

**Schedule 7 Track Charges**  
**PART 1: INTERPRETATION**

**1 Definitions**

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

- “2003 access charges review”\*** means the access charges review on which the Regulator’s conclusions are set out in the 2003 Final Conclusions;
- “2003 Final Conclusions”\*** means the document entitled “Access charges review 2003: final conclusions” and published by the Office of the Rail regulator on 12 December 2003;
- “Additional Grant Proportion”\*** has the meaning ascribed to it in paragraph 2.4 of Part 2 of this Schedule 7;
- “Additional Grant Revenue”\*** means amounts payable to Network Rail by way of grant under section 211 of the Transport Act 2000 which exceed, in aggregate, the amount of grants payable in the control period under the Existing Deed of Grant;
- “Additional Permitted Charges”** means the charges specified in paragraph 2 of Part 5;
- “Aggregate Fixed Charge”\*** means, in any relevant year  $t$ , the sum of the values of  $F_t$  under paragraph 1 of Part 2 of Schedule 7 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 of this Schedule 7;
- “Capacity Charge”** means a variable charge, calculated in accordance with paragraph 6 of Part 2;
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- “Change of Law”** means (as the context may require) Legislative Change and/or the Direction of a Competent Authority, in either case other than one the financial consequences of which are determined pursuant to Condition F4 or G5;

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\* inserted by Schedule 11

\* deleted by Schedule 11

<b>“Competent Authority”</b>	means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal or public or statutory person (whether autonomous or not and including the SRA), whether of the United Kingdom or of the European Union, which has, in respect of this contract, jurisdiction over either or both of the parties to, or the subject matter of, this contract, provided that “Competent Authority” shall not include: <ul style="list-style-type: none"> <li>(a) the Regulator, except to the extent that he shall specify by notice to the parties at any time and from time to time, and subject to such conditions (if any) as he shall so specify; or</li> <li>(b) subject to sub-paragraph (a) above, any court, tribunal or arbitral body exercising its powers in any reference made to it pursuant to or arising out of any access contract or any act or omission or fact, matter or thing associated with any such contract or the relationship created or evidenced by it;</li> </ul>
<b>“control period”*</b>	means the period of five relevant years commencing on 1 April 2004 and ending on 31 March 2009;
<b>“Default Train Consist Data”</b>	means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;
<b>“Direction”</b>	means any direction, requirement, instruction or rule binding on either or both of the parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force but shall not include the exercise of a discretion under any contract or other obligation binding on the party in question or the enforcement of any such contract or obligation;
<b>“Existing Deed of Grant”*</b>	means the Deed of Grant made on 27 June 2002 between the Strategic Rail Authority, Network Rail Limited and others, as amended or replaced and in force on 12 December 2003;
<b>“Fixed Track Charge Indexation”*</b>	has the meaning ascribed to it in paragraph 2.1 of Part 2 of this Schedule 7;

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\* inserted by Schedule 11

<b>“Franchised Passenger Services”</b>	means railway passenger services which the SRA shall have designated as eligible for provision under franchise agreements pursuant to section 23 of the Act and Ancillary Movements in relation to such services;
<b>“Fixed Track Charge”</b>	means a fixed annual charge, calculated in accordance with paragraph 2 of Part 2;
<b>“Geographic Area”</b>	means the relevant geographic section of the Network (as defined in Appendix 7B) for the purposes of performing the calculations set out in paragraphs 4 and 5 of Part 2;
<b>“Grant Amount”*</b>	has the meaning ascribed to it in paragraph 1.2 of Part 3A of this Schedule 7;
<b>“Grant Compensation Amount” *</b>	has the meaning ascribed to it in paragraph 3.2 of part 3A of this Schedule 7;
<b>“Grant Dilution”*</b>	has the meaning ascribed to it in paragraph 2.1 of Part 3A of this Schedule 7;
<b>“Grant Dilution Date”*</b>	has the meaning ascribed to it in paragraph 2.2 of Part 3A of this Schedule 7;
<b>“Gross Tonne Mile”</b>	in relation to a train, means a mile travelled on the Network in providing Franchised Passenger Services, by each tonne of the aggregate weight of the train in question;
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<b>“Index of Industrial Electricity Costs”</b>	means the index of prices of fuels purchased by manufacturing industry in Great Britain - electricity purchased by moderately large users published quarterly by the Department of Trade and Industry or:

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\* inserted by Schedule 11

\* deleted by Schedule 11

- (a) if the index for any quarter in any year shall not have been published on or before the last day of the fourth month after such quarter, such index for such period or periods as the Regulator may, after consultation with the SRA, Network Rail and the Train Operator, 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 the Regulator may, after consultation with the SRA, Network Rail and the Train Operator, determine to be appropriate in the circumstances;

**“Legal Requirement”**

means (for the purpose of the definition of Legislative Change), in relation to any person, any of the following:

- (a) any primary or secondary legislation to the extent that it applies to that person;
- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that person or a decision taken by the said Commission which is binding on that person to the extent that it is so binding; and/or
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any Legal Requirement falling within paragraph (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

**“Legislative Change”**

means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to taxation;

**“List of Capacity Charge Rates”\***

means the list of capacity charge rates published by the Regulator on 23 December 2003 as subsequently amended by the Regulator following franchise remapping (with such amendments published by a letter sent to the affected train operators and Network Rail);

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\* inserted by Schedule 11

<b>“Material Amount”</b>	means an amount which Network Rail may incur in, or save by reason of, complying with a Change of Law such as is referred to in Part 3 which is likely to result in increased (or decreased) Track Charges under this contract of an amount equivalent to or exceeding 0.1 <i>per cent</i> of the Fixed Track Charge in the Relevant Year t in which Network Rail first becomes liable to make any payment or perform any other obligation in so complying;
<b>“Network Rail Rebate”*</b>	has the meaning ascribed to it in paragraph 7.1 of part 2 of this Schedule 7;
<b>“Payment Date”*</b>	has the meaning ascribed to it in paragraph 1.1 (b) of Part 3A of this Schedule 7;
<b>“Period”</b>	has the meaning ascribed to it in Schedule 8;
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<b>“RAB”*</b>	means the Regulatory Asset Base, as defined in Condition 22 of Network Rail’s network licence;
<b>“RAB Increase Equivalent”*</b>	has the meaning ascribed to it in paragraph 2.2 of Part 2 of this Schedule 7;
<b>“Railway Safety Charge”</b>	means a charge calculated in accordance with paragraph 8 of Part 2;
<b>“Rebatable Amount”*</b>	has the meaning ascribed to it in paragraph 7.2 of Part 2 of this Schedule 7;

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\* inserted by Schedule 11

\* deleted by Schedule 11

<b>“relevant access agreement”*</b>	<p>means an access agreement under which a person who is:</p> <ul style="list-style-type: none"> <li>(a) a franchise operator;</li> <li>(b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003;</li> <li>(c) a person in the same or substantially the same position as the concession operator under the Merseyrail Electrics Network Order 2003 in relation to any other network; or</li> <li>(d) the Strategic Rail Authority or a person providing services for the carriage of passengers by railway on behalf of the Strategic Rail Authority under section 30 of the Act,</li> </ul> <p>obtains permission from Network Rail to use the Network;</p>
<b>“Relevant Amount”</b>	has the meaning ascribed to it by paragraph 2 of Part 3;
<b>“Relevant Year”</b>	<p>means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March;</p> <p>“Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made;</p> <p>“Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;</p>
<b>“Retail Prices Index”</b>	<p>means the general index of retail prices published by National Statistics each month in respect of all items or:</p> <ul style="list-style-type: none"> <li>(a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as the Regulator may, after consultation with the SRA, Network Rail and the Train Operator, determine to be appropriate in the circumstances; or</li> <li>(b) if there is a material change in the basis of the index, such other index as the Regulator may, after consultation with the SRA, Network Rail and the Train Operator, determine to be appropriate in the circumstances;</li> </ul>
<b>“Revised Deed of Grant” *</b>	has the meaning ascribed to it in paragraph 2.5.4 (a) of Part 2 of this Schedule 7;

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\* inserted by Schedule 11

<b>“Schedule of Fixed Charges”<sup>♦</sup></b>	means the Fixed Track Charges set out in annex 1 to this Schedule as subsequently amended by the Regulator following franchise remapping (with such amendments published by a letter sent to the affected train operators and Network Rail);
<b>“Track Usage Price List”<sup>♦</sup></b>	means the track usage price list published by the Regulator on 23 December 2003;
<b>“Traction Electricity Charge”</b>	means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;
<b>“Traction Electricity Price List”</b>	means the traction electricity price list published by the Regulator in Appendix Q to the document dated 26 October 2000 setting out the final conclusions to the periodic review of access charges (with the modelled consumption rates being specified separately in the letter addressed to train operators dated 27 October 2000);
<b>“Train Consist Data”</b>	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
<b>“Train Mile”</b>	in relation to a train, means a mile travelled by that train on the Network in providing Franchised Passenger Services;
<b>“Variable Charge”</b>	means the Variable Track Usage Charges and, where the context admits, Traction Electricity Charges;
<b>“Variable Track Usage Charge”</b>	means a variable charge, calculated in accordance with paragraph 3 of Part 2; and
<b>“Vehicle Mile”</b>	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network in providing Franchised Passenger Services.

## 2 Interpretation

In this Schedule 7:

- (a) unless the context otherwise requires, references in Parts of this Schedule to paragraphs are reference to paragraphs in the Parts in which they appear;<sup>2nd</sup>
- (b) unless otherwise stated, all provisions have effect from 1 April 2001;<sup>2nd</sup>
- (c)<sup>2nd</sup> all references in this Schedule 7 to a notice given by the Regulator on 10 March 2004 shall be construed as though references in Annex 2 to that

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<sup>♦</sup> amended by Schedule 11

notice to “Debt Issuance Programme (as defined in the Revised Deed of Grant attached at Annex 3 to this notice)” were references to “Debt Issuance Programme (as defined in the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail, as that definition is construed in accordance with clause 1.2 of the Revised Deed of Grant as amended and restated by that Supplemental deed)”.

### 3 Transitional arrangements

When either party is interpreting or exercising their rights under this contract in respect of the Working Timetable in force up until 23rd May 2004 the wording and cross referencing in this Schedule 7 shall be read and construed, referring where necessary to the version of Part D of the Network Code which expires on 23rd May 2004, as follows:

the reference to “Principal Change Date” in the sub-paragraph UK<sub>ijrt</sub> in paragraph 6.1 of Part 2 shall be read as a reference to “Summer Change Date” and the reference to “Subsidiary Change Date” shall be read as a reference to “Winter Change Date”.

## PART 2: TRACK CHARGES

### 1 Principal formula

During each Relevant Year (and, in respect of  $F_t$  and  $L_t$ ,<sup>♦</sup> 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:

$$^*T_t = (F_t - RIE_t + AGP_t) + V_t + R_t + L_t - W_t$$

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 2004, 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 2.1;

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<sup>♦</sup> amended by Schedule 11

<sup>\*</sup> inserted by Schedule 11

\*RIE<sub>t</sub> means an amount in respect of the RAB Increase Equivalent in relevant year t, calculated in accordance with the provisions of paragraph 2.2;

\*AGP<sub>t</sub> means an amount in respect of the Additional Grant Proportion in relevant year t, calculated in accordance with the provisions of paragraph 2.4;

V<sub>t</sub> means an amount in respect of the Variable Track Usage Charge in Relevant Year t which is derived from the formula in paragraph 3;

E<sub>t</sub> means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4;

K<sub>t</sub> means an amount in respect of the Capacity Charge in Relevant Year t which is derived from the formula in paragraph 6;

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R<sub>t</sub> means an amount in respect of the Railway Safety Charge in Relevant Year t calculated in accordance with the provisions of paragraph 8;

L<sub>t</sub> means an amount (whether of a positive or negative value) allowed to be charged by Network Rail to the Train Operator in respect of the financial consequences to Network Rail in Relevant Year t following a Change of Law in accordance with the provisions of Part 3; \*and

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W<sub>t</sub>\* 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, RAB Increase Equivalent and Additional Grant Proportion\***

### *2.1 Fixed Track Charge Indexation\**

The Fixed Track Charge Indexation in relevant year t shall be derived from the following formula:

$$FTCI_t = 1 + \frac{(RPI_{t-1} - RPI_{2003})}{RPI_{2003}}$$

where:

FTCI<sub>t</sub> means the Fixed Track Charge Indexation in relevant year t;

RPI<sub>t-1</sub> means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and

RPI<sub>2003</sub> means the Retail Prices Index published or determined with respect to November 2003.

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\* deleted by Schedule 11

\* inserted by Schedule 11

## 2.2\* *RAB Increase Equivalent*

For the purposes of paragraph 1, an amount in respect of the RAB Increase Equivalent in relevant year t ( $RIE_t$ ) is an amount derived from the following formula:

$$RIE_t = RI_t \cdot \frac{F_t}{AF_t} \cdot FTCl_t$$

where:

$RI_t$  has the meaning ascribed to it in paragraph 2.3.1;

$F_t$  has the meaning ascribed to it in paragraph 1;

$AF_t$  means the Aggregate Fixed Charge in relevant year t; and

$FTCl_t$  is the Fixed Track Charge Indexation in relevant year t, calculated in accordance with paragraph 2.1,

but so that  $RIE_t$  shall be zero in respect of the relevant years commencing on 1 April

2006, 1 April 2007 and 1 April 2008.

## 2.3 $RI_t$

### 2.3.1 *Value of $RI_t$*

Subject to paragraph 2.3.2,  $RI_t$  shall be the amount which the Regulator specifies as

$RI$  in respect of relevant year t in a notice given on 10 March 2004.

### 2.3.2 *Notice*

A notice under paragraph 2.3.1 shall have no effect unless:

- (a) the Regulator is satisfied that all the conditions specified in paragraph 2.3.3 have been satisfied; and
- (b) it satisfies the requirements of paragraph 2.3.4.

### 2.3.3 *Conditions precedent to giving of notice*

The conditions referred to in paragraph 2.3.2(a) are:

- (a) the Regulator has received from Network Rail, by 29 February 2004, a written proposal, satisfactory to the Regulator, which states:
  - (i) the amount which Network Rail considers should be added to the RAB;
  - (ii) proposed values for  $RI$  in respect of the relevant years commencing on 1 April 2004 and 1 April 2005, being the amounts by which Track Charges should be reduced in such relevant years to take account of such increase in the RAB; and

- (iii) the reasoning by which Network Rail arrived at such amounts, including:
  - (A) information about the terms of any actual or proposed loan agreement, credit facility, securitisation or other financing arrangement entered, or to be entered into, by Network Rail after 12 December 2003; and
  - (B) such other information, calculations, projections or estimates as may have been requested by the Regulator; and
- (b) the Regulator has taken into account:
  - (i) Network Rail's proposal under paragraph 2.3.3(a);
  - (ii) the matters in respect of which duties are imposed on him under section 4 of the Act;
  - (iii) the tests specified in paragraph 15.21 of the 2003 Final Conclusions; and
  - (iv) the terms of any document submitted under paragraph 2.5.3(a) and, if such a document is submitted, the matters specified in paragraph 2.5.3(b).

#### 2.3.4 *Mandatory elements of notice*

A notice given under paragraph 2.3.1 must state:

- (a) values for RI in respect of the relevant years commencing on 1 April 2004 and 1 April 2005 which are the same as the values proposed by Network Rail under paragraph 2.3.3(a)(ii); and
- (b) that the Regulator has determined that the amount which Network Rail proposed should be added to the RAB under paragraph 2.3.3(a)(i) shall be added to the RAB.

#### 2.4 *Additional Grant Proportion*

For the purposes of paragraph 1, an amount in respect of the Additional Grant

Proportion in relevant year  $t$  ( $AGP_t$ ) is an amount derived from the following formula:

$$AGP_t = AG_t \cdot \frac{F_t}{AF_t} \cdot FTCl_t$$

where:

$AG_t$  means the amount (if any) specified by the Regulator as AG in respect of relevant year  $t$  in a notice given under paragraph 2.5.1;

$F_t$  has the meaning ascribed to it in paragraph 1;

$AF_t$  means the Aggregate Fixed Charge in relevant year  $t$ ; and

$FTCI_t$  is the Fixed Track Charge Indexation in relevant year  $t$ , calculated in accordance with paragraph 2.1,

but so that in every relevant year  $t$ ,  $RIE_t + AGP_t$  shall be greater than or equal to zero.

## 2.5 $AG_t$

### 2.5.1 Value of $AG_t$

Subject to paragraph 2.5.2,  $AG_t$  shall be the amount which the Regulator specifies as

$AG$  in respect of relevant year  $t$  in a notice given on 10 March 2004.

### 2.5.2 Notice

A notice under paragraph 2.5.1 shall have no effect unless:

- (a) the Regulator is satisfied that all the conditions specified in paragraph 2.5.3 have been satisfied; and
- (b) it satisfies the requirements of paragraph 2.5.4.

### 2.5.3 Conditions precedent to giving of notice

The conditions referred to in paragraph 2.5.2(a) are:

- (a) by 29 February 2004, the Regulator has received from Network Rail a document, whose contents have been agreed with the Strategic Rail Authority, which, if executed, would amend or replace the Existing Deed of Grant; and
- (b) the Regulator is satisfied:
  - (i) that if the document received by him under paragraph 2.5.3(a) were to be executed:
    - (A) Network Rail would receive Additional Grant Revenue; and
    - (B) no payment of any amount of grant payable under the Existing Deed of Grant as amended or replaced by such document would be:
      - (aa) subject to the performance by Network Rail or any other person of any obligation;
      - (bb) subject to the exercise by the Strategic Rail Authority or any other person of any discretion; or
      - (cc) contingent upon the happening of any event or circumstance, or any act or omission of any person; and
  - (ii) that it would be appropriate, having regard to:

- (A) the Additional Grant Revenue;
- (B) the matters in respect of which duties are imposed on him under section 4 of the Act; and
- (C) the terms of any proposal made by Network Rail under paragraph 2.3.3(a) and, if such a proposal is made, the matters specified in paragraph 2.3.3(b),

to give a notice under paragraph 2.5.1.

#### 2.5.4 *Notice: mandatory elements*

A notice given under paragraph 2.5.1 must:

- (a) have attached to it a copy of the whole of the Existing Deed of Grant as it would be amended or replaced by the document received from Network Rail under paragraph 2.5.3(a) (the “**Revised Deed of Grant**”); and
- (b) state a value of AG in respect of each relevant year in the control period, which:
  - (i) may be positive or negative; and
  - (ii) shall correspond to the difference between:
    - (A) the amount of grants payable under the Revised Deed of Grant; and
    - (B) the amount of grants payable under the Existing Deed of Grant,

in such relevant year.

## 2.6 *Notices, submissions and payment arrangements under paragraph 2*

### 2.6.1 *Notices and submissions under paragraphs 2.3 and 2.5: timing*

Where paragraph 2.3 or 2.5 provides for the Regulator to:

- (a) give a notice; or
- (b) receive a submission or document from Network Rail,

on or by a specified date, the Regulator may specify, by a notice given under this paragraph 2.6.1, such later date for:

- (i) the giving of such notice; or
  - (ii) the receipt of such submission or document,
- as he considers appropriate.

### 2.6.2 *Notices under paragraph 2.6.1: timing*

A notice referred to in paragraph 2.6.1 may be given at any time and from time to time.

*2.6.3 Notices under paragraph 2: service and publication*

Any notice contemplated or provided for under this paragraph 2 shall be:

- (a) given to Network Rail and the Train Operator; and
- (b) published in such manner as the Regulator considers appropriate.

*2.6.4 Invoicing and payment adjustments: post 1 April 2004 specification of  $RI_t$  or  $AG_t$*

Where a notice given under paragraph 2.3 or 2.5 is given on or after 1 April 2004:

- (a) the terms of invoicing and payment established by the parties to this contract shall be adjusted so as to give effect to the notice on and from 1 April 2004;
- (b) such adjustments may include the repayment by one party to the other of an amount overpaid or the giving of credit for any such overpayment; and
- (c) if the parties have not made the relevant adjustments by agreement within 30 days of the giving of the notice in question, the Regulator shall, upon the application of either party, be entitled to determine what adjustments are to be made and the adjustments so determined shall have effect.

### **3 Variable track 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:

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

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 \*2004,  $V_{it}$  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

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

#### 4 Traction Electricity Charge

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:

$$E_t = \sum C_i \cdot E_{gjt} \cdot UE_{ijgt} + \sum C_i \cdot EV_t \cdot UE_{ijgt}$$

where:

$C_i$  means the calibrated modelled consumption rate (in kWh *per* Train Mile in relation to electric multiple units and kWh *per* Gross Tonne Mile in relation to locomotive-hauled units) for train category i, shown in the Traction Electricity Price List;

$E_{gjt}$  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, in Relevant Year t, derived from the following formula:

$$E_{gjt} = E_{gjt-1} \left[ 1 + \frac{I_{t-1}}{100} \right]$$

where:

$I_{t-1}$  means the percentage change (whether of a positive or negative value) between the Index of Industrial Electricity Costs published or determined with respect to the quarter ending on 30 June in Relevant Year t-1 and the index published or determined with respect to the quarter ending on 30 June in year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2001,  $E_{gjt}$  shall have, in respect of each kWh, the value set out in the Traction Electricity Price List; and in relation to the next following Relevant Year  $E_{gjt-1}$  shall have the same value;

$EV_t$  means an amount for electrification asset usage (in pence per kWh) which is derived from the following formula:

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\* amended by Schedule 11

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

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 2001,  $EV_t$  shall have, in respect of each kWh, the value set out in the Traction Electricity Price List; and in relation to the next following Relevant Year  $EV_{t-1}$  shall have the same value;

$UE_{ijgt}$  means the actual volume of usage (in electrified Train Miles in relation to electric multiple units or Gross Tonne Miles in relation to locomotive hauled units) 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;

$\Sigma$  means the summation across all relevant train categories (i), tariff bands (j) and/or Geographic Areas (g), as appropriate;

“kWh” means kilowatt hours;

“tariff band” means the tariff zone and time band in which the train in question is operated;

“train category” means train type i used on the relevant route in question; and

“tariff zone”, “time band”, “train type” and “relevant route” have the meanings ascribed to them in the Traction Electricity Price List.

## 5 Modelled and actual rates of consumption

5.1 Within 90 days after the end of Relevant Year t, Network Rail shall calculate a supplementary amount  $S_t$ , payable by or to the Train Operator, which is derived from the following formula:

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

where:

$E_{gt}$  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:

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

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

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

where:

$C_i$  means the calibrated modelled consumption rate (in kWh *per* Train Mile in relation to electric multiple units and kWh *per* Gross Tonne Mile in relation to locomotive-hauled units) for train category  $i$ , shown in the Traction Electricity Price List;

$UE_{ijgt}$  means the actual volume of usage (in electrified Train Miles in relation to electric multiple units or Gross Tonne Miles in relation to locomotive hauled units) of trains operated by or on behalf of all operators in Geographic Area  $g$  of trains of train category  $i$ , in tariff band  $j$ , referred to in the Traction Electricity Price List in Relevant Year  $t$ , pursuant to the provision of Franchised Passenger Services; and

$E_{gjt}$  means an amount for traction current (in pence per kWh) determined in accordance with paragraph 4;

$\Sigma$  means the summation across all relevant train categories ( $i$ ) and all tariff bands ( $j$ ); and

$A_{gt}$  means the total actual electricity consumption (in kWh) in Geographic Area  $g$  for Franchised Passenger Services in the Relevant Year  $t$  assessed by Network Rail (as nearly as reasonably practicable) as being the appropriate proportion of the electricity consumption billed to Network Rail by its electricity suppliers in that area.

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

- (a) a statement of the amount  $S_t$  (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 for the time being of Network Rail confirming the accuracy of the calculation.

5.3 Within 30 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 5.2, the amount  $S_t$  shall be invoiced for payment as provided under this contract. If the amount  $S_t$  shall be positive, the invoice shall be issued by Network Rail and payable by the Train Operator. If the amount  $S_t$  shall be negative, the invoice shall be issued by the Train Operator and payable by Network Rail.

## 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:

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\* inserted by Schedule 11

$$K_t = \left[ \sum (P_{g_t} * T_{g_t}) \right] - CC_t$$

where:

$\sum$  means the sum across all Service Groups;

$P_{g_t}$  means the rate per Service Group g in respect of relevant year t shown in the List of Capacity Charge Rates and indexed in accordance with the following formula:

$$P_{g_t} = P_{g_{t-1}} \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

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 2004,  $P_{g_t}$  shall have the value for the rate per Service Group g shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following relevant year,  $P_{g_{t-1}}$  shall have the same value;

$T_{g_t}$  means the actual train miles run by Services in Service Group g in the relevant year t;

$CC_t$  means an amount (in lieu of an adjustment to the Fixed Track Charge) derived from the following formula:

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

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 2004,  $CC_t$  shall have the value shown for the Train Operator in Annex 2 to this Schedule; and in relation to the next following relevant year,  $CC_{t-1}$  shall have the same value; and

**“Service Group”**

means a collection of Services specified in column A of Appendix 1 of Schedule 8, 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, 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 relevant year t under paragraph 7.2;

$F_t$  has the meaning ascribed to it in paragraph 1; and

$AF_t$  means the Aggregate Fixed Charge in relevant year t.

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 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 the Regulator before the end of each relevant year in the control period.

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 the Regulator made in the 2003 Final Conclusions;
- (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 the Regulator, having regard to the matters:

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\* deleted by Schedule 11

\* inserted by Schedule 11

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

## **8 Railway Safety Charge**

- 8.1 For the purposes of this paragraph 8, the aggregate Railway Safety Charge means such reasonable amount as Network Rail, behaving with due efficiency and economy, shall incur in any Relevant Year in the discharge of its safety functions pursuant to Condition 6 of its Network Licence.
- 8.2 Network Rail shall disclose to the Regulator its best estimate of the aggregate Railway Safety Charge by 31 January (or any such later date as the Regulator may agree) of that Relevant Year. The Regulator shall then determine what proportion of such estimate properly falls within the provisions of paragraph 8.1, following due consultation with Her Majesty's Rail Inspectorate, SRA and such other persons or bodies as the Regulator may consider requisite or expedient.
- 8.3 For the purposes of paragraph 1, the term  $R_t$  means an appropriate proportion of the determined amount of the aggregate Railway Safety Charge in respect of year  $t$  which shall be recovered from the Train Operator, such appropriate proportion to be calculated pro rata to the share attributed to the Train Operator of the aggregate total Fixed Track Charge for Relevant Year  $t$ .

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

- 9.1\* No supplement to the Traction Electricity Price List, Track Usage Price List, and no change to the 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 the Regulator shall have given his consent to the supplement \*or change.
- 9.2 Either of the Train Operator and Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Price List shall be supplemented so as to include prices and/or modelled consumption rates and/or appropriate discounts in respect of regenerative braking for any additional train category or 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; or
- (c)\* the List of Capacity Charge Rates shall be amended so as to take account of changes in the patten and number of Services.

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\* amended by Schedule 11

- 9.3 Any proposition of the 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 shall otherwise agree, paragraph C6 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 as respects which duties are imposed on the Regulator by section 4 of the Railways Act 1993; and
  - (b) the criteria which the Regulator 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 the Regulator 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 the Regulator.
- 9.9 If the Regulator gives his consent to:
- (a) the decision of an arbitrator appointed under paragraph 9.4; or
  - (b)\* a supplement or change to the Traction Electricity Price List or the Track Usage Price List, or a change to the List of Capacity Charge Rates, agreed between the parties,
- the supplement in question shall have effect from such date as the Regulator shall determine by notice to the parties.

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\* inserted by Schedule 11

\* amended by Schedule 11

## 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 Incremental Output Statement Charge;
  - (v) the Railway Safety Charge;
  - (vi) the Additional Permitted Charges; and
  - (vii) any amounts due in respect of  $L_t$  or  $P_t$ , as each of those terms is defined in paragraph 1 of Part 2,
- 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) Any invoice issued by Network Rail or the Train Operator under paragraph 5.3 of Part 2 (relating to modelled and actual rates of electricity consumption) shall be payable by the party to whom it is addressed within 21 days of the relevant invoice date.
- (d) Network Rail shall pay or procure the payment to the Train Operator of any amounts due in respect of  $L_t$  or  $P_t$  (each as defined in paragraph 1 of Part 2 attributable to any Period as invoiced by the Train Operator on or after the expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.

### 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;
  - (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 that 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 fifty-six 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 twenty-one 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 ninety 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 twenty-one 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 the Regulator of the proposed

amendments to the Default Train Consist Data and, subject to the Regulator not objecting to the proposed amendments within fourteen days (the “14 day period”) of receipt of the notification by the Regulator, such amendments shall take effect from the first day of the next Period following the earlier of the Regulator confirming his consent to the proposed amendments and the expiry of the 14 day period. If the Regulator objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with the Regulator 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: CHANGE OF LAW**

### **1. General**

The following paragraphs of this Part 3 shall apply for the purpose of determining the value (if any) of the term  $L_t$  in Part 2.

### **2. Relevant Amounts**

#### **2.1 Inclusion in formula**

If a Change of Law occurs after the date upon which this contract shall have been entered into,  $L_t$  in any Relevant Year  $t$  shall be the Relevant Amount.

#### **2.2 Meaning of Relevant Amount**

The Relevant Amount is such reasonable amount as Network Rail, behaving with due efficiency and economy (and in accordance with Clause 4), may incur in (or save by reason of) complying, during Relevant Year  $t$ , with requirements resulting directly and necessarily from the Change of Law and which it is reasonable be borne by the Train Operator and not by Network Rail. The question whether it is reasonable that any such amount should be so

borne shall be determined in accordance with any relevant criteria published by the Regulator.

### **3. Notification of Change of Law involving Material Amounts**

- 3.1 As soon as reasonably practicable after becoming aware of any Change of Law which will or may reasonably be expected to involve the expenditure or saving by Network Rail of a Material Amount, Network Rail shall:
- (a) notify the Train Operator and the Regulator of the change in question and of its assessment of the Relevant Amount;
  - (b) provide to the Train Operator such information as the Train Operator shall reasonably require, in a form and amount of detail which is sufficient to enable the Train Operator to make a proper assessment of the effect of the Change of Law and of the assessment referred to in paragraph 3.1(a); and
  - (c) provide to the Regulator all information required in that respect by the Regulator.
- 3.2 Without prejudice to paragraph 5 and subject to paragraph 6, where an obligation to notify the Regulator arises under this paragraph 3:
- (a) no agreement or determination of the kind referred to in paragraph 4 shall have effect until 28 days after the Regulator shall have been notified of the agreement or determination in question; and
  - (b) if the Regulator shall have exercised his right to call in the determination under paragraph 5, no such agreement or determination shall have effect.

### **4 Value of Relevant Amount**

The amount referred to in paragraph 2 for inclusion in the term  $L_t$  shall (save in the circumstances referred to in the remaining paragraphs of this Part 3) be such amount as may be agreed between Network Rail and the Train Operator or as may be determined in accordance with any procedure for the arbitration or settlement of disputes provided for in this contract.

### **5 Regulator's right to call in determination of Relevant Amount**

- 5.1 Notwithstanding paragraphs 3 and 4, if the Regulator shall have given notice to the parties that:
- (a) in his discretion he considers that it is appropriate, by reason of the significance of any Change of Law (and whether or not such Change of Law may give rise to changes of a Material Amount), that he should call in the determination of the value (if any) of the term  $L_t$  insofar as the value of that term is or may be affected by the Change of Law in question, and determine it himself; and
  - (b) he has determined that he will so determine it himself,
- the determination in question shall be made by the Regulator.
- 5.2 If the Regulator shall have given a notice under paragraph 5.1, the parties shall provide to him any information he may require relating to the Change of Law and its financial consequences.

- 5.3 Upon service by the Regulator of a notice of the kind referred to in paragraph 5.1, the parties shall discontinue any proceedings of the kind referred to in paragraph 4 which might otherwise result in a determination of the value of the term  $L_t$ . The Regulator's determination may make provision as to the proportions in which the parties shall bear the costs of the proceedings in question.

## **6 Limitation on the determination of the Relevant Amount by the Regulator**

- 6.1 No determination by the Regulator of the kind referred to in paragraph 5 shall, with respect to Relevant Year  $t$  in which it is made (or any previous year), operate so as to substitute the value determined by the Regulator for any value agreed by the parties or determined under paragraph 4:
- (a) before the date upon which the parties shall have been notified of the decision of the Regulator to call in the determination; and
  - (b) in the case of a Change of Law involving a Material Amount, after expiry of the notice period provided for in paragraph 3.2.
- 6.2 The Regulator's determination shall have effect in substitution for any value determined by the parties with effect for Relevant Year  $t+1$  and following years.

## **7 Procedure in a called in determination**

The provisions of Part E of the Access Dispute Resolution Rules shall apply *mutatis mutandis*<sup>1st</sup> to the procedure for any determination by the Regulator under Part 3.

### **\*PART 3A: 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 211 of the Transport Act 2000 specified in the 2<sup>nd</sup> Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 December 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail as to be paid by the Strategic Rail Authority to Network Rail; and
- (b) the Payment Dates are 1 April and 1 October in each of the years 2004, 2005, 2006, 2007 and 2008, or such other dates for the payment of such grants as may be stipulated in the 2<sup>nd</sup> Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 December 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail.

##### *1.2 Indexation*

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\* inserted by Schedule 11

For the purposes of this Part 3A, the Grant Amount for each Payment Date is the Basic Value specified in the 2<sup>nd</sup> Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 December 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail as to be paid on that date, adjusted in accordance with any applicable indexation provisions of the 2<sup>nd</sup> Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 December 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail.

### 1.3 *No Revised Deed of Grant*

If there is no Revised Deed of Grant, paragraphs 1.1 and 1.2 shall be construed as if each reference in them to “the Revised Deed of Grant” were a reference to “the Existing Deed of Grant”.

## 2. **GRANT DILUTION**

### 2.1 *Meaning of Grant Dilution*

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

- (a) the Strategic Rail Authority 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 Strategic Rail Authority 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 Grant Dilution Date*

In respect of any Grant Dilution:

- (a) if the Grant Dilution is of the kind referred to in paragraph 2.1(a), the Grant Dilution Date shall be the Payment Date in respect of which the Strategic Rail Authority fails to pay the whole or any part of the Grant Amount due on that date; and
- (b) if the 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 Grant Dilution Date.

### 3. GRANT COMPENSATION AMOUNT

#### 3.1 *Payment obligation*

If a Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and the Regulator that a 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 Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail a Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the Grant Dilution Date; and
  - (iii) if the Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail a Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each Grant Dilution Date.

#### 3.2 *Calculation*

Any 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 Grant Compensation Amount;

GA<sub>p</sub> means the Grant Amount for the Payment Date which is the same date as the Grant Dilution Date;

P means:

- (a) if the 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 Grant Dilution Date, that it has received from the Strategic Rail Authority; and
- (b) if the Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F<sub>t</sub> has the meaning ascribed to it in paragraph 1 of Part 2 of this Schedule 7; and

AF<sub>t</sub> means the Aggregate Fixed Charge in relevant year t.

**PART 4: PROPERTY****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 issued by Network Rail to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information in respect of the period covered by the invoice:

- (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 comprised in units for each service (i) so charged;
- (c) the rate of Traction Electricity Charge and the number of Train Miles or Gross Tonne Miles comprised in units for each service (i) so charged;
- (d) not used\*
- (e) not used\*
- (f) the Railway Safety Charge;
- (g) the amount of any sum payable or receivable in respect of the term  $L_t$  (Change of Law), showing separately amounts in respect of each Change of Law if more than one;
- (h) not used\*
- (i) the amount of any sum  $S_t$  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

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\* deleted by Schedule 11

\* deleted by Schedule 11

- (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**

The Regulator 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 2009 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 2009.

### **2. Access charges reviews capable of coming into operation before 1 April 2009**

#### *2.1 Review of specific activities*

The Regulator may carry out an access charges review of any relevant part or parts of this contract at any time if he is satisfied that it is necessary or expedient to do so in order to take account (and only to take account) of:

- (a) Network Rail's expenditure on signalling and any associated works;
- (b) expenditure on compensation payable for Restrictions of Use under Schedule 4 to this contract or under the corresponding provisions in other passenger track access contracts; or
- (c) increases in cumulative expenditure by Network Rail on renewal and enhancement of the West Coast Main Line (comprising both project and regional renewal costs) over the amounts specified in the line labelled "Total WCML expenditure" in Table 7.6 of the 2003 Final Conclusions, which:
  - (i) have the effect that such expenditure in the control period will be higher by 15 per cent or more than the amounts so specified; or
  - (ii) are, in the Regulator's opinion, likely to have that effect.

#### *2.2 Contractual arrangements on West Coast Main Line*

The Regulator may carry out an access charges review in relation to any relevant part or parts of this contract at any time if he considers it necessary or

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♦ amended by Schedule 11

\* inserted by Schedule 11

expedient to do so in order to take account (and only to take account) of the obligation of Network Rail to pay any amount:

- (a) to or for the benefit of West Coast Trains Limited in connection with the failure of Network Rail to perform any obligation owed to West Coast Trains Limited, including as a result of any liability of West Coast Trains Limited or any of its affiliates to any other person; and
- (b) in connection with the discharge of any of its obligations to West Coast Trains Limited in respect of the renewal or enhancement of the West Coast Main Line or the acceptance into service of any rolling stock used or to be used on the West Coast Main Line.

### 2.3 *Exceptional circumstances*

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

- (a) the cumulative expenditure of Network Rail on:
  - (i) operation, maintenance and renewal of the Network; and
  - (ii) those enhancements of the Network on which expenditure has been allowed in the 2003 Final Conclusions, as specified in the lines labelled “WCRM enhancements” and “Other enhancements” in Annex D to the 2003 Final Conclusions,

has been, in any period beginning on 1 April 2004 and ending on a relevant date,

higher or lower by 15 per cent or more than the assumed expenditure for that period; or

- (b) he considers that:
  - (i) 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; and
  - (ii) in consequence there are compelling reasons to initiate an access charges review, having due regard to his duties under section 4 of the Act, including in particular the duty to act in a manner which he 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 the Regulator has functions under or by virtue of Part I of the Act.

### 2.4 *Review of the elements of charges*

The Regulator may carry out an access charges review in relation to any relevant part or parts of this contract at any time if he considers that it is necessary or expedient to do so:

- (a) in respect of the Traction Electricity Charge, in order to allow Train Operators to purchase electricity from competing suppliers or to facilitate on-train metering;
- (b) in order to establish appropriate incentives for improvements to track and vehicle quality or to the efficiency of the track/vehicle interface;
- (c) in order to establish appropriate incentives for the efficient use of the Network; or
- (d) in order to reflect a material change or proposed material change in the policy or practice of Network Rail concerning Restrictions of Use.

### **3. Definitions**

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

3.2 In this Part 7:

“access charges review” has the meaning ascribed to it by Schedule 4A to the Act;

“assumed expenditure” means, in relation to any period beginning on 1 April 2004 and ending on a relevant date, the cumulative expenditure of Network Rail on operation, maintenance, renewal and enhancement of the Network which is specified in the line labelled “Total Expenditure” in Annex D to the 2003 Final Conclusions;

“excluded change”, in relation to paragraph 2.3(b)(i), means a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under section 211 of the Transport Act 2000;

“expenditure”, in relation to paragraph 2.3(a) and to the definition of “assumed expenditure” in this Part 7, includes:

- (a) compensation payable by Network Rail for Restrictions of Use under Schedule 4 to this contract and under the corresponding provisions in all other relevant access agreements; and
- (b) payments by Network Rail under Schedule 8 to this contract and under the corresponding provisions in all other relevant access agreements;

“relevant date” means any of: 31 March 2006, 31 March 2007, 31 March 2008 or 31 March 2009; and

“West Coast Main Line” means the following route sections of the Network:

## ANNEX A

Route Section	From	To	Lines
1	Euston	Rugby Trent Valley Junction	All platforms and running lines from Euston to Camden. All running lines and loops from Camden to Hanslope Junction to Rugby Trent Valley Junction (direct). Goods and associated running lines from West London Junction and Harlesden Junction to Brent Junction.
2	Rugby Trent Valley Junction	Weaver Junction	All running lines and loops from Rugby Trent Valley Junction via Nuneaton, Tamworth, Lichfield, Stafford, Madeley and Crewe to Weaver Junction. Independent Lines at Crewe.
3	Weaver Junction	Gretna Junction	All running lines and loops from Weaver Junction, via Acton Grange Junction, Warrington Bank Quay, Winwick Junction (direct), Wigan North Western, Preston, Lancaster, Oxenholme and Carlisle to Gretna Junction. Helsby lines from Acton Grange Junction to Warrington Bank Quay via Arpley and Windsor Bridge to Euxton via Bolton.
4	Gretna Junction	Glasgow Central	All running lines and loops from Gretna Junction, via Lockerbie, Carstairs, Law Junction, Shieldmuir (direct), Motherwell, Uddingston (direct), Newton, Rutherglen West Junction and Eglinton Street Junction to Glasgow Central.
5	Hanslope Junction	Rugby	All running lines and loops via Northampton.
6	Rugby Trent Valley Junction	Trent Valley No1 Junction	All running lines and loops from Rugby via Coventry, Birmingham International, Grand Junction, Birmingham New Street, Soho North and South Junctions, Dudley Port, Wolverhampton and Penkridge to Stafford.
7	Crewe	Manchester Piccadilly	All running lines and loops from Crewe via Wilmslow and Stockport to Manchester Piccadilly.
8	Wilmslow	Slade Lane Junction	All running lines via Styal (excluding Manchester Airport branch and South spur).
9	Weaver Junction	Liverpool Lime Street	All running lines and loops from Weaver Junction via Runcorn, Allerton and Edge Hill to Liverpool Lime Street.

Route Section	From	To	Lines
10	Stechford	Bushbury Junction	All running lines and loops from Stechford via Aston, Bescot, Portobello Junction to Bushbury Junction (direct).
11	Norton Bridge	Stone	All running lines.
12	Colwich Junction	Cheadle Hulme	All running lines and loops from Colwich via Meaford Crossing, Stoke on Trent and Macclesfield to Cheadle Hulme.
13	Carstairs South Junction and Carstairs Station Junction	Haymarket East Junction	All running lines and loops from Carstairs South Junction and Carstairs Station Junction via Auchengray and Slateford to Haymarket East Junction (exclusive).
14	Coventry North Junction	Nuneaton South Junction	All running lines and loops via Bedworth.
15	Preston	Blackpool North	All running lines and loops.
16	Crewe	Kidsgrove	All running lines and loops via Alsager.
17	Liverpool Lime Street	Manchester Piccadilly	All running lines via Earlestown or via Warrington Central and Heaton Norris Junction to Salford crescent via Ashton Moss.”

## PART 8: ADJUSTMENT OF ACCESS RIGHTS AND STRUCTURE OF CHARGES

### 1 Definitions

In this Part 8, unless the context otherwise requires:

**“Access Right”**

means, in relation to an access contract, permission to use track for the purpose of the operation of trains on that track by a beneficiary and rights ancillary thereto which are provided or charged for in the contract in question;

<b>“Affected Person”</b>	means, in relation to Qualifying Information, the person to whose affairs the information relates;
<b>“beneficiary”</b>	has the meaning ascribed to it by section 17(7) of the Act;
<b>“Chairman”</b>	means the Chairman of the Industry Committee established pursuant to the Access Dispute Resolution Rules;
<b>“Confidentiality Direction”</b>	means a direction of the Chairman of the kind referred to in paragraph 9.3(a);
<b>“Confidentiality Undertaking”</b>	means an undertaking of the kind referred to in paragraph 11.1;
<b>“Corresponding Access Contract”</b>	means an access agreement which includes provisions in the same or substantially the same terms as this Part 8;
<b>“Corresponding Notice”</b>	means a notice from Network Rail which states that Network Rail believes that, in order to provide a response analogous to a relevant response to another person who is party to a Track Access Contract: <ul style="list-style-type: none"> <li>(a) Network Rail believes that it shall be necessary for it to disclose to that person information which it has acquired in relation to the affairs of the Train Operator; and</li> <li>(b) such disclosure would or might, in Network Rail’s reasonable opinion, seriously and prejudicially affect the interests of the Train Operator;</li> </ul>
<b>“Costs”</b>	include a fair allocation of Network Rail’s administrative and other regional and national costs of carrying on its business;
<b>“Determination”</b>	in relation to the Chairman means his Directions of the kind referred to in paragraph 9.3(a);
<b>“Notice of Objection”</b>	means a notice given by an Affected Person to Network Rail of the kind referred to in paragraph 9.1(e)(ii);

<b>“Period for Objections”</b>	means the period specified in paragraph 9.1(e)(ii);
<b>“Qualifying Information”</b>	means information which Network Rail has acquired in relation to the affairs of any Affected Person pursuant to an access contract between Network Rail and that person;
<b>“Quality Adjustment”<sup>♦</sup></b>	means the alteration of any aspect of the Access Rights of the Train Operator (whether in relation to performance, the quality or condition of the Network, the liability of any person to any other person, or in any other respect) other than a <i>Quantum</i> Adjustment in a manner which is not inconsistent with the Access Conditions;
<b>“<i>Quantum</i> Adjustment”</b>	means the surrender of any Access Right of the Train Operator in question and the grant to him of any other Access Right;
<b>“Released Capacity”</b>	means track capacity made available to Network Rail as a consequence of the making of a specified relevant surrender or a specified relevant adjustment, and “release of capacity” shall be construed accordingly;
<b>“Relevant Adjustment”</b>	means a Quality Adjustment or a <i>Quantum</i> Adjustment, and “adjust” shall be construed accordingly;
<b>“Relevant Criteria”</b>	means the criteria which the Regulator shall have most recently published (and identified as such) in relation to the surrender or adjustment of Access Rights;
<b>“Relevant Enquiry”</b>	means an enquiry made of Network Rail by the Train Operator under paragraph 2.1;
<b>“Relevant Financial Consequences”</b>	means the cost savings or Costs incurred referred to in paragraph 4.1(a);
<b>“Relevant Information”</b>	means information which complies with the provisions of paragraph 4.1;

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<sup>♦</sup> amended by Schedule 11

<b>“Relevant Response”</b>	means Network Rail’s answer to a Relevant Enquiry under paragraph 2.2;
<b>“Relevant Surrender”</b>	means the surrender to Network Rail of Access Rights possessed by the Train Operator;
<b>“Specified Relevant Adjustment”</b>	means a Relevant Adjustment specified in a Relevant Enquiry;
<b>“Specified Relevant Surrender”</b>	means a Relevant Surrender specified in a Relevant Enquiry; and
<b>“Track Access Contract”</b>	means an access contract which confers permission to use track of which Network Rail is the facility owner.

## **2 Obligation of Network Rail to answer Train Operator’s enquiries**

- 2.1 The Train Operator may at any time make an enquiry of Network Rail concerning a Relevant Surrender or a Relevant Adjustment.
- 2.2 Network Rail shall provide the Train Operator with a Relevant Response within a reasonable time of the making of a Relevant Enquiry.

## **3 Contents of Relevant Enquiries**

Each Relevant Enquiry shall contain:

- (a) a specification of the Access Rights (if any) which the Train Operator, at that time, is aware that he may be willing to surrender to Network Rail;
- (b) a specification of the Access Rights (if any) which the Train Operator, at that time, is aware that he may be willing to adjust;
- (c) a request that Network Rail provides the Train Operator with Relevant Information in relation to:
  - (i) any Specified Relevant Surrender; and
  - (ii) any Specified Relevant Adjustment; and
- (d) a specification of the dates with effect from which the Specified Relevant Surrender or Specified Relevant Adjustment may be expected to take place.

## **4 Information to be provided by Network Rail**

### **4.1 Relevant Information**

Subject to paragraphs 9 and 11, the Relevant Information which Network Rail shall provide in each Relevant Response shall be a statement of:

- (a) the Costs which Network Rail may reasonably expect to save or incur if any Specified Relevant Surrender or Specified Relevant Adjustment is made;

- (b) the times at which and the periods over which the Relevant Financial Consequences will have effect;
- (c) the steps which Network Rail would expect to take to achieve the Relevant Financial Consequences within the times referred to in paragraph 4.1(b) and the opportunities which Network Rail has to accelerate or postpone the effect of the relevant financial consequences;
- (d) the extent to which any Released Capacity may reasonably be expected to be used:
  - (i) by any other operator of trains; and
  - (ii) in relation to the maintenance, re-alignment, re-configuration, repair or renewal of any part of the Network;
- (e) the reasonably foreseeable financial effects on Network Rail of the release of capacity;
- (f) Network Rail's proposals as to the amounts which should be payable by the Train Operator under this contract as a consequence of the making of any Specified Relevant Surrender or Specified Relevant Adjustment and its reasons for them, including in relation to the sharing between Network Rail and the Train Operator of the financial effects of the surrender or adjustment in question; and
- (g) whether any other person shall have made an enquiry of Network Rail pursuant to an agreement between that person and Network Rail in relation to the surrender or adjustment of access rights under that agreement which, if made, might reasonably be expected to affect the interests of the Train Operator in relation to the Specified Relevant Surrender or Specified Relevant Adjustment in question,

together with such other information as the Train Operator shall reasonably request, in each case in a form and amount of detail which is sufficient to enable the Train Operator to make a proper assessment of the effect of the making of the Specified Relevant Surrender or Specified Relevant Adjustment in question.

#### **4.2 Pre-existing obligations of confidence**

Nothing in this paragraph 4 shall require Network Rail to break an obligation of confidence which arose before 1 April 1994.

### **5. Consultation**

#### **5.1 Other train operators**

In preparing each Relevant Response, Network Rail shall:

- (a) except to the extent otherwise requested by the Train Operator and in accordance with such (if any) conditions as the Train Operator shall specify; and
- (b) subject to paragraphs 9, 10 and 11,

carry out such consultation of other operators of trains and persons whom it has reason to believe shall intend to become operators of trains, as shall be

necessary or expedient so as to enable Network Rail properly to inform itself of the effects on the capacity of the track in question which the Specified Relevant Surrender or Specified Relevant Adjustment in question, if made, shall be likely to have.

## **5.2 Obligation to co-operate**

If:

- (a) Network Rail shall have made any enquiry of the Train Operator either in relation to a Relevant Enquiry made by the Train Operator under this Part 8 or pursuant to the relevant provisions of a corresponding access agreement; and
- (b) the enquiry is one which the Train Operator may reasonably be expected to answer,

the Train Operator shall provide Network Rail with an answer to the enquiry to the extent and in the amount of detail which is reasonable in the circumstances. Information provided in any such response shall be treated as Qualifying Information and this Part 8 shall apply accordingly.

## **6. Costs of providing Relevant Response**

### **6.1 Estimates**

Network Rail shall:

- (a) if so requested by the Train Operator and as soon as reasonably practicable after the request, provide the Train Operator with:
  - (i) its best estimate of its Costs of providing a Relevant Response; and
  - (ii) having provided such an estimate, its best estimate of the costs which it has incurred in preparing the Relevant Response in question up to the date of the request or any other date specified in the request; and
- (b) not, in preparing a Relevant Response, exceed the amount of the estimate without first notifying and obtaining the consent of the Train Operator.

### **6.2 Payments of Costs of Relevant Responses**

The Train Operator shall:

- (a) be entitled to make any request of the kind referred to in paragraph 6.1 at the time of making the Relevant Enquiry in question and at any time and from time to time thereafter, and the failure of the Train Operator to make any such request on any occasion shall not prejudice its right to make such a request on a later occasion;
- (b) pay to Network Rail an amount calculated under paragraph 6.3; and
- (c) be entitled to receive from Network Rail a certificate from its auditors verifying that the Costs referred to in paragraph 6.3 have been incurred in providing the Relevant Response.

### **6.3 Division and payment of Costs**

The amount referred to in paragraph 6.2(b) shall be an amount equal to 75 per cent of the amount of those of Network Rail's reasonable Costs of providing the Relevant Response which exceed £1000 (excluding VAT). Such amount shall be payable not later than 30 days after the later of:

- (a) the date upon which the Relevant Response shall be provided; and
- (b) the date upon which Network Rail requests payment of the amount in question in an invoice which is sufficient for the purposes of Value Added Tax.

## **7 Train Operator's acceptance of Relevant Response**

### **7.1 Right to elect to surrender or adjust Access Rights**

If, following receipt of a Relevant Response, the Train Operator:

- (a) wishes to make a Specified Relevant Surrender or have a Specified Relevant Adjustment effected; and
- (b) accepts the amounts payable and sharing of the Relevant Financial Consequences proposed by Network Rail in the Relevant Response,

he shall be entitled to do so:

- (i) upon giving to Network Rail a notice to that effect not later than 60 days after the date upon which he receives the Relevant Response in question; and
- (ii) unless the Regulator shall otherwise determine, so as to have effect not later than the date upon which the Regulator shall have given his consent to the making of the Relevant Surrender or Relevant Adjustment in question.

### **7.2 Regulator's consent to surrender or adjustment of Access Rights**

- (a) No Relevant Surrender or Relevant Adjustment shall have effect without the consent of the Regulator.
- (b) Network Rail and the Train Operator shall use all reasonable endeavours to procure that the Regulator is furnished with sufficient information and evidence as he shall require to determine whether or not to give his consent to the making of the Relevant Surrender or Relevant Adjustment in question. Such information and evidence shall:
  - (i) include the text of any necessary modifications of this contract; and
  - (ii) be provided to the Regulator as soon as practicable after the date of the giving of the notice under paragraph 7.1.

## **8 Right to refer to arbitration**

### **8.1 Reference to arbitration**

If, having received a Relevant Response, the Train Operator shall be dissatisfied with it (whether in relation to the amounts payable or sharing of benefits proposed by Network Rail or in any other respect), he shall be

entitled, by notice to Network Rail, to refer the matter to an arbitrator for determination.

## 8.2 Selection of arbitrator

The arbitrator shall be chosen by agreement between Network Rail and the Train Operator. If they shall have failed to agree on the arbitrator to be appointed by a date which is 30 days after the giving of a notice by the Train Operator under paragraph 8.1, the arbitrator shall be chosen by the Regulator on the application of either Network Rail or the Train Operator.

## 8.3 Arbitrator's remit and powers and confidentiality of award

### *Remit and powers*

- (a) The arbitrator's remit shall be that he shall:
- (i) reach a decision which is fair and reasonable;
  - (ii) have due regard to:
    - (1) the matters as respects which duties are imposed on the Regulator by section 4 of the Act; and
    - (2) Relevant Criteria;
  - (iii) not make an award which is inconsistent with any provision of the Network Code;
  - (iv) have the power:
    - (1) to give Directions as to the procedure to be followed in the arbitration, including in relation to the making of any written or oral submissions and the extent to which any evidence or other submissions made by one party to the arbitration shall be disclosed to the other; and
    - (2) to make such orders as he shall think fit in relation to the proportions of the costs of the arbitration (assessed in such manner as he shall determine) which shall be borne by either or both of the parties;
  - (v) issue his decision as to:
    - (1) whether the Train Operator should be entitled to make any Relevant Surrender or have any Relevant Adjustment given effect; and, if so:
    - (2) what the Relevant Surrender or Relevant Adjustment should be;
    - (3) what should be the amounts payable by the Train Operator under this contract as a consequence of the making of the Relevant Surrender or Relevant Adjustment in question, including the sharing between Network Rail and the Train Operator of the financial effects of the surrender or adjustment in question;

- (4) when the Relevant Surrender or Relevant Adjustment in question should have effect;
  - (5) what modifications of the provisions of this contract shall be required to give effect to his decision; and
  - (6) such other matters as he shall consider relevant to the proper determination of the reference; and
- (vi) give his reasons.

*Confidentiality of arbitrator's award*

- (b) Notwithstanding that the parties may have elected to adopt the whole or any part of Part C of the Access Dispute Resolution Rules to apply in the arbitration, paragraph C6 of those rules shall not apply.

**8.4 Provision of information etc, compliance with Directions and binding nature of arbitrator's decision**

Network Rail and the Train Operator shall:

- (a) use all reasonable endeavours to procure that the arbitrator is furnished with sufficient information and evidence to determine the matter in question as soon as reasonably practicable after the date of the reference;
- (b) be bound by the lawful Directions of the arbitrator; and
- (c) comply with any decision of the arbitrator.

**8.5 Right of Train Operator to have Access Rights adjusted subject to consent of the Regulator**

If the arbitrator shall have determined that the Train Operator should be entitled to make any Relevant Surrender or have any Relevant Adjustment given effect:

- (a) the Train Operator shall give notice to Network Rail as to whether it elects to exercise that entitlement; and
- (b) if the Train Operator gives notice under paragraph 8.5(a) of an election to exercise such an entitlement, he shall send a copy of the arbitrator's decision to the Regulator.

A notice under paragraph 8.5(a) shall be given within 60 days of the date of the arbitrator's decision, and, if not given within that time, the Train Operator shall lose the entitlement in question.

**8.6 Regulator's consent**

- (a) No Relevant Surrender or Relevant Adjustment shall have effect without the consent of the Regulator.
- (b) The arbitrator's decision (including the modifications contemplated by paragraph 8.3(a)(v)(5)) shall have effect upon the date which the Regulator shall have given his consent to the making of the Relevant Surrender or Relevant Adjustment in question, or such other date as the Regulator shall by notice to the parties have specified for the purpose of this paragraph 8.6.

## **8.7 Obligation of Network Rail to give effect to adjustment of Access Rights**

If the Regulator shall give his consent to the making of the Relevant Surrender or Relevant Adjustment determined by the arbitrator, Network Rail shall:

- (a) give effect to it in accordance with the terms of the arbitrator's decision; and
- (b) send to the Regulator a copy of any necessary modifications of this contract.

## **9 Confidentiality**

### **9.1 Affected Persons and their interests**

- (a) Notice to Train Operator of confidentiality considerations

If, having received a Relevant Enquiry, Network Rail shall have reasonable grounds for believing that, in order to provide the Relevant Response:

- (i) it shall be necessary for it to disclose to the Train Operator any Qualifying Information; and
- (ii) such disclosure would or might, in Network Rail's reasonable opinion, seriously and prejudicially affect the interests of the Affected Person;

Network Rail shall give notice to that effect to the Train Operator.

- (b) Train Operator's right to elect for Relevant Response without Qualifying Information

Having received a notice from Network Rail under paragraph 9.1(a), the Train Operator shall be entitled, by notice given to Network Rail, to elect either:

- (i) that the Relevant Response be provided to him without the Qualifying Information; or
- (ii) that Network Rail should give notice to the Affected Person in question under paragraph 9.1(d) and thereafter comply with the procedures established in this paragraph 9.

Network Rail shall not proceed with its preparation of the Relevant Response until the Train Operator shall have made its election.

- (c) Relevant Response without Qualifying Information

If the Train Operator makes an election under paragraph 9.1(b)(i):

- (i) Network Rail shall proceed to prepare and provide the Relevant Response so as to omit the Qualifying Information; and
- (ii) if, having received a Relevant Response of the kind referred to in sub-paragraph 9.1(c)(i), the Train Operator wishes Network Rail to revise it so as to include any Qualifying Information, it shall be entitled to do so by notice to Network Rail.

If the Train Operator gives notice to Network Rail under paragraph 9.1(c)(ii), Network Rail shall proceed to give notice to the Affected Person in question

under paragraph 9.1(d) and thereafter comply with the procedures established in this paragraph 9.

(d) Relevant Response with Qualifying Information

If the Train Operator makes an election under paragraph 9.1(b)(ii), Network Rail shall give notice to the Affected Person that it has grounds for a belief of the kind referred to in paragraph 9.1(a).

(e) Contents of notice to Affected Person

The notice given to the Affected Person under paragraph 9.1(d) shall be accompanied by:

- (i) a statement of the information which Network Rail considers it necessary to disclose; and
- (ii) statement to the effect that unless the Affected Person gives notice to Network Rail within 21 days of his receipt of the notice that he objects to the disclosure in question, that person shall have lost the right to object to its disclosure.

(f) Entitlement of Network Rail to include Qualifying Information if no Notice of Objection.

Subject to paragraph 4.2, if no Notice of Objection shall have been given to Network Rail within the Period for Objections, Network Rail shall be entitled to include the Qualifying Information in the Relevant Response.

**9.2 Discretion of Chairman of Industry Committee to order confidentiality**

- (a) If Network Rail shall have received a Notice of Objection within the Period for Objections, Network Rail shall immediately give notice of that fact to the Train Operator and the Chairman.
- (b) The notice given to the Train Operator under paragraph 9.2(a) shall not contain any indication as to the identity of the Affected Person, whether by stating his name, the nature of his business or any information which may enable the Train Operator to determine his identity.
- (c) The notice given to the Chairman shall be accompanied by:
  - (i) a copy of the Notice of Objection;
  - (ii) an explanation by Network Rail as to its reasons for the belief referred to in paragraph 9.1(a); and
  - (iii) a request for Directions of the kind referred to in paragraph 9.2(d).
- (d) The parties shall comply with such Directions which the Chairman shall give to them in relation to the preservation of the positions of the parties (including the Affected Person) and the confidentiality of the Qualifying Information pending the Determination of the matter. No such Directions shall have effect for a period which is longer than 90 days without being renewed by the Chairman.

### **9.3 Chairman's Directions as to preservation of confidentiality of Qualifying Information**

- (a) In a case to which paragraph 9.2 applies, and subject to paragraph 4.2, Network Rail shall be entitled to include Qualifying Information in a Relevant Response except where directed not to do so by the Chairman, to the extent stated and subject to such conditions (if any) as shall be specified in the Confidentiality Direction.
- (b) No Relevant Response containing Qualifying Information shall be given until after the expiry of the period specified by the Regulator in any Directions of the kind referred to in paragraph 9.2(d).

### **9.4 Grounds on which the Chairman may order confidentiality**

A Confidentiality Direction shall only have effect if:

- (a) it is stated by the Chairman to have been given on the grounds that:
  - (i) the disclosure to the Train Operator of the Qualifying Information in question would or might seriously and prejudicially affect the interests of the Affected Person; and
  - (ii) such prejudice outweighs or is likely to outweigh the interests of operators and potential operators of railway assets on the part of the network in question in its disclosure to the Train Operator, having due regard to the matters as respects which duties are imposed on the Regulator by section 4 of the Act; and
- (b) the Chairman shall have complied with the requirements specified in paragraphs 9.6 and 9.7.

### **9.5 Opportunity to make representations to the Chairman**

Within 28 days of the Chairman's receipt of a notice under paragraph 9.2(a) (or such longer period as the Regulator shall allow), Network Rail, the Train Operator and the Affected Person shall be entitled to make representations to the Chairman:

- (a) as to whether it considers that the Chairman should exercise his discretion to give a Confidentiality Direction; and, if so
- (b) as to the extent and conditions of the Confidentiality Direction.

Any such representations shall be accompanied by the reasons why the person in question believes the Chairman should or should not (as the case may be) give a confidentiality direction.

### **9.6 Hearing on confidentiality representations**

If he shall have received any representations of the kind contemplated by paragraph 9.5, the Chairman shall be entitled to hear the parties on the matter. The Chairman shall have an absolute discretion as to the procedure to be followed in any such hearing, and shall have the power at any time to amend it if he considers it necessary to do so for the fair resolution of the matter.

### **9.7 Written reasons for Determination**

If any representations shall have been made to him under paragraph 9.5, unless the parties concerned otherwise agree the Chairman shall provide them with his reasons for his Determination. Such reasons shall be given in writing.

### **9.8 Appeal against Chairman's Determination**

If Network Rail, the Train Operator or the Affected Person shall be dissatisfied with the Chairman's Determination, he shall be entitled to refer the matter to the Regulator for determination.

### **9.9 Information to be provided in relation to appeals to Regulator and compliance with his Directions**

Where any person has referred the Chairman's Determination to the Regulator:

- (a) the person making the reference shall include with it a statement in reasonable detail as to his reasons for making the reference; and
- (b) the parties shall comply with any Directions of the Regulator in relation to the procedure (including in respect of the provision of information to the Regulator and the confidentiality of the proceedings) or the substance of the reference.

### **9.10 Right of Regulator to decline to hear appeal**

Where a reference of the kind referred to in paragraph 9.8 shall have been made to the Regulator, the Regulator shall be entitled to decline to act on the reference if, having consulted the parties concerned and considered the Determination of the Chairman, he shall determine that the reference should not proceed, including on the grounds that:

- (a) the matter in question is not of sufficient importance to the relevant part of the industry;
- (b) the reference to him is frivolous or vexatious; or
- (c) the conduct of the person making the reference ought properly to preclude its being proceeded with.

### **9.11 Immunities of Chairman and Regulator**

- (a) Neither the Chairman nor the Regulator shall be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to any reference to him under this Part 8.
- (b) Each of the Train Operator and Network Rail shall:
  - (i) indemnify and hold harmless the Chairman, the Regulator and each other against every claim which may be made against any of them in relation to any of the matters referred to in paragraph 9.11(a); and
  - (ii) to the extent that it is the creditor in the indemnity in paragraph 9.11(b)(i), hold the benefit of that indemnity upon trust as bare trustee for the benefit of the Chairman and the Regulator.

- (c) No provision of this contract which may operate so as to exclude or restrict the liability of either party shall apply to the obligations of the parties under this paragraph 9.11.

### **9.12 Preservation of confidentiality of Qualifying Information pending Determination**

- (a) In making any Determination of the kind contemplated by this paragraph 9 (or in the case of the Regulator any determination under paragraph 9.8), the remit of the Chairman and the Regulator shall include a requirement that:
- (i) any hearing of the kind contemplated by paragraph 9.6 shall be conducted in such a way as not to disclose any part of the Qualifying Information; and
  - (ii) the reasons for the Chairman's Determination shall, if given to the parties, not disclose to the Train Operator any part of the Qualifying Information.
- (b) If a reference shall have been made to the Regulator under paragraph 9.8, the Chairman shall be required by the parties to provide to the Regulator all Relevant Information in relation to his decision, including his reasons without any omissions which may have been necessary in order to comply with paragraph 9.12(a)(ii).

## **10 Reciprocal provisions**

### **10.1 Obligation to include analogous provisions in other track access agreements**

Except where the Regulator shall give Directions pursuant to sections 17, 18 or 19 of the Act to the contrary, Network Rail shall ensure that every Track Access Contract into which it enters shall include provisions in the same terms as paragraphs 9, 10 and 11.

### **10.2 Entitlement of Train Operator to receive corresponding notices**

The Train Operator shall be entitled to receive a Corresponding Notice from Network Rail in the circumstances contemplated by the Track Access Contracts referred to in paragraph 10.1.

### **10.3 Corresponding rights of Train Operator against Network Rail**

If the Train Operator receives a Corresponding Notice, it shall have rights and obligations in relation to Network Rail and Network Rail's freedom to disclose Qualifying Information to another person which are the same as those described in paragraph 9 in relation to an Affected Person. Network Rail shall have the corresponding obligations and rights in relation to the Train Operator.

## **11 Confidentiality Undertakings From Train Operators**

### **11.1 Obligation to provide Confidentiality Undertaking**

If:

- (a) an Affected Person shall have given notice to Network Rail that it does not propose to give a Notice of Objection within the Period for Objections; or
- (b) the Chairman shall have determined that no Confidentiality Direction shall be given in relation to Qualifying Information; or
- (c) the Regulator shall have determined that a Determination of the Chairman of the kind referred to in paragraph 11.1(b) shall be confirmed in whole or in part; and
- (d) the Affected Person shall require Network Rail to procure that the Train Operator gives a confidentiality undertaking for the benefit of the Affected Person,

the Train Operator shall deliver to Network Rail an undertaking of strict confidentiality in relation to the Qualifying Information.

### **11.2 Quality of Confidentiality Undertaking**

A confidentiality undertaking shall:

- (a) contain an undertaking that the person giving it will hold the Qualifying Information disclosed to him strictly confidential and will not, without the consent of the Affected Person, disclose it to any person except:
  - (i) to any of the persons referred to in sub-clauses (a), (b), (c), (d), (e), (f) or (g) of Clause 14.2, subject to the conditions which apply to such disclosures under that Clause;
  - (ii) in the course of an arbitration commenced under this Part 8; or
  - (iii) where required to do so pursuant to the order of a court of competent jurisdiction;
- (b) contain no limitations on the liability of the person who gives it in the case of its breach; and
- (c) in every other respect, be unqualified.

### **11.3 Supplemental**

A Confidentiality Undertaking shall be:

- (a) given to Network Rail by the Train Operator as soon as reasonably practicable after Network Rail shall have requested the Train Operator to provide it; and
- (b) held by Network Rail upon trust for the Affected Person.

### **11.4 Failure to comply with obligation to provide Confidentiality Undertaking**

If the Train Operator fails to comply with its obligations under this paragraph 11, Network Rail shall not include the Qualifying Information in its Relevant Response.

**12 Cessation of effect**

- 12.1 Subject always to the provisions of paragraph 12.2, the preceding provisions of this Part 8 shall cease to have effect on and from such date as the Regulator shall specify by notice to the Train Operator and Network Rail.
- 12.2 No notice may be given under paragraph 12.1 before the Regulator is satisfied that provisions to like effect to those set out in this Part 8 have been incorporated in the Network Code.

## Appendix 7A The Property Allowance Scheme

Not used\*

### Appendix 7B

#### Geographic Areas for calculation of Traction Electricity wash-up

For the purposes of performing the calculation set out in paragraph 5 of Part 2, the applicable Geographic Areas and tariff zones will be as set out in the table below. Unless otherwise specified, all electrified connecting lines, sidings, passing loops, links to depots or yards are contained within these zones.

Traction electricity Geographic Area / Tariff Zone	Description
Merseyside	Comprises the Merseyside third rail electrified system between Liverpool, Southport, Ormskirk, Kirkby, Hunts Cross, Ellesmere Port, Chester, New Brighton and West Kirby
Thameslink North	Comprises the overhead line electrified routes from London St Pancras, Farringdon and Moorgate (Midland) to Bedford
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
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 overhead line electrified section of the North London Line route between Stratford and Camden East Junction

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\* deleted by Schedule 11

## ANNEX A

West Anglia	Comprises the electrified West Anglia routes from Hackney Downs station to Chingford, Enfield Town, Hertford East, Stanstead Airport, Cambridge and Kings Lynn and the electrified route between Cambridge Junction (on the East Coast Main Line near Hitchin) and Cambridge
East Coast and North East	Comprises the electrified East Coast Main Line (and all electrified connecting routes in the North East) from Kings Cross to the neutral section at Chathill (between Alnmouth and Belford), Leeds, Bradford and Skipton; 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.
Scotland	Comprises all electrified routes in Scotland; the West Coast Main Line to the north of the neutral section at Upperby (between Penrith and Carlisle); and the East Coast Main Line to the north of the neutral section at Chathill
West Coast Main Line and North London Lines	Comprises the West Coast Main Line routes from Euston to the neutral section at Upperby (between Penrith and Carlisle), Liverpool, Manchester, Manchester Airport and Birmingham; all electrified routes around Birmingham and Manchester; 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 North Woolwich (excluding the overhead line supply between Camden East Junction and Stratford); and the route between the Primrose Hill tunnels and Camden Road
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
Paddington - Heathrow	Comprises the electrified route from Paddington to Heathrow Airport

**APPENDIX 7C: Default train consist data<sup>1st</sup>**

<b>Train Service Code</b>	<b>Type of Train Movement</b>	<b>Default Train Consist Data</b>
11817020	Train movement(s) between Manchester Airport and Manchester Piccadilly, Sheffield, Doncaster and Cleethorpes	1 x class 158 Diesel Multiple Unit (2 motor units)
12246820	Train movement(s) between Manchester Airport and Manchester Piccadilly, Preston, Lancaster and Barrow, or Barrow via Morecambe, or Windermere	1 x class 175 Diesel Multiple Unit (3 motor units)
21731000	Train movement(s) between Newcastle or York to Manchester Piccadilly or Manchester Airport.	1 x class 158 Diesel Multiple Unit (3 motor units)
21732000	Train movement(s) between Scarborough and Liverpool Lime Street	1 x class 158 Diesel Multiple Unit (3 motor units)
21733000	Train movement(s) between Hull and Leeds, and Hull or Leeds to Manchester Piccadilly.	1 x class 158 Diesel Multiple Unit (2 motor units)
21734000	Train movement(s) between Middlesbrough and York or Manchester Piccadilly or Manchester Airport	1 x class 158 Diesel Multiple Unit (3 motor units)
22356000	Train movement(s) between Windermere and Oxenholme or Lancaster or Morecambe or Preston	1 x class 175 Diesel Multiple Unit (3 motor units)

**Annex 2<sup>1st</sup>****Fixed Track Charges**

2004/05	2005/06	2006/07	2007/08	2008/09
£	£	£	£	£
55,888,273	66,036,867	63,791,443	72,649,667	70,577,660

**ANNEX 2<sup>1ST</sup>**

**CC Term**

£

£1,599,475

