the Network Rail Rebate in Relevant Year t, calculated in accordance with the provisions of paragraph 7.1.

2 Fixed Track Charge Indexation

The Fixed Track Charge Indexation in Relevant Year t shall be derived from the following formula:

$$FTCI_t = 1 + \left(\frac{RPI_{t-1} - RPI_{2008}}{RPI_{2008}} \right)$$

where:

$FTCI_t$ means the Fixed Track Charge Indexation in Relevant Year t;

RPI_{t-1} means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and

RPI_{2008} means the Retail Prices Index published or determined with respect to November 2008.

3 Variable track usage charge and efficiency benefit share

3.1 Variable track usage charge

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

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

where:

V_{it} means an amount in respect of the Variable Track Usage Charge per Vehicle Mile for a category of vehicle i for Relevant Year t which is derived from the following formula:

$$V_{it} = V_{it-1} \left[1 + \frac{RPI_{t-1} - 0}{100} \right]$$

where:

RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2009, V_{it} shall have, in respect of each Vehicle Mile, the

value set out in the Track Usage Price List; and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

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

3.2 *Efficiency Benefit Share*

3.2.1 The Efficiency Benefit Share is an amount (which shall not be a negative value) representing a return of Track Charges which shall be identified in the ORR's annual assessment of Network Rail as the "Efficiency Benefit Share", if any, to be rebated to the Train Operator, such amount to be determined in accordance with the methodology and principles set out in paragraphs 27.34 to 27.53 (inclusive) of the 2008 Final Determinations.

3.2.2 If, pursuant to paragraph 3.2.1, the Train Operator is entitled to payment of an Efficiency Benefit Share in respect of Relevant Year t , then, subject to paragraph 3.2.3, such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which it is determined by the ORR that such payment should be made.

3.2.3 If, in respect of any Relevant Year t , an Efficiency Benefit Share is payable in accordance with paragraph 3.2.2 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t , the Train Operator shall be entitled to a pro rata payment of the Efficiency Benefit Share payable in respect of that Relevant Year t . Such pro rata payment (which shall be payable in accordance with paragraph 3.2.2) shall be calculated as follows:

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

where:

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

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

- (a) where this contract commences during the course of that Relevant Year t , following commencement of this contract; or

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

provided that, in each case:

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

3.2.4 Any such payment of an Efficiency Benefit Share ("**EBS payment**") shall be made on the basis that it is to be treated as a rebate of Track Charges for the purposes of VAT unless the parties agree that the law relating to VAT at the date of the payment requires some other treatment as agreed between the parties or unless, prior to making such payment, Network Rail has notified the Train Operator that, based on advice that Network Rail has received from HM Revenue and Customs, this paragraph 3.2.4 applies. Where this paragraph 3.2.4 applies, the relevant EBS payment is to be treated as being outside the scope of VAT, then paragraphs (a) to (e) inclusive below shall apply, and the EBS payment may be made accordingly:

- (a) the provisions of this contract relating to VAT on rebates or repayments shall be disapplied in relation only to EBS payments and subject to paragraph (e) below;
- (b) no VAT will be charged on the EBS payment;
- (c) in respect of the Track Charges paid or payable by the Train Operator to Network Rail (disregarding the EBS payment) in respect of the period to which the EBS payment relates, Network Rail will account for VAT (where required by law to do so) and will not seek to reclaim any such VAT, except in either case as provided under paragraph (e) below;
- (d) the Train Operator will treat the EBS payment as being outside the scope of VAT; and
- (e) if the treatment of an EBS payment as being outside the scope of VAT is challenged such that the Train Operator is required to account for VAT to HM Revenue and Customs on the EBS payment, then (subject to the Train Operator promptly notifying

Network Rail of that fact) the preceding paragraphs (a) to (d) inclusive will (at the election of the Train Operator) cease to apply to the EBS payment and Network Rail will account to the Train Operator for the amount of VAT on the EBS payment and issue the Train Operator with a VAT credit note in respect of that amount.

- 3.2.5 Network Rail will indemnify the Train Operator in respect of any liability it may incur to HM Revenue and Customs (other than the obligation to account to HM Revenue and Customs for the amount of the VAT credit set out in paragraph 3.2.4(e)) as a result of having treated the EBS payment as being outside the scope of VAT in accordance with paragraph 3.2.4.

4 Traction Electricity Charge

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

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

where:

Σ means the summation across all relevant train categories i , tariff bands j and/or Geographic Areas g , as appropriate;

C_i means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category i , shown in the Traction Electricity Consumption Rates List;

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2; and

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i , in Geographic Area g , in tariff band j and in Relevant Year t , pursuant to this contract.

- 4.2 At least three months prior to the start of each Relevant Year commencing on or after 1 April 2009, Network Rail shall consult with the Train Operator

regarding a strategy for the procurement of traction electricity for the Train Operator in respect of that Relevant Year, and:

- (a) if Network Rail and the Train Operator agree on a strategy for the procurement of traction electricity, Network Rail will procure traction electricity for the Train Operator in accordance with that agreed strategy; or
 - (b) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and the Train Operator has, during its consultation with Network Rail under this paragraph 4.2, notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity and it is possible for Network Rail, acting reasonably, to implement that strategy, Network Rail will procure traction electricity for the Train Operator in accordance with the traction electricity procurement strategy so notified to Network Rail by the Train Operator; or
 - (c) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and either (y) the Train Operator has not notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity during its consultation with Network Rail in accordance with this paragraph 4.2, or (z) it is not possible for Network Rail, acting reasonably, to implement the Train Operator's preferred strategy for the procurement of traction electricity as notified to Network Rail during its consultation in accordance with this paragraph 4.2, Network Rail will:
 - (i) acting reasonably, determine the procurement strategy for traction electricity for the Train Operator, having regard to whatever information, if any, the Train Operator has supplied to Network Rail during its consultation under this paragraph 4.2; and
 - (ii) procure traction electricity for the Train Operator in accordance with that traction electricity procurement strategy.
- 4.3 Network Rail shall provide to the Train Operator within 30 days of the end of each calendar month in each Relevant Year, the actual cost of traction electricity consumed by railway vehicles operated by or on behalf of the Train Operator in the relevant calendar month against the budgeted amounts. Network Rail shall also provide to the Train Operator a provisional six month volume reconciliation by region before 30 October of each Relevant Year and a provisional nine month volume reconciliation by region before 30 January of each Relevant Year.

- 4.4 (a) If the Train Operator wishes to propose the introduction of on-train metering to measure traction electricity consumption in a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 4.4(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 4.4(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the parties shall notify ORR. If ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require to determine the matter and shall abide by any determination issued by ORR. If ORR does not so elect, the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:
- (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
 - (ii) each of the parties shall abide by the rules and procedures established by the expert; and
 - (iii) the parties shall direct the expert to have regard to any relevant criteria and/or policy statement most recently issued by the Office of Rail Regulation.
- (e) Any amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) shall take effect only when it has been approved by ORR. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 4.4 (other than a determination by ORR pursuant to sub-paragraph 4.4(d)), the parties shall ensure that ORR is furnished with such amendment and such information and

evidence as it shall require to determine whether or not to approve the amendment.

- (f) Any amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) shall apply with effect from, subject to sub-paragraph 4.4(e), the date proposed by the Train Operator (unless otherwise agreed by the parties or determined by the ORR or the expert in relation to the proposal).

5. Volume and Cost Reconciliation

5.1 Within 90 days after the end of Relevant Year t , Network Rail shall calculate two supplementary amounts $S1_t$ and $S2_t$ which shall be payable by or to the Train Operator in accordance with this paragraph 5.

5.2 $S1_t$ is derived from the following formula:

$$S1_t = \sum E_{gt} \cdot \frac{(A_{gt} - M_{gt})}{M_{gt}}$$

where:

Σ means the summation across all relevant train categories i , tariff bands j and Geographic Areas g for Relevant Year t , as appropriate;

E_{gt} is part of the Traction Electricity Charge payable by the Train Operator for each applicable Geographic Area g in Relevant Year t , determined in accordance with the following formula:

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

where:

C_i means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category i , shown in the Traction Electricity Consumption Rates List;

EF_{gjt} means an amount for traction current (in pence per kWh) determined in accordance with paragraph 4 of this Part 2; and

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated in Relevant Year t by or on

behalf of the Train Operator in train category i, in Geographic Area g and in tariff band j;

M_{gt} means the total modelled electricity consumption in Geographic Area g and in Relevant Year t which is derived from the following formula:

$$M_{gt} = \sum C_i \cdot UE_{igt}$$

where:

Σ means the summation across all train categories i and Geographic Areas g for Relevant Year t, as appropriate; and

C_i has the meaning given to it in this paragraph 5.2; and

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated in Relevant Year t by or on behalf of all train operators in train category i, in Geographic Area g;

A_{gt} means the total actual electricity consumption (in kWh), if any, in Geographic Area g in Relevant Year t by or on behalf of all train operators, assessed by Network Rail (as accurately as possible) as being the appropriate proportion of the electricity consumption billed to Network Rail by its electricity suppliers in that area for traction electricity consumed in accordance with the terms for the purchase of traction electricity entered into by Network Rail,

provided that, if:

- (a) any train operator is charged by Network Rail for its traction electricity consumption based on that train operator's actual metered traction electricity consumption plus an amount in respect of the associated transmission and distribution losses ("**metered traction electricity**"); and
- (b) that train operator's access contract in relation to track provides that no supplementary amount $S1_t$ shall apply to that train operator in respect of that metered traction electricity,

then the values of M_{gt} and A_{gt} shall be calculated excluding:

- (i) in the case of M_{gt} , that train operator's actual volume of usage of metered traction electricity; and
- (ii) in the case of A_{gt} , the metered traction electricity consumption so charged to that train operator.

5.3 $S2_t$ is derived from the following formula:

$$S2_t = (EP_t + S1_t) * (CS_t - CW_t) / CW_t$$

where:

$S1_t$ means the supplementary amount in respect of the Train Operator for Relevant Year t calculated in accordance with paragraph 5.2;

EP_t means the summation of E_{gt} for the Train Operator as referred to in paragraph 5.2 across all Geographic Areas g for Relevant Year t;

CS_t means the total actual cost to Network Rail for traction electricity for each train operator whose access contract incorporates a provision in relation to $S2_t$ in substantially similar terms to this paragraph 5 in Relevant Year t; and

CW_t means the total modelled cost for traction electricity for each train operator whose access contract incorporates a provision in relation to $S2_t$ in substantially similar terms to this paragraph 5 in the Relevant Year t as notified to the Train Operator by Network Rail which is derived from the following formula:

$$CW_t = \sum (EP_t + S1_t)$$

where:

\sum means the summation across all train operators whose access contracts incorporate a provision in relation to $S2_t$ in substantially similar terms to this paragraph 5 in Relevant Year t;

EP_t means the summation of E_{gt} for each train operator calculated in accordance with paragraph 5.2 across all Geographic Areas g for Relevant Year t; and

$S1_t$ means (where applicable) the supplementary amount $S1_t$ in respect of each train operator for Relevant Year t calculated in accordance with paragraph 5.2.

5.4 Network Rail shall, within 90 days after the end of Relevant Year t, provide to the Train Operator:

- (a) a statement of the amounts $S1_t$ and $S2_t$ (whether of a positive or negative amount);
- (b) such background workings as may reasonably be required for a proper understanding of the calculation; and
- (c) a certificate of the auditors of Network Rail confirming the accuracy of the calculation.

5.5 Within 30 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 5.4, the amounts $S1_t$ and $S2_t$ shall be invoiced for payment as provided under this contract. If the aggregate of the amounts $S1_t$ and $S2_t$ is positive, the invoice shall be issued by Network Rail and payable by the Train Operator. If the aggregate of the amounts $S1_t$ and $S2_t$ is negative, Network Rail will issue a credit note to the Train Operator.

6 Capacity Charge

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

$$K_t = \left[\sum (Pg_{twd} * Tg_{twd}) + (Pg_{twe} * Tg_{twe}) \right]$$

where:

\sum means the sum across all Service Coded Groups;

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

$$Pg_{twd} = Pg_{twd - 1} \left[1 + \frac{RPI_{t - 1}}{100} \right]$$

where:

RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year $t-1$ and the index published or determined with respect to November in Relevant Year $t-2$,

but so that in relation to the Relevant Year t commencing on 1 April 2009, Pg_{twd} shall have the value for the Weekday rate per Service Coded Group g shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year, $Pg_{\text{twd}-1}$ shall have the same value;

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

$$Pg_{\text{twe}} = Pg_{\text{twe} - 1} \left[1 + \frac{RPI_{t-1}}{100} \right]$$

where:

RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year t commencing on 1 April 2009, Pg_{tw} shall have the value for the weekend rate per Service Coded Group g shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year, $Pg_{\text{tw}-1}$ shall have the same value;

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

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

“Service Coded Group” means a Service or collection of Services specified as such in the List of Capacity Charge Rates, and any Ancillary Movements relating to such Services.

7 Network Rail Rebate

7.1 For the purpose of paragraph 1, the Network Rail Rebate in respect of any Relevant Year t (W_t) is an amount (which shall not be a negative value) by way of a return of Track Charges paid in Relevant Year t-1, derived from the following formula:

$$W_t = RA_t \cdot \frac{F_t}{AF_t}$$

where:

RA_t means the Rebatable Amount declared by Network Rail in relation to Relevant Year t-1 under paragraph 7.2;

F_t has the meaning ascribed to it in paragraph 1 as if references to "Relevant Year t" in the definition of " F_t " in paragraph 1 were references to "Relevant Year t-1"; and

AF_t means the Aggregate Fixed Charge in Relevant Year t-1, calculated as if references to "Relevant Year t" in the definition of "Aggregate Fixed Charge" and in the definition of " F_t " in paragraph 1 were references to "Relevant Year t-1".

7.2 The Rebatable Amount shall be the amount, if any:

- (a) which represents such proportion of Network Rail's total income for Relevant Year t-1 as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;
- (b) which Network Rail, in its discretion, considers it appropriate, having regard to the matters specified in paragraph 7.3, to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and
- (c) which Network Rail notifies as such to ORR before the end of each Relevant Year t-1.

7.3 In considering the amount of the Rebatable Amount in any Relevant Year, Network Rail shall have regard to:

- (a) its obligations under its network licence and any contracts to which it is a party;
- (b) the extent to which its efficiency and economy in discharging the obligations referred to in paragraph 7.3(a) matches or exceeds any assumption which ORR made in the 2008 Final Determinations;
- (c) its current and foreseeable future financial position; and
- (d) the need for long term investment in the Network.

7.4 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR, having regard to the matters:

- (a) to which Network Rail is to have regard under paragraph 7.3; and
- (b) in respect of which duties are imposed on it under section 4 of the Act,

has consented to such rebate.

7.5 Paragraphs 2.3.4 and 2.3.5 shall apply to a payment of Network Rail Rebate in the same way as they apply in relation to a payment of an Efficiency Benefit Share, as if references in paragraphs 2.3.4 and 2.3.5 to

“Efficiency Benefit Share” and “EBS payment” were instead references to, respectively, “Network Rail Rebate” and “Network Rail Rebate payment”.

8 Electrification Asset Usage Charge

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

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

where:

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t which is derived from the following formula:

$$EV_{tk} = EV_{tk-1} \cdot \left[1 + \frac{RPI_{t-1} - 0}{100} \right]$$

where:

RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2009, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and in relation to the next following Relevant Year EV_{tk-1} shall have the same value; and

UV_{tk} means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator.

- 9 Changes to the List of Capacity Charge Rates, Traction Electricity Consumption Rates List and Track Usage Price List**
- 9.1 No supplement to the Traction Electricity Consumption Rates List or Track Usage Price List, and no change to the List of Capacity Charge Rates, shall have effect unless the supplement or change has been:
- (a) determined in accordance with the procedure set out in this paragraph 9; or
 - (b) agreed between the parties,
- and ORR shall have given its consent to the supplement or change.
- 9.2 Either of the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Consumption Rates List shall be supplemented or amended so as to include modelled consumption rates in respect of regenerative braking for any new or additional train category or any relevant route by tariff band (any such being a “relevant category”);
 - (b) the Track Usage Price List shall be amended so as to include a vehicle category which is not included in the list;
 - (c) the List of Capacity Charge Rates shall be amended so as to take account of changes in the pattern and number of Services; or
 - (d) the Traction Electricity Consumption Rates List or Track Usage Price List shall be amended to correct any manifest error.
- 9.3 Any proposition of a kind referred to in paragraph 9.2 shall be made by notice to the other party and shall be accompanied by a specification in reasonable detail of the change proposed and the reasons for it. The parties shall thereafter negotiate in good faith the necessary supplements or changes to the list in question.
- 9.4 If the parties shall have failed to agree such supplements or changes within 45 days of the date of the notice given under paragraph 9.3, either party shall be entitled to refer the matter to an arbitrator for determination pursuant to Part C of the Access Dispute Resolution Rules. Unless the parties otherwise agree, paragraphs C1.24 to C1.30 inclusive of those rules shall not apply to the arbitration.
- 9.5 The remit of the arbitrator shall be to determine:
- (a) whether any such new relevant category or vehicle category (as the case may be) should be added to the list in question or whether changes in the pattern and/or number of Services warrant a change to the list in question; and, if so,
 - (b) which new categories should be added and what prices and/or modelled consumption rates and/or appropriate discounts should be

included in relation to each such category or what change to the List of Capacity Charge Rates should be made.

- 9.6 In determining the matter referred to him under paragraph 9.4, the arbitrator shall be required by the parties to reach a decision which is fair and reasonable to them, having regard to:
- (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
 - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.
- 9.7 The parties shall procure that the decision of the arbitrator shall be delivered to ORR within 7 days after the date of the decision.
- 9.8 No decision of an arbitrator appointed under paragraph 9.4 shall have effect without the consent of ORR.
- 9.9 If ORR gives its consent to:
- (a) the decision of an arbitrator appointed under paragraph 9.4; or
 - (b) a supplement of the Traction Electricity Consumption Rates List or the Track Usage Price List, or a change to the List of Capacity Charge Rates, agreed between the parties,

the supplement or change in question shall have effect from such date as ORR shall determine by notice to the parties.

10 Payment of access charges

10.1 Payment of access charges

- (a) The Train Operator shall pay or procure the payment to Network Rail of:
 - (i) the Variable Track Usage Charge;
 - (ii) the Traction Electricity Charge;
 - (iii) the Capacity Charge;
 - (iv) the Electrification Asset Usage Charge; and
 - (v) the Additional Permitted Charges,attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.
- (b) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within 7 days of the invoice date or 7 days after the end of the Period, whichever is later.

- (c) Not used.
- (d) Any invoice issued by Network Rail under paragraph 5.5 of Part 2 (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 *Train Consist Data*

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

10.3 *Invoices and right to object to invoices*

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.
- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges

included in the relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("notice of objection"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within fourteen days following receipt of a notice of objection, the Train Consist Data shall be determined at the request of either party by arbitration in accordance with Part C of the Access Dispute Resolution Rules save that:
 - (i) the parties shall use their respective endeavours to ensure a joint paper setting out their respective positions on the matter in dispute is agreed for delivery to the arbitrator no later than three working days following the expiration of a period of 14 days following receipt of a notice of objection;
 - (ii) the parties shall each request that the arbitrator's decision in writing (following any discussions or meetings between or with the parties that the arbitrator considers necessary) is delivered to the parties no later than 56 days after the expiration of the relevant Period and that the arbitrator establish such rules and procedures for the conduct of the arbitration as he sees fit having regard to such timescale; and
 - (iii) each of the parties shall accept and abide by the rules and procedures established by the arbitrator under paragraph 10.3(d)(ii).
- (e) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 5 of Part 2 shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.

- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 *Unrepresentative Train Consist Data*

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.
- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, the matter shall be referred to expert determination in accordance with Part D of the Access Dispute Resolution Rules.
- (c) Upon the earlier of agreement between the parties or expert determination, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within fourteen days (the "14 day period") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

10.5 *Disputed amounts repayment and interest rate*

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount

of the invoice, including the disputed amount, in accordance with the terms of the invoice.

- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
 - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

PART 3: NOT USED

PART 3A: SCOTTISH GRANT DILUTION

1 Grant Amounts

1.1 Basic Values and Payment Dates

For the purposes of this Part 3A:

- (a) the Basic Values are the amounts by way of grant under section 8 of the Railways Act 2005 specified in the Grant Agreement as payable by the Scottish Ministers to Network Rail; and
- (b) the Payment Dates are the dates set out in the Grant Agreement for the payment of grant by the Scottish Ministers in each of the years 2009, 2010, 2011, 2012, 2013 and 2014, or such other dates for the payment of such grants as may be stipulated in the Grant Agreement.

1.2 Indexation

For the purposes of this Part 3A, the Grant Amount for each Payment Date is the Basic Value specified in the Grant Agreement as payable on that date, adjusted in accordance with any applicable indexation provisions of the Grant Agreement.

2 Scottish Grant Dilution

2.1 Meaning of Scottish Grant Dilution

For the purposes of this Part 3A, there shall be a “**Scottish Grant Dilution**” in respect of a Payment Date if:

- (a) the Scottish Ministers fail, for any reason, to pay the whole or any part of the Grant Amount on or before that Payment Date; or
- (b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:

- (i) subject to the performance by Network Rail or any other person of any obligation;
- (ii) subject to the exercise by the Scottish Ministers or any other person of any discretion; or
- (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

2.2 *Meaning of Scottish Grant Dilution Date*

In respect of any Scottish Grant Dilution:

- (a) if the Scottish Grant Dilution is of the kind referred to in paragraph 2.1(a), the Scottish Grant Dilution Date shall be the Payment Date in respect of which the Scottish Ministers fail to pay the whole or any part of the Grant Amount due on that date; and
- (b) if the Scottish Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
 - (i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or
 - (ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii),

shall be a Scottish Grant Dilution Date.

3. **Scottish Grant Compensation Amount**

3.1 *Payment obligation*

If a Scottish Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that a Scottish Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (b) the Train Operator shall:
 - (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;
 - (ii) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail a Scottish Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the Scottish Grant Dilution Date; and
 - (iii) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail a Scottish Grant

Compensation Amount calculated in accordance with paragraph 3.2 three months after each Scottish Grant Dilution Date.

3.2 Calculation

Any Scottish Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:

$$GC = (GA_p - P) \cdot \frac{F_t}{AF_t} \cdot (1.0575^{0.25})$$

where:

GC means the Scottish Grant Compensation Amount;

GA_p means the Grant Amount for the Payment Date which is the same date as the Scottish Grant Dilution Date;

P means:

- (a) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within 7 days after the Scottish Grant Dilution Date, that it has received from the Scottish Ministers; and
- (b) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F_t has the meaning ascribed to it in paragraph 1 of Part 2; and

AF_t means the Aggregate Fixed Charge in Relevant Year t.

PART 4: NOT USED

PART 5: ADDITIONAL PERMITTED CHARGES

1 Obligation to pay

Network Rail may make and the Train Operator shall be required to pay under this contract, in addition to Track Charges, only such Additional Permitted Charges as are enumerated in paragraph 2.

2 Definition

Additional Permitted Charges shall comprise the following:

- (a) such amounts payable to Network Rail as are specified in, or calculated in accordance with, Schedule 4;
- (b) such amounts payable to Network Rail as are specified in, or calculated in accordance with, Schedule 8; and
- (c) such amounts payable to Network Rail pursuant to any provision of the Network Code.

PART 6: SUPPLEMENTAL PROVISIONS

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

- (a) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;
- (b) the rate of Variable Track Usage Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) the amount of any Efficiency Benefit Share;
- (h) the amount of any sum W_t payable as provided in paragraph 7 of Part 2;
- (i) the amount of any sum $S1_t$ and/or $S2_t$ payable as provided in paragraph 5 of Part 2;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any Additional Permitted Charge, separately the amount payable in respect of each head of charge for Additional Permitted Charges.

PART 7: FUTURE ACCESS CHARGES REVIEWS

1 General

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2014 or such later date as may be specified in that review; and
- (b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation before 1 April 2014.

2 Access charges reviews capable of coming into operation before 1 April 2014

2.1 ORR may carry out an access charges review in relation to any relevant part or parts of this contract at any time:

2.1.1:

- (a) where it considers that there has been a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; or
- (b) at Network Rail's request, where Network Rail considers that it is unable, or is likely to become unable, in the next eighteen month period, to finance itself efficiently; or
- (c) at Network Rail's request, where in any Review Period, the value of the Adjusted Interest Cover Ratio (AICR) derived from the following formula is less than or equal to 1.4:

$$AICR = \frac{1 - 2 - 3 - 4}{5}$$

where:

- 1 means Network Rail's projected income in that Review Period;
- 2 means Network Rail's projected total expenditure (excluding Network Rail's projected renewals expenditure and projected enhancements expenditure to the extent that these are funded through income or the Regulated Asset Base) in that Review Period;
- 3 means the projected corporation tax payable in that Review Period;
- 4 means the regulatory amortisation assumption made by ORR in relation to that Review Period as specified in Table 16.3 of the 2008 Final Determinations; and
- 5 means the projected net interest payable by Network Rail on its financial indebtedness in that Review Period,

provided that, where part only of a Financial Year falls within the relevant Review Period, each of the component elements of this formula shall be attributed to that Review Period on a pro rata basis reflecting the proportion of that Financial Year falling within that Review Period; or

- (d) where Network Rail's projections at that time (each such projection being prepared in accordance with the Regulatory Accounting Guidelines dated March 2008) as to its Net Expenditure in relation to that part of the Network which is situated in Scotland (the "**Scottish Network**") for the Review Period show a projected level of such Net Expenditure which is higher by 15 per cent or more than the assumed expenditure for that period, where:

- (i) "**Net Expenditure**" shall be derived from the following formula:

$$\text{Net Expenditure} = 1 + 2 + 3$$

where:

- 1 means Network Rail's total Scottish expenditure in the relevant Review Period;
- 2 means the proportion of net interest payable in respect of the Scottish Network in the relevant Review Period; and
- 3 means the proportion of corporation tax payable in respect of the Scottish Network in the relevant Review Period;
- (ii) expressions used in the formula specified in paragraph 2.1.1(d)(i) but not otherwise defined shall have the meanings ascribed to them in paragraph 3;
- (iii) "**assumed expenditure**" means the amount of Net Expenditure assumed by ORR to be incurred in respect of the Scottish Network in each Financial Year (or part) falling within the relevant Review Period and identified in respect of the Scottish Network in Table 12.3 of the 2008 Final Determinations; and
- (iv) "**total Scottish expenditure**" means any cost Network Rail incurs operating, maintaining, renewing and enhancing the Scottish Network where, for the purposes of this definition, the cost is net of other operating income treated by ORR as an operating cost in Table 16.2 of the 2008 Final Determinations,

provided that, where part only of a Financial Year falls within the relevant Review Period, each of the component elements of this formula shall be attributed to that Review Period on a pro rata basis reflecting the proportion of that Financial Year falling within that Review Period; and

- 2.1.2 where ORR considers that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.

3. Definitions and interpretation:

In this Part 7:

- (a) “**corporation tax**” means the amount of corporation tax payable by Network Rail in accordance with the Income and Corporation Taxes Act 1988 net of any group relief;
- (b) “**enhancements expenditure**” has the meaning ascribed to it in the Regulatory Accounting Guidelines dated March 2008;
- (c) “**net interest payable**” is:
 - (i) interest, issuance costs and financing fees payable by Network Rail; less
 - (ii) interest receivable by Network Rail,in each case, on an accruals basis,
and for these purposes, any calculation of interest
 - (iii) shall treat all amounts payable and receivable under interest rate and foreign exchange derivative transactions as though such transactions fully qualified for hedge accounting whether or not they in fact do sobut:
 - (iv) shall not include:
 - (x) capital accretion on index-linked debt; or

- (y) interest that is payable but rolled-up under intercompany loan arrangements;
- (d) **“renewals expenditure”** has the meaning ascribed to it in the Regulatory Accounting Guidelines dated March 2008;
- (e) **“Review Period”** means a period commencing at any time and ending 36 consecutive months later, provided that if a period of 36 consecutive months would, but for this proviso, extend beyond 31 March 2014, the relevant Review Period shall be deemed to end, and shall end on 31 March 2014;
- (f) **“total expenditure”** means any cost Network Rail incurs operating, maintaining, renewing and enhancing the Network where, for the purposes of this definition, the cost is net of other operating income treated by ORR as an operating cost in Table 16.3 of the 2008 Final Determinations;
- (g) **“income”** is as provided in Annex B to the Regulatory Accounting Guidelines dated March 2008 except that income shall not include the final bullet of paragraph 9 of Annex B being “other income – income generated by [Network Rail] from sources other than those described above.”;
- (h) any calculation of income, expenditure and corporation tax made under or in connection with paragraph 2.1 shall be carried out on an accruals basis; and
- (i) references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

PART 8: NOT USED

APPENDIX 7A

Not Used

APPENDIX 7B

The Geographic Areas

The table below describes the Geographic Areas g for the purposes of Traction Electricity Charge calculations.

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
M	Merseyside	Comprises the Merseyside third rail electrified system between Liverpool, Southport, Ormskirk, Kirkby, Hunts Cross, Ellesmere Port, Chester, New Brighton and West Kirby
N	Midland Main Line	Comprises the overhead line electrified routes from London St Pancras, Farringdon and Moorgate (Midland) to Bedford
O	London Tilbury & Southend	Comprises the overhead line electrified London Tilbury and Southend routes from Fenchurch Street to Shoeburyness via Laindon, Rainham and Chafford Hundred; the route from Barking to Forest Gate Junction; and the route between Gas Factory Junction and Bow Junction
P	Great Eastern	Comprises the electrified Great Eastern Main Line routes from Liverpool Street to Bow Junction, Upminster, Southend Victoria, Southminster, Braintree, Sudbury, Clacton, Walton-on Naze, Harwich Town and Norwich; the West Anglia route from Liverpool Street to Hackney Downs station; the Lea Valley Line between Stratford and Coppermill Junction, and the ac & dc section of the North London Line route between Stratford and York Way neutral section (north of Kings Cross).

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
Q	West Anglia	Comprises the electrified West Anglia routes from Hackney Downs station to Chingford, Enfield Town, Hertford East, Stansted Airport, Cambridge and Kings Lynn and the electrified route between Cambridge Junction (on the East Coast Main Line near Hitchin) and Cambridge
R	East Coast Main Line South	Comprises the electrified East Coast Main Line from Kings Cross to the neutral section at Tallington (between Peterborough and Grantham), the electrified route between Moorgate and Finsbury Park; the electrified route between Canonbury West Junction and Finsbury Park; and the Kings Cross Incline between Camden Road East Junction and Freight Terminal Junction.
A	East Coast Main Line Central	Comprises the electrified East Coast Main Line between the neutral sections at Tallington (between Peterborough and Grantham), South Kirkby and Hambleton Junction (between Doncaster and York).
B	East Coast Main Line North	Comprises the electrified East Coast Main Line between the neutral sections at Hambleton Junction (between Doncaster and York) and Chathill (between Alnmouth and Belford).
C	East Coast Main Line Leeds	Comprises the electrified East Coast Main Line between the neutral section at South Kirkby and Leeds, Bradford and Skipton.
S	Scotland Glasgow	Comprises the electrified routes in Scotland between the neutral sections at Coatbridge, Rutherglen, Bishopston, Lochwinnoch & Carstairs
D	Scotland East	Comprises the electrified routes in Scotland between the neutral sections at Chathill (between Alnmouth and Belford) and Auchengray (between Edinburgh & Carstairs).

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
E	Scotland North & West	Comprises the electrified routes in Scotland on the North Clyde between the neutral sections at Coatbridge & Rutherglen, the routes from Bishopston neutral section to Gourrock & Wemyss Bay and the routes from Lochwinnoch neutral section to Ayr & Largs.
F	Scotland WCML	Comprises the electrified routes in Scotland between the neutral sections at Penrith, Carstairs and Auchengray (between Edinburgh & Carstairs).
T	West Coast Main Line South	Comprises the West Coast Main Line routes from Euston to the neutral sections at Berkswell and Nuneaton; the third rail electrified lines from Euston to Watford Junction; the West London Line to the North Pole junction; the North London Line between South Acton and York Way (north of Kings Cross) and the route between the Primrose Hill tunnels and Camden Road
G	West Coast Main Line Central	Comprises the West Coast Main Line routes between Nuneaton and Liverpool bounded by the neutral sections at Nuneaton, Queensville (Stafford), Stone – Colwich, Stone - Norton Bridge, Kidsgrove, Chelford and Weaver Junction.
H	West Coast Main Line West Midlands	Comprises the West Coast Main Line routes around Birmingham between the neutral sections at Berkswell and Queensville (Stafford).
I	West Coast Main Line Manchester	Comprises the West Coast Main Line routes between Manchester and Stone bounded by the neutral sections at Stone – Colwich, Stone - Norton Bridge, Kidsgrove, Chelford
J	West Coast Main Line North	Comprises the West Coast Main Line routes between Weaver Junction and Penrith (neutral sections).

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
U	Southern	Comprises all third rail electrified routes south from Farringdon, Cannon Street, Charing Cross, London Bridge, Waterloo and Victoria, covering the international route as far as the Network Rail/Eurotunnel boundary; the West London Line to the south of North Pole junction; and the North London Line between Richmond and Acton Central
V	Great Western	Comprises the electrified route from Paddington to Heathrow Airport

ANNEX 3

BESPOKE AMENDMENTS

PART 1 (MODIFICATIONS TO STANDARD AMENDMENTS AND OTHER BESPOKE AMENDMENTS)

Explanatory Note:

This Annex 3 sets out (i) the modifications which need to be made to the standard amendments to Schedules 4 (Rules of the Route, Rules of the Plan and Restrictions of Use), 7 (Track Charges) and 8 (Performance Regime), and (ii) certain other bespoke amendments, in each case required in order to give effect to the ORR's conclusions on the Review in the Track Access Agreements of the Train Operators listed below.

If the name of a Train Operator does not appear in Part 1 of this Annex 3, the ORR proposes that the standard amendments will be made to that Train Operator's Track Access Agreement without modification.

If the name of a Train Operator does appear in Part 1 of this Annex 3, the ORR proposes that the standard amendments will be made to that Train Operator's Track Access Agreement, except to the extent specified in the paragraph or paragraphs of Part 1 of this Annex 3 relating to that Train Operator.

Each Track Access Agreement referred to in this Annex 3, in each case as amended in accordance with Annex 2, shall be further amended on the terms set out in this Annex 3.

1 SPD Cost Thresholds in Paragraph 1.1 of Schedule 4

In paragraph 1.1 of Schedule 4 to each of the following Track Access Agreements between Network Rail and each of:

- (a) **The Chiltern Railway Company Limited;**
- (b) **London Overground Rail Operations Ltd;** and
- (c) **Merseyrail Electrics 2002 Limited;**

1.1 replace “£552,000” with “£276,000” in the definition of “SPD Cost Threshold No.1”; and

1.2 replace “£1,104,000” with “£552,000” in the definition of “SPD Cost Threshold No.2”.

2 EBMPR Amount in Paragraph 4.2 of Schedule 4

2.1 In the definition of “EBMPR” in paragraph 4.2(b) of Schedule 4 to each Track Access Agreement listed below, replace “£9.19” with “£13.67”:

- (a) Track Access Agreement between Network Rail and **c2c Rail Limited;**
- (b) Track Access Agreement between Network Rail and **The Chiltern Railway Company Limited;**
- (c) Track Access Agreement between Network Rail and **First Capital Connect Limited;**
- (d) Track Access Agreement between Network Rail and **London & Birmingham Railway Limited;**
- (e) Track Access Agreement between Network Rail and **London & South Eastern Railway Limited;**

- (f) Track Access Agreement between Network Rail and **London Eastern Railway Limited**;
- (g) Track Access Agreement between Network Rail and **London Overground Rail Operations Ltd**;
- (h) Track Access Agreement between Network Rail and **New Southern Railway Limited**; and
- (i) Track Access Agreement between Network Rail and **Stagecoach South Western Trains Limited**.

2.2 In paragraph 4.2(b) of Schedule 4 to the Track Access Agreement between Network Rail and **First Greater Western Limited**, the definition of “EBMPR” shall be deleted and replaced with the following:

“EBMPR is the payment rate per EBM, which is:

- (i) in respect of any LSE Service Group, £13.67; and
- (ii) in respect of every other Service Group that is not an LSE Service Group, £9.19,

where “**LSE Service Group**” means any of the following Service Groups: Service Group EE01 (peak), Service Group EE01 (off peak), Service Group EF05 (peak), Service Group EF05 (off peak), Service Group EF06 (peak), Service Group EF06 (off peak), Service Group EF07, Service Group EF08 and Service Group EF09.”

3 Paragraph 1 of Part 5 of Schedule 4: Access Charge Supplement For Restrictions of Use

3.1 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **Arriva Trains Wales/Trenau Arriva Cymru Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	1,267,839
2010-2011	1,125,940
2011-2012	1,146,219
2012-2013	915,591
2013-2014	866,344

3.2 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **c2c Rail Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	2,186,339
2010-2011	1,941,640
2011-2012	1,976,610
2012-2013	1,578,901
2013-2014	1,493,976

3.3 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **The Chiltern Railway Company Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	2,463,086
2010-2011	2,187,413
2011-2012	2,226,810
2012-2013	1,778,758
2013-2014	1,683,084

3.4 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **East Midlands Trains Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	6,833,117
2010-2011	6,068,342
2011-2012	6,177,636
2012-2013	4,934,648
2013-2014	4,669,226

3.5 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **First Capital Connect Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	6,884,292
2010-2011	6,113,790
2011-2012	6,223,902
2012-2013	4,971,604
2013-2014	4,704,195

3.6 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **First Greater Western Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	35,765,306
2010-2011	31,762,390

2011-2012	32,334,448
2012-2013	25,828,504
2013-2014	24,439,259

3.7 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **First/Keolis Transpennine Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	1,963,015
2010-2011	1,743,311
2011-2012	1,774,708
2012-2013	1,417,623
2013-2014	1,341,373

3.8 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **First ScotRail Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	5,689,829
2010-2011	5,053,014
2011-2012	5,144,021
2012-2013	4,109,004
2013-2014	3,887,992

3.9 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **London & Birmingham Railway Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	2,076,159
2010-2011	1,843,792
2011-2012	1,877,000
2012-2013	1,499,333
2013-2014	1,418,688

- 3.10 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **London & South Eastern Railway Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	3,440,236
2010-2011	3,055,199
2011-2012	3,110,225
2012-2013	2,484,423
2013-2014	2,350,793

- 3.11 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **London Eastern Railway Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	7,796,630
2010-2011	6,924,018
2011-2012	7,048,723
2012-2013	5,630,465
2013-2014	5,327,617

3.12 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **London Overground Rail Operations Ltd** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	451,988
2010-2011	401,401
2011-2012	408,630
2012-2013	326,411
2013-2014	308,854

3.13 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **Merseyrail Electrics 2002 Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	2,472,625
2010-2011	2,195,885
2011-2012	2,235,434
2012-2013	1,785,647
2013-2014	1,689,602

3.14 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **New Southern Railway Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	10,274,222
2010-2011	9,124,313

2011-2012	9,288,647
2012-2013	7,419,698
2013-2014	7,020,613

- 3.15 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **Northern Rail Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	2,217,563
2010-2011	1,969,369
2011-2012	2,004,839
2012-2013	1,601,450
2013-2014	1,515,312

- 3.16 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **NXEC Trains Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	33,859,005
2010-2011	30,069,445
2011-2012	30,611,012
2012-2013	24,451,837
2013-2014	23,136,639

3.17 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **Stagecoach South Western Trains Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	16,390,291
2010-2011	14,555,861
2011-2012	14,818,020
2012-2013	11,836,519
2013-2014	11,199,864

3.18 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **West Coast Trains Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	32,559,586
2010-2011	28,915,460
2011-2012	29,436,243
2012-2013	23,513,441
2013-2014	22,248,716

3.19 The two columns headed “Year” and “£” in paragraph 1 of Part 5 of Schedule 4 to the Track Access Agreement between Network Rail and **XC Trains Limited** shall be deleted and replaced in their entirety with the following:

Year	£
2009-2010	12,591,501
2010-2011	11,182,238

2011-2012	11,383,636
2012-2013	9,093,160
2013-2014	8,604,063

4 Table A in Paragraph 14.10(a) of Schedule 8

4.1 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **Arriva Trains Wales/Trenau Arriva Cymru Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	62,995
2010-2011	61,453
2011-2012	58,810
2012-2013	57,268
2013-2014	55,726

4.2 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **c2c Rail Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	-
2010-2011	-
2011-2012	-
2012-2013	-
2013-2014	-

4.3 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **The Chiltern Railway Company Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	18,701
2010-2011	17,588
2011-2012	16,697
2012-2013	16,252
2013-2014	15,584

- 4.4 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **First ScotRail Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	276,329
2010-2011	259,851
2011-2012	247,809
2012-2013	244,640
2013-2014	242,105

- 4.5 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **Merseyrail Electrics 2002 Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	201
2010-2011	197
2011-2012	193
2012-2013	193
2013-2014	193

- 4.6 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **Northern Rail Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	55,958
2010-2011	53,352
2011-2012	51,072
2012-2013	49,900
2013-2014	48,858

- 4.7 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **New Southern Railway Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	26,995
2010-2011	25,367
2011-2012	24,189
2012-2013	22,673
2013-2014	21,551

- 4.8 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **NXEC Trains Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	310,796
2010-2011	278,171
2011-2012	255,848
2012-2013	233,526
2013-2014	218,072

- 4.9 Table A in paragraph 14.10(a) of Schedule 8 to the Track Access Agreement between Network Rail and **Stagecoach South Western Trains Limited** shall be deleted and replaced in its entirety with the following:

Year	£
2009-2010	2,595,102
2010-2011	2,379,813
2011-2012	2,251,803
2012-2013	2,170,343
2013-2014	2,094,701

5 Paragraph 14.10(b) of Schedule 8

In paragraph 14.10(b) of Schedule 8 to each of the following Track Access Agreements between Network Rail and each of:

- (a) **Arriva Trains Wales/Trenau Arriva Cymru Limited;**
- (b) **c2c Rail Limited;**
- (c) **The Chiltern Railway Company Limited;**
- (d) **First ScotRail Limited;**
- (e) **Merseyrail Electrics 2002 Limited;**
- (f) **Northern Rail Limited;**
- (g) **New Southern Railway Limited;**
- (h) **NXEC Trains Limited; and**
- (i) **Stagecoach South Western Trains Limited;**

- 5.1 each reference to “RPI_[2003]” shall be deleted and replaced with “RPI_[2008]”;
- 5.2 the reference to “November 2003” shall be deleted and replaced with “November 2008”; and
- 5.3 the reference to “1 April 2004” shall be deleted and replaced with “1 April 2009”.

6 Track Access Agreement between Network Rail and First Greater Western Limited

- 6.1 The following text shall be added to the end of paragraph 4.1 (after the definition of UE_{igt}) in Part 2 of Schedule 7 to the Track Access Agreement between Network Rail and **First Greater Western Limited**:

“Provided that, notwithstanding any amount for traction current (in pence per kWh) agreed or determined pursuant to paragraph 4.2, for so long as the track access contract between Network Rail and Heathrow Express Operating Company Limited relating to the operation of the Hayes & Harlington Shuttle is in full force and effect, the value of EF_{gt} shall be deemed to be nil (0) in respect of each any electric multiple units operated by or on behalf of the Train Operator on the route between London Paddington and Hayes & Harlington.”

- 6.2 The following text shall be added to the end of paragraph 8 (after the definition of UV_{tk}) in Part 2 of Schedule 7 to the Track Access Agreement between Network Rail and **First Greater Western Limited**:

“Provided that, notwithstanding any value provided for in the Track Usage Price List, for so long as the track access contract between Network Rail and Heathrow Express Operating Company Limited relating to the operation of the Hayes & Harlington Shuttle is in full force and effect, the value of EV_{tk} shall be deemed to be nil (0) in respect of each any electric multiple units operated by or on behalf of the Train Operator on the route between London Paddington and Hayes & Harlington.”

7 Track Access Agreement between Network Rail and London & Birmingham Railway Limited

The following paragraph 15 shall be inserted in Part 3 of Schedule 4 to the Track Access Agreement between Network Rail and **London & Birmingham Railway Limited**:

“15 Remodelling and renewals at Bletchley

- 15.1 If, at any time, Network Rail decides to proceed with the proposed remodelling and renewal of the network currently controlled by Bletchley Power Signal Box (the “**Bletchley Works**”), Network Rail shall notify the Train Operator in writing (the “**BW Notice**”).
- 15.2 Following receipt of the BW Notice, Network Rail and the Train Operator will negotiate in good faith bespoke compensation arrangements (the “**Bletchley Compensation Arrangements**”) for those Restrictions of Use to be taken in connection with the Bletchley Works (the “**Bletchley RoUs**”). Such Bletchley Compensation Arrangements must be consistent with the principles set out in paragraph 15.3.
- 15.3 Any Bletchley Compensation Arrangements must be consistent with:
- (a) the compensation provisions contained in the version of schedule 4 to this contract relating to Restrictions of Use under Part G of the Network Code that was in force as at 31 March 2009;
 - (b) the provisions of the Network Code (in particular, Part G) that was in force as at 31 March 2009; and
 - (c) the principles that:
 - (i) the Bletchley Compensation Arrangements shall apply in place of the provisions of this Schedule 4 and Part G of the Network Code, in each case to the extent only that such provisions and Part G of the Network Code relate to compensation for the Bletchley RoUs; and
 - (ii) the Bletchley Compensation Arrangements shall relate solely to compensation for the Bletchley RoUs and shall not override any other provision of this contract or the Network Code.

15.4 If the parties fail to reach agreement as to the Bletchley Compensation Arrangements within 56 days after service of the BW Notice, or if, prior to that date, both parties agree that agreement is unlikely to be reached prior to that date, the parties shall notify ORR and ORR shall determine the Bletchley Compensation Arrangements. Accordingly, the parties agree that where a reference to ORR is made under this paragraph 15.4, the parties shall:

- (a) furnish ORR with such information and evidence as ORR shall require to determine the Bletchley Compensation Arrangements; and
- (b) abide by any determination issued by ORR.

15.5 Any amendment to this contract in connection with the Bletchley Compensation Arrangements shall take effect only when it has been approved by ORR. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 15 (other than a determination by ORR pursuant to paragraph 15.4), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.

15.6 Subject to paragraph 15.4, any amendment to the contract in connection with the Bletchley Compensation Arrangements shall apply with effect from either:

- (a) where the parties have agreed the Bletchley Compensation Arrangements pursuant to paragraph 15.2, the date agreed by the parties (unless otherwise determined by ORR); or
- (b) the date determined by ORR.”

8 Track Access Agreement between Network Rail and West Coast Trains Limited

The following paragraph 15 shall be inserted in Part 3 of Schedule 4 to the Track Access Agreement between Network Rail and **West Coast Trains Limited**:

“15 West Coast Route Modernisation - NAUM-30 and MKC PSN

15.1 Notwithstanding the other provisions of this Schedule 4 and the provisions of Schedule 8, Network Rail and the Train Operator agree that the versions of:

- (a) schedules 4 and 8 to the access agreement in relation to track dated 30 April 1995 between Network Rail and the Train Operator; and
- (b) Part G of the Network Code,

that were (in each case) in force as at 18 August 2008 shall apply in respect of any possessions referred to, as at 18 August 2008, in either (i) the document with reference “NAUM-30” (“**NAUM-30**”) and/or (ii) the document with reference “MKC PSN” (“**MKC PSN**”) (as applicable).

15.2 If either party disputes whether or not a possession falls within the scope of the possessions referred to in either NAUM-30 and/or MKC PSN (as applicable), that party shall notify the other party in writing, and the parties shall seek to reach agreement on that matter within 56 days of such notice.

15.3 If the parties fail to reach agreement as to whether or not a possession falls within the scope of the possessions referred to in either NAUM-30 and/or MKC PSN (as applicable) within 56 days of service of a notice referred to in paragraph 15.2, the parties shall notify ORR and ORR shall determine whether or not that possession falls (or fall) within the scope of the possessions referred to in NAUM-30 and/or MKC PSN (as applicable). Accordingly, the parties

agree that where a reference to ORR is made under this paragraph 15.3, the parties shall:

- (a) furnish ORR with such information and evidence as ORR shall require to determine the matter; and
- (b) abide by any determination issued by ORR.”

PART 2 (CONFIDENTIAL INFORMATION)

Explanatory Note:

As explained above, the confidential information is attached to this Review Notice in the following pages. Copies will be sent only to the parties to the relevant Track Access Agreement, the Secretary of State for Transport, the Scottish Ministers and the Treasury and any relevant parties listed in Part 2 of Annex 1 to this Review Notice. The publication of that information would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of each Train Operator and/or Network Rail for the purpose of section 71(2) of the Act, and it is therefore not being published.