

TRACK ACCESS CONTRACT

(PASSENGER SERVICES)

Between

HEATHROW AIRPORT LIMITED

and

[Insert name of beneficiary]

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THIS CONTRACT is made on [●]

BETWEEN:

- (1) Heathrow Airport Limited, a company registered in England under number 01991017 having its registered office at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW (“HAL”); and
- (2) [●], a company registered in [●] under number [●] having its registered office at [●] (the “Train Operator”).

WHEREAS:

- (A) HAL is the owner of the Network;
- (B) HAL is exempt from the requirements under section 7 of the Act to be authorised by a licence granted under section 8 of the Act to be the operator of the Network; and
- (C) HAL has agreed to grant to the Train Operator permission to use certain track comprised in the Network on the terms and conditions of this contract.

IT IS AGREED AS FOLLOWS:

1 INTERPRETATION

1.1 Definitions

In this contract unless the context otherwise requires:

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

“**Access Beneficiary**” has the meaning ascribed to it in Part A of the Network Code;

“**Access Dispute Resolution Rules**” and “**ADRR**” have the meaning ascribed to them in Part A of the Network Code;

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

“**Accounting Year**” means each period of 12 months ending on 31 December

“**Act**” means the Railways Act 1993;

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

“**Affiliate**” means, in relation to any company:

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

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

“**Ancillary Movements**” has the meaning ascribed to it in Part D of the Network Code;

“**Applicable Engineering Access Statement**” means the Engineering Access Statement in force in respect of the Routes, as from time to time amended or replaced under Part D of the Network Code;

“**Applicable Timetable Planning Rules**” means the Timetable Planning Rules in force in respect of the Routes on, as from time to time amended or replaced under Part D of the Network Code;

“**Applicable Timetable**” has the meaning ascribed to it in Schedule 8;

“**Asset Stewardship Strategy**” means such stewardship and delivery plans as HAL may from time to time deem it necessary to prepare in order to comply with the obligations imposed on it under Clause 6.1(b) in respect of the Network;

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

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

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

“**Confidential Information**” means information relating to the affairs of one party to this contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this contract, or any matter or thing contemplated by this contract or to which this contract relates, the

disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

“Contract” means this document including all schedules and appendices to it and the Network Code;

“Contract Year” means each yearly period commencing on [●] and subsequently on each anniversary of such date;

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

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

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

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

“Expiry Date” means the [Principal Change Date/Subsidiary Change Date] occurring in [●];

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

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

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

“HAL Event of Default” has the meaning ascribed to it in paragraph 1.3 of Schedule 6;

“Independent Arbitrator” means the independent arbitrator appointed in accordance with Part N of the Network Code;

“Infrastructure Managers” means the infrastructure managers under the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

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

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

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section

123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;

- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

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

that party with timely recourse to all appropriate measures and procedures;

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

“Longstop Date” means [●];

“Network” means the network of which HAL is the facility owner and which is situated in England;

“Network Code” means the document now known as the HAL Network Code;

“Network Rail” means Network Rail Infrastructure Limited, a company registered in England under number 02904587 having its registered office at 1 Eversholt Street, London, NW1 2DN;

“New Working Timetable” means, in respect of any day, the version of the Working Timetable for that day provided by HAL in accordance with Condition D2.7.1, as amended pursuant to Condition D2.7.4;

“Office of Rail and Road” has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and references to "ORR" shall be construed as references to the Office of Rail and Road;

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

“Permission to Use Effective Date” has the meaning ascribed to it in Clause 3.2;

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

“Railway Group Standards” means the national technical rules and national safety rules applicable to the mainline railway system which are produced under the procedures set out in the Railway Group Standards Code (or equivalent

predecessor documents, including previous versions of that Code) that defines mandatory requirements in respect of the mainline railway system;

“railway facility” has the meaning ascribed to it in section 83 of the Act;

“relevant ADRR Forum” means the Forum, having the meaning ascribed to it in the ADRR, to which a Relevant Dispute is allocated for resolution in accordance with the ADRR;

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

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

“Relevant Losses” means, in relation to:

- (a) a breach of this contract; or
- (b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a “breach” for the purpose of this definition) ; or
- (c) in the case of Schedule 8, the matter specified in paragraph 18 of Schedule 8 (a “breach” for the purposes of this definition only),

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

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

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

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

“RPI” means the General Index of Retail Prices All Items measured by CHAW and published each month;

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

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

“Safety Obligations” means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation

arising under statute, statutory instrument or mandatory code of practice) in Great Britain;

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

“SNRP” has the meaning ascribed to it in the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;

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

“SPP Threshold” has the meaning ascribed to it in Paragraph 18 of schedule 8;

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

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

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

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

“Timetable Participant” shall have the meaning ascribed to it in Part D of the Network Code; **“Track Charges”** means the charges payable by or on behalf of the Train Operator to HAL, as set out in paragraph 1 of Schedule 7;

“Traction Electricity Charge” means the charge which recovers the costs of providing electricity for traction purposes, and references to “EC4T” shall be construed as references to the Traction Electricity Charge.

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

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

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

“Train Slot” has the meaning ascribed to it in Part D of the Network Code;

“Value Added Tax” means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any

turnover tax replacing or introduced in addition to them, and “VAT” shall be construed accordingly;

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

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

1.2 Interpretation

In this contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) any one gender includes the other;
- (c) all headings are for convenience of reference only and shall not be used in the construction of this contract;
- (d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- (e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- (f) reference to a party is to a party to this contract, its successors and permitted assigns;
- (g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words “including” and “in particular” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- (l) words and expressions defined in the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, the Railways

Act 1993 and the Railways and Other Guided Transport Systems (Safety) Regulations 2006 unless otherwise defined in this contract, have the same meanings in this contract;

- (m) not used;
- (n) words and expressions defined in the Network Code shall have the same meanings in this contract;
- (o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail;
- (p) NOT USED; and
- (q) NOT USED.

1.3 Indemnities

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

2 NETWORK CODE

2.1 Incorporation

The Network Code is incorporated in and forms part of this contract.

2.2 Modifications to the Network Code

If the Network Code is modified at any time, Schedule 10 shall have effect.

2.3 Compliance by other operators

Except where ORR has directed otherwise in the exercise of its powers under the Act or the Network Code, and except in relation to London Underground Limited to the extent that such persons are not party to the Network Code, HAL shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the Network Code.

3 CONDITIONS PRECEDENT AND DURATION

3.1 Effective date

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

3.2 Conditions precedent to Clause 5

Clause 5 shall take effect when all of the following conditions precedent have been satisfied in full (the “**Permission to Use Effective Date**”):

- (a) to the extent required by the Act and/or the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016,

the Train Operator is authorised to be the operator of trains for the provision of the Services by:

- (i) a licence granted under section 8 of the Act; and/or
- (ii) a European licence and corresponding SNRP;
- (b) HAL is authorised by a licence granted under section 8 of the Act to be the operator of that part of the Network comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the Act;
- (c) each of the Collateral Agreements set out in paragraph 1 to paragraph 5 of Schedule 3 is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);
- (d) each of the parties (or their nominated representatives from time to time) has, as necessary, a valid safety certificate or safety authorisation as required by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and has established and is maintaining a safety management system which meets the requirements of those Regulations; and
- (e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 Obligations to satisfy conditions precedent to Clause 5

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

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

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

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

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

3.4A Emergency Access Code

Each party shall use all reasonable endeavours (insofar as within its control) to secure that the accession agreement set out in paragraph 6 of Schedule 3 is executed and delivered by all the parties to such agreement (or that such alternative agreement or arrangement as may be agreed between the parties is either executed and delivered by all the parties to such alternative agreement,

or implemented (as applicable)) as soon as practicable following the Permission to Use Effective Date, and in any event not later than [●].

3.5 Expiry

This contract shall continue in force until the earliest of:

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

3.6 Suspension and termination

Schedule 6 shall have effect.

4 STANDARD OF PERFORMANCE

4.1 General standard

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

- (a) network owner and operator (in the case of HAL); and
- (b) train operator (in the case of the Train Operator).

4.2 Good faith

The parties to this contract shall, in exercising their respective rights and complying with their respective obligations under this contract (including when conducting any discussions or negotiations arising out of the application of any provisions of this contract or exercising any discretion under them), at all times act in good faith.

4.3 Non-discrimination

HAL shall act in a fair and non-discriminatory manner towards the Train Operator and any other train operator using the Network and any prospective

train operators using the Network and shall not discriminate between persons or classes of persons.

5 PERMISSION TO USE

5.1 Permission to use the Routes

HAL grants the Train Operator permission to use the Routes from the Permission to Use Effective Date.

5.2 Meaning

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

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

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

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

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

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

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

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

Changes to the Applicable Engineering Access Statement and the Applicable Timetable Planning Rules are subject to regulatory protection (including appeals) in accordance with Part D of the Network Code.

5.5 NOT USED

5.6 The Services and the Specified Equipment

Schedule 5 shall have effect.

5.7 Performance

Schedule 8 shall have effect.

5.8 Stabling

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

6 OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

6.1 General

Without prejudice to the other provisions of this contract:

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

6.2 Trespass, vandalism and animals

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

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

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

6.3 Safety

In relation to Safety Obligations:

- (a) the Train Operator shall comply with any reasonable request by HAL, including but not limited to the granting of cab access to any authorised personnel for the purpose of monitoring the Network, in relation to any

aspect of the Train Operator's operations which affects or is likely to affect the performance of HAL's Safety Obligations; and

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

6.4 Use of Railway Code Systems

6.4.1 General

The parties shall:

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

6.4.2 Provision of Train Consist Data

Without prejudice to Clause 6.4.1, the Train Operator shall:

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

6.5 Standards

HAL shall comply with the Railway Group Standards insofar as applicable to the Network.

6.6 Maintenance Strategy and Delivery Plans

- (a) HAL shall procure the operation, repair, maintenance, improvement, enhancement and development (including the renewal and replacement) of the Network:
 - (i) in accordance with Clauses 6.1(b) and 4.1; and
 - (ii) with the intention of satisfying the reasonable requirements of persons providing services relating to railways and Transport for London (as a funder), including potential providers, in respect of:
 - (A) the quality and capability of the Network; and
 - (B) the facilitation of railway service performance in respect of services for the carriage of passengers by railway operating on the Network.
- (b) HAL shall prepare and publish:
 - (i) an asset management policy in respect of the Network, which describes HAL's general principles and procedures in relation to the operation,

repair, maintenance, improvement, enhancement and development of the Network; and

- (ii) an asset management plan in respect of the Network, which sets out what HAL proposes to do to comply with its obligations set out in Clauses 4.1, 6.1(b) and 6.6(a) and including an indicative renewal and replacement timetable.
- (c) In relation to each of the documents referred to in Clause 6.6(b), no less than once every two years HAL shall:
- (i) review such documents;
 - (ii) consider whether any amendments to such documents are reasonably necessary to allow HAL to continue to demonstrate how it will comply with its obligations set out in Clauses 4.1, 6.1(b) and 6.6(a); and
 - (iii) consult with the Train Operator and other train operators using the Network on any proposed amendments to any such document and have due regard to any representations made by the Train Operator and other train operators using the Network in connection therewith.
- (d) Schedules 4 and 8 of this contract shall apply.

6.7 Passenger Information

- (a) HAL shall use all reasonable but commercially prudent endeavours to secure the provision to the Train Operator of appropriate, accurate and timely information relating to:
- (i) planned and actual movements of the Services and other services on the Network; and
 - (ii) disruption affecting the Network,
- to enable the Train Operator to provide information to passengers and to meet its obligations to provide information to passengers and prospective passengers, including when there is disruption affecting the Network.
- (b) Without prejudice to the generality of Clause 6.7(a), HAL shall:
- (i) cooperate with Network Rail, Rail for London (Infrastructure) Limited, the Train Operator and other train operators using the Network to enable such persons to provide appropriate, accurate and timely information to enable passengers to plan and make their journeys with a reasonable degree of assurance (including when there is disruption);
 - (ii) grant access on reasonable terms (including the prices charged, means of access and confidentiality) to information it holds on the planned movement of trains on the Network to:
 - (A) other infrastructure managers (including Network Rail and Rail for London (Infrastructure) Limited), to enable such infrastructure managers to provide information in relation to trains which use the

Network and the networks operated by such infrastructure managers;

- (B) Transport for London or an Affiliate of Transport for London, to enable it to provide information to passengers through electronic and other means (including on the Transport for London website); and
 - (C) persons providing or seeking to provide credible enquiry or information services relating to the operation of railway passenger services on the Network;
- (iii) NOT USED;
 - (iv) NOT USED;
 - (v) procure the provision to Network Rail of such information relating to train movements on the Network to allow Network Rail to publish a national timetable for passenger services; and
 - (vi) establish, maintain and comply with an efficient and effective process, reflecting best practice, to provide appropriate, accurate and timely information to the Train Operator on relevant changes to the operation of the Network or the operation of trains on the network. HAL shall provide such information to the Train Operator not less than 12 weeks before the date such changes are to have effect or as soon as is reasonably practicable having regard to all relevant circumstances,

and for the purposes of Clause 6.7(b)(vi), “relevant changes” are changes to train movements on the Network resulting from:

- (x) any renewal, maintenance or enhancement of the Network; or
- (y) any Restriction of Use (as defined in Schedule 4) of the Network of which HAL is, or reasonably ought to be, aware.

6.8 Environment

HAL’s obligations in respect of protecting the environment from the effect of its activities on and the operation of the Network shall be covered by the HAL “airport environment and energy policy” pursuant to the “Responsible Heathrow” policy (which HAL agrees includes the operation of the Network). HAL shall provide a copy of this policy to Train Operator on a regular basis, as updated and amended from time to time.

7 TRACK CHARGES AND OTHER PAYMENTS

7.1 Schedule 7 shall have effect.

7.2 In the event of a Change of Circumstances (as defined in Schedule 7), HAL may review the Fixed Track Access Charge and/or, Variable Usage Charge in accordance with the provisions of Schedule 7. Any amendment(s) shall be made in accordance with Clauses 18.2.1(b), 18.2.2, 18.2.3 and 18.2.4 (if

relevant and as appropriate). (For the avoidance of doubt, Clause 18.2.1(a) shall not apply for the purposes of this Clause 7.2).

7.3 The Train Operator shall pay or procure the payment to Network Rail (or to its successors, assigns or the relevant party stipulated under the Traction Electricity Rules from time to time) the Traction Electricity Charge under the separate tripartite agreement between the Train Operator, Network Rail and HAL.

7.4 HAL may increase (i) the Fixed Track Access Charge; and/or (ii) Variable Usage Charge on an annual basis with effect from 1 January in each Contract Year in line with the percentage increase in RPI between (i) 1 July in the year preceding the previous year and (ii) 30 June in the preceding year.

8 LIABILITY

8.1 Performance Orders in relation to breach

In relation to any breach of this contract:

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

8.2 Compensation in relation to breach

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

9 NOT USED

10 LIABILITY - OTHER MATTERS

10.1 Train Operator indemnity

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

- (a) a failure by the Train Operator to comply with its Safety Obligations;
- (b) any environmental damage arising directly from the acts or omissions of the Train Operator or the taking by HAL of any steps to prevent, mitigate

or remedy a condition which exists as a direct result of the acts or omissions of the Train Operator; and

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

10.2 HAL indemnity

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

- (a) a failure by HAL to comply with its Safety Obligations;
- (b) a failure by HAL to comply with its asset stewardship obligations arising under Clause 6.6;
- (c) any damage to the Specified Equipment or other vehicles or things brought onto the Network in accordance with the permission to use granted by this contract arising directly from HAL's negligence.

11 RESTRICTIONS ON CLAIMS

11.1 Notification and mitigation

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

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

11.2 Restrictions on claims by HAL

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

- (a) shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any

claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:

- (i) the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less
 - (ii) any other compensation which the Train Operator has an obligation to pay for such damage;
- (b) shall exclude loss of revenue in respect of permission to use any part of the Network under or in accordance with any Access Agreement with any person; and
- (c) shall:
- (i) include Relevant Losses only to the extent that these constitute amounts which HAL would not have incurred as network owner and operator but for the relevant breach; and
 - (ii) give credit for any savings to HAL which result or are likely to result from the incurring of such amounts.

11.3 Restrictions on claims by Train Operator

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

- (a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in

circumstances where the SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8); and

- (b) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and
 - (ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

11.4 Restriction on claims by both parties

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

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

11.5 Limitation on liability

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

- (a) does not limit any liability arising under Schedules 5, 7 or 8;
- (b) in relation to a failure to perform an obligation under the Network Code, only to the extent (including as to time and conditions) that the Network Code so provides; and
- (c) subject to Clause 18.3.3.

11.6 Claims Allocation and Handling Agreement

11.6.1 General

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

11.6.2 Restriction of application

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

as provided for under this contract would be prevented or restricted by Clauses 16 and 17 of the Claims Allocation and Handling Agreement.

11.6.3 Liability for small claims

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

11.6A Accession

HAL:

- 11.6A.1 shall at all times remain a party to and comply with such agreements or arrangements (as amended from time to time) relating to:
 - (A) the handling of claims against operators of railway assets; and
 - (B) the allocation of liabilities among operators of railway assets,and the Claims Allocation and Handling Agreement shall satisfy the requirements of this Clause;
- 11.6A.2 shall procure that each train operator using the Network also becomes party to the same arrangement described in Clause 11.6A.1;
- 11.6A.3 shall not, in relation to any of the agreements or arrangements described in Clause 11.6A.1 (the “relevant claims handling arrangements”), enter into any

agreement or arrangement with any other party to the relevant claims handling arrangements:

- (A) under which HAL agrees not to exercise any rights which it may have under any of the relevant claims handling arrangements; or
- (B) varying the relevant claims handling arrangements other than as provided for under the terms of the relevant claims handling arrangements.

12 GOVERNING LAW

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

13 DISPUTE RESOLUTION

13.1 ADRR

A Relevant Dispute shall be referred for resolution in accordance with the Access Dispute Resolution Rules in force at the time of the reference (the “**ADRR**”), as modified by this Clause 13, unless:

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

13.2 Unpaid sums

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges; or
- (b) any other sum which has fallen due in accordance with any provision of this contract, then:
 - (i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and

to any assignee of a party's right to payment in respect of any invoice or other sum due);

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

13.3 Performance Orders

13.3.1 Power to order provisional relief

For the purposes of section 39 of the Arbitration Act 1996, should any Relevant Dispute be allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR, the arbitrator shall have power to order on a provisional basis any relief which he would have power to grant in a final award including Performance Orders.

13.3.2 Performance Orders

A Performance Order:

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

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

13.3.3 Duties of arbitrator in relation to Performance Orders

Without prejudice to any additional remedies that may be ordered by the arbitrator under Clause 13.4, where a dispute is allocated in accordance with the ADRR to arbitration and a party has applied for a Performance Order, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that:

- (a) the arbitrator shall decide as soon as possible whether the application is well founded or not; and
- (b) if the arbitrator decides that the application is well founded, he shall be required to make an interim or final declaration to that effect and, in that event, the arbitrator may also make any interim or final order directing any

party to do or to refrain from doing anything arising from such declaration which he considers just and reasonable in all the circumstances.

13.4 Remedies

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

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

13.5 Exclusion of applications on preliminary points of law

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

14 CONFIDENTIALITY

14.1 Confidential Information

14.1.1 General obligation

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

14.1.2 HAL - Affiliates

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

14.1.3 Train Operator - Affiliates

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

14.2 Entitlement to divulge

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

- (a) to ORR;
- (b) to the Secretary of State;
- (c) to Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the

Network) (d) to any Affiliate of either party, provided that HAL shall not be permitted without the approval of the Train Operator to divulge any Confidential Information to [any other Train Operator];

- (e) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- (f) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (g) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
- (h) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
- (i) to the extent required by the Act, the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, any other

applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;

- (j) to the extent that it has become available to the public other than as a result of a breach of confidence; and
- (k) under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant ADRR Forum, each as defined in the ADRR).

14.3 Return of Confidential Information

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

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

14.4 Retention or destruction of Confidential Information

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

14.5 Ownership of Confidential Information

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

14.6 Network Code

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

15 ASSIGNMENT, NOVATION AND SUBCONTRACTING

15.1 Assignment

15.1.1 Neither party may assign, transfer, novate (including a novation under Clause 15.2) or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this contract without the prior written consent of the other party.

15.1.2 In the event of a proposed disposal by HAL of the Network or any material part thereof (other than a part which is to cease being used as a network and such cessation of use has been approved either pursuant to Part G of the HAL Network Code or the closures provisions set out in

the Railways Act 2005) to a third party, HAL shall, at that time, use its best endeavours to:

- (a) novate the rights and obligations of HAL under this Contract (in relation to the Network or the relevant part) to such third party so that such third party becomes a party to and is bound by this contract in every way as if it were at all times the original party to this contract in place of HAL; and
- (b) execute such contracts and do such things as may be necessary or desirable to give effect to the novation, provided that if, despite HAL having used its best endeavours, the rights and obligations of HAL under this Contract are not novated to such third party, HAL shall remain liable to the Train Operator to perform its obligations (and exercise its rights) under this Contract. Accordingly, the Train Operator shall continue to have such rights and remedies against HAL as may be available to it under this Contract and/or by law in respect of this Contract.

15.2 Novation

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

- (a) agree to the novation of the rights and obligations of the Train Operator under this contract in favour of another person (including the Secretary of State or a person nominated by him, or Transport for London, (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network) in any circumstances where:
 - [(i) the Secretary of State requests HAL to participate in such a novation in the course of exercising its powers under section 30 of the act; or]
 - [(ii) Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network) requests HAL to participate in such a novation in the course of exercising its rights under the [Concession Agreement]; and]
- (b) execute such contracts and do such things as the Secretary of State [or Transport for London (or such Affiliate of Transport for London responsible

for the procurement of passenger rail services on the Network)] as applicable may reasonably request to give effect to the novation.15.3

15.3 Novation terms

Any novation under Clause 15.2 shall be on terms that:

- (a) the Train Operator shall not be released from:
 - (i) any accrued but unperformed obligation;
 - (ii) the consequences of any breach of this contract which is the subject of any proceedings (arbitral or otherwise) for the resolution of a dispute between the parties; or
 - (iii) any liability in respect of anything done under this contract before, or as at the date of, any such novation (except to the extent that such other person agrees to assume and be responsible for it); and
- (b) such other person shall not be required by HAL, as a term of or a condition to the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequence of a breach of the kind referred to in Clause 15.3(a), but this shall not prevent any such agreement being a term or condition of the novation if required by the Secretary of State or by Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services on the Network) as applicable.

15.4 Sub-contractors

15.4.1 Subject to Clause 15.4.3, HAL may subcontract the performance of any of its obligations under this contract.

15.4.2 Subject to Clause 15.4.3 the Train Operator may sub-contract the performance of any of its obligations under this contract.

15.4.3 Nothing in this Clause 15.4 shall operate so as to relieve HAL or the Train Operator of its obligations under this contract and each party shall remain responsible for the acts and omissions of any sub-contractor as if they were the acts and omissions of that party.

16 PAYMENTS, INTEREST AND VAT

16.1 Payment

16.1.1 No deduction

All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required

by law or as expressly provided in any Schedule to this contract or in the Network Code.

16.1.2 Delivery of invoices

All statements of amounts payable under Schedules 4, 5 or 8, under the Network Code shall be delivered by hand at, or sent by prepaid first class post to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

16.1.3 Content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it.

16.1.4 Method of payment

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

16.2 Interest

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

16.3 VAT

16.3.1 Payment of VAT

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

16.3.2 Reimbursement of VAT

Where under this contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member

of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

16.3.3 VAT credit note to be issued on repayment

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

16A INSURANCE

16A.1 Required Insurance Policies

HAL shall take out and maintain in full force and effect and at its own cost, insurance of no less than £155 million in respect of all liabilities and in accordance with the ORR's guidance on insurance requirements, from time to time.

16A.2 Evidence of Insurance Policies

Promptly following any request by the Train Operator, and otherwise on each anniversary of the execution of this contract, HAL shall provide to the Train Operator for inspection evidence satisfactory to the Train Operator that the insurance policies specified in Clause 16A.1 are in place, are in full force and

effect and that all premiums payable in respect of such insurance policies have been paid in full.

16A.3 For the purposes of Clause 16A.1, HAL shall procure the insurance which it is required to take out and maintain complies with the following requirements:

- (1) it is third party liability insurance;
- (2) it has a total cover of not less than £155 million per incident in respect of all liabilities to third parties;
- (3) where an aggregate limit of indemnity applies, this limit will be reinstated at least once if the limit is exhausted;
- (4) cover is on an 'occurrence' basis;
- (5) cover is on a costs exclusive basis;
- (6) any other party is included as an insured to the extent that that party is required to be insured or indemnified in any underlying contract or agreement with HAL;
- (7) cover for any difference between its contractors' or sub-contractors' cover and that required by this Clause 16A is provided;
- (8) such insurance is taken out only with insurers duly authorised by the Financial Services Authority or an equivalent body.

16A.4 Notwithstanding any other Clauses of this contract, HAL shall be liable for any excess or deductible that applies to such insurance policy.

17 FORCE MAJEURE EVENTS

17.1 Meaning of Force Majeure Event

In this Clause 17:

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

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

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;

- (f) discovery of fossils, antiquities or unexploded bombs; and
- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

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

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

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

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

17.2 Nature and extent of relief for Force Majeure

Force Majeure relief under this Clause 17:

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

17.3 Entitlement to Force Majeure relief

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

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

17.4 Procedure for claiming relief

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

17.5 Force Majeure Notices and Reports

17.5.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

- (a) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Clause 17 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and
- (b) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

17.5.2 Force Majeure Report

Following the giving of a Force Majeure Notice:

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

17.5.3 Other information

The Affected Party shall promptly give the Non-affected Party all other information concerning the Relevant Force Majeure Event and the steps which could reasonably be taken, and which the Affected Party proposes to take, to avoid or remove the Relevant Force Majeure Event or to mitigate its

consequences and effects as may reasonably be requested by the Non-affected Party from time to time.

17.6 Mitigation

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

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

(b) minimise the duration of such Force Majeure Event,

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

17.7 Duration of relief for force majeure

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

(a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and

(b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 17.6.

17.8 Availability of Performance Order

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

18 MISCELLANEOUS

18.1 Non waiver

18.1.1 No waiver

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

18.1.2 Failure or delay in exercising a right or remedy

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

under this contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

18.2 Variations

18.2.1 Amendments to be in writing and to be approved

No amendment of any provision of this contract shall be effective unless such amendment is in writing and signed by, or on behalf of, the parties.

18.2.2 Not used

18.2.3 Not used

18.2.4 Conformed copy of contract

HAL shall produce and send to the Train Operator a conformed copy of this contract within 28 days of the making of any amendment or modification to it (including any modification made by virtue of Schedule 10).

18.3 Entire contract and exclusive remedies

18.3.1 Entire contract

Subject to Clause 18.3.3:

- (a) this contract contains the entire agreement between the parties in relation to the subject matter of this contract;
- (b) each party acknowledges that it has not been induced to enter into this contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this contract and, to the extent that this is not the case, the relevant party unconditionally and

irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and

- (c) neither party shall have any right to rescind or terminate this contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this contract.

18.3.2 Exclusive remedies

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

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

18.3.3 Fraud, death and personal injury

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

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

18.4 Notices

18.4.1 Giving of notices

Any notice to be given under this contract:

- (a) shall be in writing; and
- (b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending

it by prepaid first class post or recorded delivery to, the relevant address set out in Schedule 1.

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

18.4.2 Right to modify registered company and communication details

A party shall be entitled to modify in any respect:

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

18.4.3 Deemed receipt

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

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by electronic transmission, at the time of transmission.

18.4.4 Copies

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

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

18.5 Counterparts

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

18.6 Survival

Those provisions of this contract which by their nature or implication are required to survive expiry or termination of this contract (including the provisions of Clauses 8 (Liability), 10 (Liability - Other Matters), 11 (Restrictions on Claims); 12 (Governing Law), 13.2 (Unpaid Sums), 14 (Confidentiality), 16 (Payments, Interest and VAT), 17 (Force Majeure Events), paragraph 4 of Schedule 6 (Consequence of Termination) and Schedule 9 (Limitation on

liability)), shall so survive and continue in full force and effect, together with any other provisions of this contract necessary to give effect to such provisions.

18.7 Contracts (Rights of Third Parties) Act 1999

18.7.1 Application to third parties

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

18.7.2 Application to the Office of Rail and Road and the Independent Arbiter

ORR and the Independent Arbiter shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to them under this contract.

18.7.3 Application to the Secretary of State and Transport for London

The Secretary of State and Transport for London shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce Clauses 15.2 and 15.3.

18.7.4 NOT USED.

19 NOT USED

SCHEDULE 1: CONTACT PARTICULARS

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

The Compass Centre

Nelson Road

Hounslow

Middlesex

TW6 2GW

Tel: 0844 335 1801

Email: secretariat@heathrow.com

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

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

Address [●]

Tel: [●]

Fax: [●]

Email: [●]

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

Address [●]

Tel: [●]

Fax: [●]

Email: [●]

SCHEDULE 2: THE ROUTES

1. In order to provide the Services, the Train Operator has permission to use the routes specified in Column 1 of Table 2.1 and Table 2.2 of Schedule 5.
2. In order to provide Services when any part of the route is unavailable, the Train Operator has permission to use any reasonable route for diversionary purposes, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.
3. In order to make Ancillary Movements, the Train Operator has permission to use any reasonable route, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.
4. In order to Stable railway vehicles, the Train Operator has permission to use any reasonable location, subject to obtaining any necessary route clearance for the Specified Equipment for the location in question.
5. Use of all routes is subject to the Network Code.

SCHEDULE 3: COLLATERAL AGREEMENTS

1. An access agreement between (1) the Train Operator and (2) HAL granting the Train Operator permission to use the following stations:
 - a) Heathrow Airport Terminals 2 and 3;
 - b) Heathrow Airport Terminal 4; and
 - c) Heathrow Airport Terminal 5.
2. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement and, for the purpose of Schedule 6, the Claims Allocation and Handling Agreement.
3. [A concession agreement between (1) the Train Operator and (2) Rail for London Limited under which the concessionaire undertakes to provide or procure the provision of all or a material part of the Services.]
4. A traction electricity charging agreement between (1) the Train Operator and (2) Network Rail and (3) Heathrow Airport Limited relating to the payment and administration of traction electricity charges on the Network.
5. A right to connect under the Heathrow Express Track Access Agreement dated 16 August 1993 (unless superseded by another connection agreement) between (1) Network Rail and (2) Heathrow Airport Limited granting permission to Heathrow Airport Limited to physically connect the Heathrow Spur to the Network at Heathrow Tunnel Junction.
6. An accession agreement (or such alternative agreement or arrangement which may be agreed between the parties in accordance with Clause 3.4A) to HAL's Emergency Access Code and, for the purpose of Schedule 6, the Emergency Access Code (or such alternative arrangement as may be agreed between the parties). For the avoidance of doubt, the accession agreement (or alternative agreement) referred to in this paragraph will only be considered a Collateral Agreement once it has been entered into by all the parties to such agreement.

SCHEDULE 4: NOT USED

SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT**1 Definitions**

1.1 In this Schedule unless the context otherwise requires:

“Calling Pattern”	means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;
“Contingent Right”	means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5;
“Day”	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
“Exercised”	has the meaning ascribed to it in Part D of the Network Code;
“Firm Right”	has the meaning ascribed to it in Part D of the Network Code;
“Journey Time”	means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service;
“Journey Time Review Notice”	has the meaning ascribed to it in paragraph 7.5;
“Maximum Journey Time”	means, in respect of a Passenger Train Slot, the corresponding Maximum Journey Time, if any, set out in column 4 of Table 6.1;
“Maximum Key Journey Time”	means, in respect of a Passenger Train Slot, the corresponding Maximum Key Journey Time, if any, set out in column 4 of Table 6.1;
“Modification Notice”	has the meaning ascribed to it in paragraph 7.10;
“HAL Network Change”	has the meaning ascribed to it in Part G of the Network Code;
“Passenger Train Slot”	means a Train Slot intended by the Train Operator to be used for the provision of a Service;
“Peak Services”	means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at Heathrow Terminal 4 Station between 0605 and 0904 hours and 1633 and 1932 hours or (ii) to depart from Heathrow Terminal 4 Station between 0628 and 0927 hours and 1528 and 1827 hours, and “Peak” shall be construed accordingly;

“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Reduced Regular Calling Pattern”	has the meaning ascribed to it in paragraph 4.1;
“Regular Calling Pattern”	has the meaning ascribed to it in paragraph 4.1;
“Scheduled”	means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;
“Service Group”	means any one or more (as the context may require) of the service groups described in this Schedule;
“Timetable Period”	means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
“Timing Load”	means, in relation to a Service, the timing reference code as defined from time to time in the Working Timetable;
“Train Service Code” or “TSC”	means the eight-character code applied in the Performance Monitoring System and used to identify Services;
“Weekday”	means any day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday; and

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

2 Passenger Train Slots

Table 2.1: Passenger Train Slots

1						2					
Service Group [nnnn]											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times ¹		Off-Peak times ²	Weekday ³	Saturday	Sunday
						Morning Peak	Evening Peak				

Notes to Table:

1 Peak times – means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at Heathrow Terminal 4 Station between 1633 and 1932 hours or (ii) to depart from Heathrow Terminal 4 Station between 0628 and 0927 hours, and “Peak” shall be construed accordingly;

2 Off-Peak times – arriving at and departing from a relevant station outside of Peak Times.

3 Passenger Train Slots listed under the sub-headings “Peak times” and “Off-Peak times” are the constituent parts of, and are not in addition to, those listed under the sub-heading “Weekday”.

Passenger Train Slots

- 2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 on the Days and within the Peak and Off-Peak times so listed using any Specified Equipment included in paragraph 5.1.(a) that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Rights for the purposes of Part D of the Network Code.
- 2.2 In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 the Train Operator has:
 - (a) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at Heathrow Terminals 2 and 3 Station, Heathrow Terminal 4 Station, Heathrow Terminal 5 Station; and
 - (b) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at: N/A.
- 2.3 In order to provide through Services the Train Operator has:
 - (a) Firm Rights to combine Passenger Train Slots at Heathrow Terminals 2 and 3 Station; and
 - (b) Contingent Rights to combine Passenger Train Slots at: N/A.

Table 2.2: Additional Passenger Train Slots

Additional Passenger Train Slots [●]

1						2					
Service Group [nnnn]											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times		Off-Peak times	Weekday	Saturday	Sunday
						Morning Peak	Evening Peak				

Table 2.3: Additional Passenger Train Slots – Driver Training

1						2					
Service Group [nnnn]											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times		Off-Peak times	Weekday	Saturday	Sunday
						Morning Peak	Evening Peak				

Additional Passenger Train Slots

- 2.4 The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in Table 2.2 and on the Days so listed.
- 2.5 A Contingent Right for an additional Passenger Train Slot under paragraph 2.4 includes:
- (a) a Contingent right to call at any station listed in Table 4.1;
 - (b) a Contingent Right to have Scheduled part only of the Passenger Train Slot in question; and
 - (c) a Contingent Right to combine Passenger Train Slots to provide a through Service.

Ancillary Movements

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

Relief Passenger Train Slots

- 2.8 The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to the relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in table 2.1 or 2.2.
- 2.9 NOT USED
- 2.10 NOT USED

- 2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1.

3 Intervals

Table 3.1: Service Intervals

1					2	3				4			
Service description					Station where interval applies	Interval (minutes)				Maximum variation (+/- minutes)			
From	To	Via	Description	TSC		Peak ¹	Off-Peak ²	Satur-day	Sun-day	Peak ¹	Off-Peak ²	Satur-day ³	Sun-day ⁴

Notes to Table:

1 Peak times –. means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at Heathrow Terminal 4 Station between 1633 and 1932 hours or (ii) to depart from Heathrow Terminal 4 Station between 0628 and 0927 hours, and “Peak” shall be construed accordingly;

2 Off-Peak times – arriving at and departing from a relevant station outside of Peak Times.

Table 3.1(a): Morning Peak Service Intervals

N/A

Table 3.1b: Evening Peak Service Intervals

N/A

Service Intervals

- 3.1 In respect of each Service specified in column 1 of Tables 3.1(a) and 3.1(b), and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to the minimum number of Passenger Train Slots during the times shown in column 2 of Table 3.1(a) and Table 3.1(b), arriving at the station shown in column 2 of Table 3.1(a) and departing from the station shown in column 2 of Table 3.1(b), being the component parts of, and not additional to, the quanta shown in column 2 of Table 2.1.
- 3.2 In respect of each Service specified in column 1 of Table 3.1 and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to:
- (a) the interval between Passenger Train Slots shown in column 3 of Table 3.1 from the station shown in column 2 of that Table, being a station of origin or an intermediate station;
 - (b) the minimum interval between Passenger Train Slots shown in column 3 of Table 3.1(a) arriving at the station shown in that column, being a destination station or an intermediate station; and
 - (c) the minimum interval between Passenger Train Slots shown in column 3 of Table 3.1(b) departing from the station shown in that column, being a station of origin or an intermediate station.
- 3.3 The Firm Rights specified in paragraphs 3.1 and 3.2 may only be Exercised if the Access Proposal or Rolled Over Access Proposal for each such Service complies with the Regular Calling Pattern or Reduced Regular Calling Pattern and the Specified Equipment is capable of achieving the Timing Load specified for each such Service.
- 3.4 HAL shall be entitled to vary:
- (a) any one or more departures from the station named in column 2 of Table 3.1 and named in column 3 of Table 3.1(b) by up to the number of minutes specified in column 4 of Table 3.1 and column 3 of Table 3.1(b); and
 - (b) any one or more arrivals at the station named in column 3 of Table 3.1(a) by up to the number of minutes specified in column 3 of Table 3.1(a),
- with the effect that the interval between any two or more of such Passenger Train Slots may be less than or more than that specified in column 3 of Table 3.1 provided that the cumulative effect of such flexing over a period of 60 minutes shall not reduce the Train Operator's entitlement to its full quantum of Passenger Train Slots.

4 Calling Patterns

Table 4.1: Calling Patterns

1					2	3
Service Group [nnnn]						
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations

Calling Patterns

- 4.1 In respect of each Service specified in column 1 of Table 4.1, the Train Operator has Firm Rights to the corresponding Calling Pattern listed in column 2 of that Table (the “Regular Calling Pattern”) or any subset of the Calling Pattern (the “Reduced Regular Calling Pattern”).

Additional calls

- 4.2 The Train Operator has Contingent Rights to have Scheduled, in respect of any Passenger Train Slot, calls at one or more of the stations set out opposite the Service in column 3 of Table 4.1 being stations which do not form part of the Regular Calling Pattern.

5 Specified Equipment

Specified Equipment

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

(a) Firm Rights to operate the following railway vehicles:

List here all rolling stock to which Firm Rights are being given]

and

(b) Contingent Rights to operate any railway vehicles registered with Network Rail's rolling stock library, subject to HAL's specific requirements relating to rolling stock compatibility guidelines as set out in Appendix 1 to this Schedule.

For the purposes of this contract the railway vehicles specified in paragraph 5.1(a) and 5.1(b) are known as the "Specified Equipment".

Train length

5.2 The Train Operator has a Firm Right to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of HAL to vary the train length in cases where the Network cannot accommodate all Access Proposals and Rolled Over Access Proposals to operate to the maximum length.

5.3 Nothing in paragraph 5.2 precludes the operation of trains in excess of platform lengths where appropriate measures have been taken to control, so far as is reasonably practicable, any risks introduced by the use of such longer trains.

6.

Not Used

7

Not Used

8 Other rights

Platform rights

8.1 NOT USED

8.2 NOT USED

Connections

8.3 NOT USED

8.4 NOT USED

Departure time ranges

8.5 NOT USED

Table 8.6: Stabling facilities

Table 8.6: Firm Rights to Stabling facilities

1	2	3
Stabling facility	Time available	Specified Equipment

Table 8.6A: Contingent Rights to Stabling facilities¹

1	2	3
Stabling facility	Time available	Specified Equipment

Stabling facilities

8.6 The Train Operator has Firm Rights to use the Stabling facility specified in column 1 of Table 8.4 between the hours specified in column 2 for the purposes of Stabling the Specified Equipment specified in column 3 as agreed by both parties by exception.

¹ Trains may need to call at Heathrow Terminal 5 Station in the event of an emergency, engineering works, unplanned disruptions or other unforeseen circumstances.

APPENDIX 1 – Rolling Stock Compatibility Guidelines

Any party wishing to introduce a new vehicle onto the HAL infrastructure or make a change to the operation or engineering of an existing vehicle must consider the effect of this on all other railway undertakings and on the Infrastructure Manager.

To aid railway undertakings in the discharge of this function they must first satisfy the Network Rail Infrastructure Limited (“**NR**”) process in full. HAL will then undertake a review of the outcome to confirm the railway undertaking’s qualification to operate on its infrastructure. In the unlikely event that HAL imposes a more onerous requirement than NR, further confirmations, information or tests may be required.

HAL-ARP

Heathrow Airport Limited's Assurance Review Panel (“**HAL-ARP**”) is an independently chaired, competent panel, whose role is to consider engineering and operational change applications in relation to HAL’s infrastructure, including the introduction of new Train Operators and rolling stock. HAL-ARP seeks assurance that such changes are designed, planned and executed in a manner that enables HAL to continue to discharge:

- its duties as a mainline Infrastructure Manager (stations);
- its general duties as an owner of mainline infrastructure;
- its duty of care.

In order to achieve this, HAL-ARP requires change projects to generate and submit evidence of effective risk management arrangements. Such arrangements will include the securing of compliance with relevant legislation and standards, for example:

- Railways and Guided Transport System (Safety) Regulations;
- Railway Interoperability Regulations;
- Construction (Design and Management) Regulations;
- Technical Specifications for Interoperability;
- Railway Group Standards;
- European Commission Regulations establishing Common Safety Methods;
- CENELEC standards;
- Authoritative Codes of Practice.

HAL-ARP operates in compliance with its Terms of Reference.

SCHEDULE 6: EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1 Events of Default

1.1 Train Operator Events of Default

The following are Train Operator Events of Default:

- (a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services in accordance with Clause 3.2(a);
- (b) an Insolvency Event occurs in relation to the Train Operator;
- (c) (i) any breach by the Train Operator of this contract, its Safety Obligations or any of the Collateral Agreements; or
 - (ii) any event or circumstance which is reasonably likely to result in any such breach,
 - which, by itself or taken together with any other such breach, event or circumstance, HAL reasonably considers constitutes a threat to the safe operation of any part of the Network;
- (d) any Track Charges or other amount due by the Train Operator to HAL under this contract remain unpaid for more than seven days after their due date;
- (e) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to HAL;
- (f) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators;
- (g) any non-payment of the Traction Electricity Charge in accordance with Clause 7.3 of this Contract; and
- (h) a failure by the Train Operator to secure the satisfaction, by the Longstop Date, of the conditions precedent contained in Clause 3.2(a) and, insofar as within its control, Clause 3.2(c) and Clause 3.2(d).

1.2 Notification

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

1.3 HAL Events of Default

The following are HAL Events of Default:

- (a) HAL ceases to be authorised to be the operator of that part of the Network comprising the Routes by a licence granted under section 8 of the Act unless exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to HAL;

- (c) (i) any breach by HAL of this contract, its Safety Obligations or any of the Collateral Agreements; or
- (ii) any event or circumstance which is reasonably likely to result in any such breach,
which, by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements;
- (d) any breach of this contract or any material breach of any of the Collateral Agreements by HAL which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator; and
- (e) a failure by HAL to secure the satisfaction, by the Longstop Date, of the conditions precedent contained in Clause 3.2(b) and, insofar as within its control, Clause 3.2(c) and Clause 3.2(d).

1.4 Notification

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

2 Suspension

2.1 Right to suspend

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

2.2 Contents of Suspension Notice

A Suspension Notice shall specify:

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

Charges or other amounts due, seven days shall be a reasonable grace period).

2.3 *Effect of Suspension Notice served by HAL*

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

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

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

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

- (a) it shall have the effect of suspending the Train Operator's permission to use the Routes to provide the Services to the extent specified in the Suspension Notice;
- (b) NOT USED;
- (c) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to HAL under paragraph 2.5.4; and
- (d) the service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the Network Code.

2.5 *Suspension to be proportionate to breach*

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

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

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

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

- (a) railway vehicles;

- (b) Services;
- (c) Routes; and
- (d) categories of train movements or railway vehicles,
(or (as the case may be) parts or part of them) to which the relevant HAL Event of Default relates.

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

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

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

3 Termination

3.1 *HAL's right to terminate*

HAL may serve a Termination Notice on the Train Operator:

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

3.2 *Train Operator's right to terminate*

The Train Operator may serve a Termination Notice on HAL:

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

3.3 *Contents of Termination Notice*

A Termination Notice shall specify:

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

3.4 *Effect of Termination Notice*

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

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

4 **Consequence of termination**

4.1 *Directions regarding location of Specified Equipment*

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

4.2 *Failure to comply with directions*

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

4.3 *Evidence of costs*

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

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

PART 1: TRACK CHARGING

1 Track Charges

1.1 In this Schedule 7:

- 1.1.1 "**Period**" means each consecutive period of 28 days during the term of this contract commencing at 0000 on 1 April each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from HAL to the Train Operator; and
- 1.1.2 "**Actual Train Movement**" means the total number of Passenger Train Slots (as defined in Schedule 5) which are actually operated by the Train Operator in respect of Period p.
- 1.1.3 "**Scheduled Train Movement**" means the total number of Passenger Train Slots (as defined in Schedule 5) which are scheduled in the Working Timetable by the Train Operator in respect of Period p.

1.2 Subject to Part 2 of this Schedule 7:

- 1.2.1 the Fixed Track Access Charge will be the sum of £[●] per Scheduled Train Movement, as set out in the HAL price list to be published by HAL on its website and updated by HAL from time to time in accordance with Clause 7.4; and

- 1.2.2 the Variable Usage Charge will be the sum of:

(a) *from [●] until [●]:*

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the spur to CTA section of track; or

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the CTA to Heathrow Terminal 4 Station section of track; or

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the CTA to Heathrow Terminal 5 Station section of track;

from [●]:

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the spur to CTA section of track; or

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the CTA to Heathrow Terminal 4 Station section of track; or

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the CTA to Heathrow Terminal 5 Station section of track;

(b) *from [●] until [●]:*

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the spur to CTA section of track,

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the CTA to Heathrow Terminal 4 Station section of track; or

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the CTA to Heathrow Terminal 5 Station section of track,

from [●]:

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the spur to CTA section of track,

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the CTA to Heathrow Terminal 4 Station section of track; or

£[●] per Actual Train Movement operated by a class [●] unit where the Actual Train Movement relates to the CTA to Heathrow Terminal 5 Station section of track,

each as set out in the HAL price list to be published by HAL on its website and updated by HAL from time to time in accordance with Clause 7.4.

- 1.3** For each section of track used (i.e. the portal to CTA, CTA to Heathrow Terminal 4 Station, CTA to Heathrow Terminal 5 Station), the Track Charges in respect of Period p shall be calculated in arrears following the end of such Period as follows:

$$TC_p = (FTA_p \times SM_p) + (VUC_{p[●]} \times AM_{p[●]}) + (VUC_{p[●]} \times AM_{p[●]})$$

where:

TC_p means the Track Charges in respect of Period p;

FTA_p means the Fixed Track Access Charge per Scheduled Train Movement specified in paragraph 1.2.1;

$VUC_{p[●]}$ means the Variable Usage Charge per Actual Train Movement operated by a class [●] unit specified in paragraph 1.2.2(a);

- VUC_{p360} means the Variable Usage Charge per Actual Train Movement operated by a class [●] unit specified in paragraph 1.2.2(b);
- SM_p means the number of Scheduled Train Movements on the Network during Period p;
- AM_{p[●]} means the number of Actual Train Movements operated by a class [●] unit which the Train Operator made on the Network during Period p; and
- AM_{p[●]} means the number of Actual Train Movements operated by a class [●] unit which the Train Operator made on the Network during Period p.

1.4 Not used

2 Payment of Access Charges

- 2.1** HAL shall issue one invoice to the Train Operator within 28 days of the end of a Period, p, in respect of the Track Charges payable in respect of such Period p.
- 2.2** The Train Operator shall pay or procure the payment to HAL of all sums invoiced pursuant to paragraph 2.1 within 28 days of the date of the invoice.

3 Additional Permitted Charges

- 3.1** Either party shall be required to pay to the other (in accordance with this Contract) any additional permitted charges comprising:
- (a) such amounts payable to or by HAL as are specified in, or calculated in accordance with, Schedule 8; and
 - (b) such amounts payable to or by HAL pursuant to any provision of the HAL Network Code,

("Additional Permitted Charges")

HAL shall issue an invoice to the Train Operator 28 days following the end of each Period in respect of any Additional Permitted Charges relating to such Period.

- 3.2** HAL or the Train Operator (as the case may be) shall pay or procure the payment to the other party of all sums invoiced pursuant to paragraph 3.1 within 28 days of the date of the invoice.

4 Payments in the Event of Dispute

- (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 4(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 payor together with interest on such amount (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

5 Payments, Interest and VAT

5.1 *Payment*

- (a) All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in this contract or in the HAL Network Code.
- (b) All invoices issued under this Schedule 7, or statements of amounts payable under Schedule 8 or the HAL Network Code, shall be sent by electronic transmission (with confirmation copy by prepaid first class post) to the address for service for the recipient specified in Schedule 1 to this contract and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.
- (c) Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and the party making the supply will issue a VAT invoice for that amount to the payer.
- (d) All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

5.2 *Interest*

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with paragraph 5.1(a) or paragraph 5.1(b).

5.3 *VAT*

- (a) Where any taxable supply for VAT purposes is made under or in connection with this contract by one party to the other the payer shall, in

addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

- (b) Where under this contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.
- (c) Where under this contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

PART 2: REOPENERS

1 Definitions

1.1 In addition to the definitions set out in Part 1 of this Schedule 7, in this Part 2 of Schedule 7, unless the context otherwise requires:

"Asset Management Plan" means the asset management plan referred to in clause 6.6(b)(ii) of this contract;

"Asset Management Policy" means the asset management policy referred to in clause 6.6(b)(i) of this contract;

"Asset Management Strategy" means, in relation to the Network, the costed strategy (on the basis of efficient delivery) developed by HAL (and as modified from time to time) for:

- (a) the discharge of its obligations as to the maintenance, repair and renewal of the Network under this contract or any other obligations owed by HAL for which it is not otherwise remunerated under this contract including the Asset Management Plan and Renewals Plan;
- (b) the discharge of any obligations binding on HAL as to the state, condition and safe operation of the Network which it is otherwise obliged to deliver to the extent these are different from or in addition to (a) above; and

- (c) achieving or working towards the Asset Management Policy,

in each case over the period to which it relates;

"Change in means, in respect of the Network:

Circumstances"

- (a) a Change of Law (as defined in the Network Code) or a Direction (as defined in the Network Code), determination or other decision of a 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 ORR and the Civil Aviation Authority) whether of the United Kingdom or of the European Union;
- (b) the occurrence of a Material Change;
- (c) any material change in the Asset Management Strategy (other than as a result of a change in law) affecting the Network which was not reasonably foreseeable by HAL at the time the relevant Asset Management Strategy was prepared;
- (d) a charging decision by the ORR pursuant to Schedule 3 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, which directly affects the values of the Fixed Track Access Charge; or
- (e) any other material event which HAL, the Train Operator and all other Access Beneficiaries agree should result in a review of the Review Provisions.

in each case, which will result in either (i) a decrease or increase in the costs of delivering the Asset Management Strategy; or (ii) (where paragraph 2.3 applies) HAL's costs and/or expenses of maintaining, operating and renewing the Network increasing or decreasing;

"Interim Review " has the meaning given to it in paragraph 4.1;

"Interim Review Notice" has the meaning given to it in paragraph 4.2;

"Material Change" means:

- (a) a significant physical modification to the Network; or
- (b) an increase or decrease of not less than 5% in the number of timetabled train movements on the Network (relative to the number of timetabled train movements on the Network at the point the amount of each of the Review Provisions was set);

"Renewals Plan" means HAL's plan defining the rolling renewal and replacement of and investment in the Network by HAL to deliver the Asset Management Strategy; and

"Review
Provisions" means:

- (a) the values of the Fixed Track Access Charge and Variable Usage Charge set out in paragraph 1.2 of Part 1 of this Schedule 7; and
- (b) the values set out in Appendix 1 to Schedule 8.

2 Review of the Review Provisions

2.1 Subject to paragraph 2.2 and (in the case of the Fixed Track Access Charge) paragraph 2 of Schedule 3 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, and without prejudice to Part G of the HAL Network Code, either party shall be entitled to review the Review Provisions in accordance with an Interim Review following the occurrence of a Change in Circumstances, provided that HAL shall only be entitled to review the Review Provisions either:

2.1.1 where paragraph 2.3 applies; or

2.1.2 in conjunction with preparing or changing the Asset Management Strategy and/or Asset Management Plan and/or Renewals Plan for the Network.

2.2 A party shall only be entitled to initiate a review of (and HAL shall only be entitled to modify) the Review Provisions pursuant to paragraph 2.1 and paragraph 4 either:

2.2.1 (where paragraph 2.3 applies), to the extent reasonably necessary to recover or compensate for the increase or decrease (as the case may be) in HAL's costs and/or expenses of maintaining, operating and renewing the Network which have arisen as a direct result of such Change of Circumstances; or

2.2.2 (in all other circumstances) to ensure that there are sufficient funds to comply with the Asset Management Strategy and/or Asset Management Plan and/or Renewals Plan.

In any event, if HAL proposes to increase the amount of the Fixed Track Access Charge, it must first obtain the approval of the ORR and confirmation from the ORR that such increase satisfies the test set out in paragraph 2 of Schedule 3 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

2.3 HAL and the Train Operator acknowledge and agree that:

2.3.1 it is generally expected that a Change in Circumstances will require HAL to make a change to the Asset Management Strategy and/or Asset Management Plan and/or Renewals Plan (and HAL will propose modifications to the Review Provisions as a direct consequence thereof); but

2.3.2 there may be one or more Changes in Circumstances which do not require HAL to make a change to the Asset Management Strategy and/or Asset Management Plan and/or Renewals Plan but will nevertheless directly result in HAL's costs and/or expenses of maintaining, operating and renewing the Network increasing or decreasing, in which case, HAL shall be entitled to initiate an Interim Review in accordance with paragraph 4, provided that HAL can demonstrate to the Train Operator (and each other train operator using the Network) that:

- (a) a Change in Circumstances has occurred;
- (b) such Change in Circumstances has or will directly result in an increase or decrease in HAL's costs and/or expenses of maintaining, operating and renewing the Network;
- (c) such Change in Circumstances is one which does not reasonably require HAL to make any changes to the Asset Management Strategy and/or Asset Management Plan and/or Renewals Plan;
- (d) in implementing the Interim Review, HAL intends only to modify the Review Provisions to the extent reasonably necessary to recover or compensate for the increase or decrease (as the case may be) in HAL's costs and/or expenses of maintaining, operating and renewing the Network which have arisen as a direct result of such Change in Circumstances; and
- (e) the proposed modifications to the Review Provisions comply with the requirements of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 and European Commission Implementing Regulation 2015/909 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service,

(paragraphs (a), (b), (c), (d) and (e) being the “**Non-Asset Conditions**”).

- 2.4** If an Interim Review is initiated following the occurrence of a Change in Circumstances, resulting from paragraph (b) of the definition of Material Change, the scope of the Interim Review shall be to:
- (a) calculate the aggregate Fixed Track Access Charge payable by the Train Operator and all other Access Beneficiaries for a Relevant Year, calculated on the basis of the number of timetabled train movements on the Network at the point the amount of each of the Review Provisions was set; and
 - (b) divide the aggregate Fixed Track Access Charge for a Relevant Year calculated pursuant to paragraph 2.4 (a) between the number of timetabled train movements on the Network immediately following the occurrence of the Change in Circumstances.
- 2.5** If an Interim Review is initiated following the occurrence of an event falling within paragraph (d) of the definition of Change in Circumstances, in order to obtain full recovery of the costs incurred, HAL, with the approval of the ORR in accordance with paragraph 2 of schedule 3 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, shall be entitled to revise the Fixed Track Access Charge. The Fixed Track Access Charge per Scheduled Train Movement shall be the revised aggregate Fixed Track Access Charge for a Relevant Year divided equally between the number of timetabled train movements on the Network immediately following the occurrence of the Change in Circumstances.
- 3 Not used.**
- 4 Interim Review**
- 4.1** Either party shall be entitled to initiate a review of the Review Provisions at any time following the occurrence of a Change in Circumstances (an "**Interim Review**").
- 4.2** On or prior to a party initiating an Interim Review following the occurrence of a Change in Circumstances, the party wishing to initiate a review of the Review Provisions (the "**Requesting Party**") shall promptly give written notice (an "**Interim Review Notice**") to the other party and to each other train operator using the Network stating:
- 4.2.1 that it wishes to initiate an Interim Review; and
 - 4.2.2 the circumstances which have resulted in the Requesting Party initiating an Interim Review;
 - 4.2.3 Either:
 - (a) (in HAL's case and only where paragraph 2.1.2 applies), the proposed changes to the Asset Management Strategy and/or Asset Management Plan and/or Renewals Plan; or
 - (b) (in HAL's case and only where paragraph 2.3 applies) the Non-Asset Conditions have been satisfied (together with

reasonable evidence to demonstrate that such Change in Circumstances has or will directly result in an increase or decrease in HAL's costs and/or expenses of maintaining, operating and renewing the Network); and

4.2.4 any modifications to any of the Review Provisions that the Requesting Party proposes as a result of the occurrence of the Change in Circumstances.

4.3 If:

4.3.1 (i) where HAL is the Requesting Party, the Train Operator and/or any other train operator using the Network (as applicable) do not or (ii) where the Train Operator is the Requesting Party, HAL and/or any other train operator using the Network (as applicable) do not, in each case in accordance with paragraph 5 object to the modification of any of the Review Provisions within 30 days of notification in accordance with paragraph 4.2; or

4.3.2 following the referral of the matter to the disputes resolution process set out in paragraph 5, it is determined that any of the Review Provisions should be modified,

HAL shall promptly notify the Train Operator in writing of any of the modified Review Provisions.

4.4 Any modification to the Review Provisions notified to the Train Operator and each other train operator using the Network pursuant to paragraph 4.3 shall take effect from the first day of the Period immediately succeeding the date of the notice.

5 Review Provisions - Dispute Resolution Procedure

5.1 Subject to paragraph 5.2, and without prejudice to HAL's and the Train Operator's respective rights under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, if HAL or the Train Operator (or any other train operator using the Network) is dissatisfied with the proposed changes to the Review Provisions, then the dissatisfied party shall promptly notify the Requesting Party and any other train operators using the Network and the matter shall be referred to Arbitration in accordance with the ADRR in force at the relevant time and such determination will be binding on HAL, the Train Operator and each other train operator using the Network.

5.2 Where the Train Operator (or any other train operator using the Network) reasonably believes that either:

5.2.1 (where paragraph 2.3 applies) HAL has not demonstrated to the Train Operator that each of the Non-Asset Conditions have been satisfied; or

5.2.2 (where paragraph 2.1.2 applies) the changes to the Asset Management Strategy, Asset Management Plan and/or Renewals Plan proposed by HAL in accordance with paragraph 4.2 are outside the scope of the Asset Management Policy,

the Arbitration process shall determine that:

- (a) either:
 - (i) (where paragraph 2.3 applies) HAL has demonstrated that each of the Non-Asset Conditions have been satisfied; or
 - (ii) (where paragraph 2.1.2 applies) the changes proposed by HAL to the Asset Management Strategy, Asset Management Plan and/or Renewals Plan in accordance with paragraph 4.2 are within the scope of the Asset Management Policy,

or

- (b) either:
 - (i) (where paragraph 2.3 applies) which of the Non-Asset Conditions HAL has not demonstrated have been satisfied; or
 - (ii) (where paragraph 2.1.2 applies) which changes proposed by HAL to the Asset Management Strategy, Asset Management Plan and/or Renewals Plan in accordance with paragraph 4.2 are outside the scope of the Asset Management Policy;

and such determination will be binding on HAL, the Train Operator and each other train operator using the Network.

5.2 Without prejudice to HAL's rights under paragraph 2.1.2 in conjunction with preparing the Asset Management Strategy for the Network, if it is determined that HAL has not demonstrated that each of the Non-Asset Conditions have been satisfied, HAL shall not be entitled to modify the Review Provisions in accordance with the proposals set out in the Interim Review Notice.

6 Protected Provisions

6.1 Except as expressly set out otherwise in this Contract, HAL may only make changes to the Review Provisions as part of an Interim Review.

SCHEDULE 8: PERFORMANCE REGIME

1 Interpretation

1.1 Definitions

In this Schedule 8 and its Appendices, unless the context otherwise requires:

- “Applicable Timetable”** means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00 hours on the day prior to that day, and which is applicable to the Trains;
- “Aggregate NRPS”** means the total NRPS as calculated in paragraph 9 for all Service Groups in a given Period or Contract Year (as appropriate);
- “Aggregate TPS”** means the total TPS as calculated in paragraph 10 for all Service Groups in a given Period or Contract Year (as appropriate);
- “Bi-annual Timetable”** means in respect of any day or any Period the Passenger Timetable commencing on either the Principal Change Date or Subsidiary Change Date (as the case may be) in which falls the last day of the Period containing that day or the last day of that Period respectively;
- “Cancelled Stop”** means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point);
- “Cancellation Minutes”** means, in relation to a Cancelled Stop, the number of Cancellation Minutes specified in column J of Appendix 1 for the Service Group which includes that Train;
- “Cap”** means, in relation to a Monitoring Point, or a Train, the cap for the relevant Service Group in column K of Appendix 1;
- “Capped Value”** means in relation to any Service Group, the capped value (if any) specified in respect of that Service Group in Appendix 1 (as indexed in accordance with paragraph 9);
- “Charter Destination Point”** means any such station so specified in Appendix 2;

- “Corresponding Day”** means, in respect of any day (the **"first day"**):
- (a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable;
 - (b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
 - (c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or otherwise determined in accordance with paragraph 22;
- “Corresponding Day Timetable”** means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 22;
- “ETCS”** means the European Train Control System;
- “Joint Inquiry”** means a formal inquiry which is required by any of the Railway Group Standards to be held or is permitted by any of the Railway Group Standards to be held and is in fact held;
- “Material Change”** means a change falling within the definition of "Material Change" in Schedule 7 which (in any case) has or HAL reasonably expects to have a material impact on the performance and reliability of the Network;
- “Matters Subject to Rebenchmarking”** means:
- (a) the figures set out in columns E, I, J, K and O of Appendix 1; and
 - (b) the SPP Threshold figures in Appendix 3 of this Schedule 8;

“Minutes Delay”	means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;
“Minutes Late”	means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2;
“Monitoring Point”	means, in relation to a direction of a Service, a point listed in column N of Appendix 1 as a point to be used for recording lateness of Trains in accordance with paragraph 2, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point for the same Service in the opposite direction and/or for other Services;
“New Working Timetable”	has the meaning given to it in Part D of the HAL Network Code;
“HAL Performance Point”	means, in relation to a Service Group, the HAL performance point specified in column B of Appendix 1;
“Initial Benchmarking Period”	means the period from and including 0200 on the Subsidiary Change Date occurring in [●] until (but excluding) 0200 on the Subsidiary Change Date occurring in [●];
"Initial Rebenchmarking Implementation Date"	means, in respect of the Initial Benchmarking Period, [●];
“Off-Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Passenger’s Charter”	means a commitment to passengers generally (whether or not legally binding) made by the Train Operator or any Passenger Transport Executive (in respect of any services operated by the Train Operator which are the subject of arrangements between the Train Operator and that Passenger Transport Executive) in relation to the punctuality and/or reliability of all or any of the Trains. The foregoing shall not be construed as to include any specific alternative or additional arrangements with any particular passenger (whether or not legally binding);
“Passenger Timetable”	means the timetable referred to within the Performance Monitoring System as the passenger timetable and which reflects the Applicable Timetable;
“Peak”	Where applicable, has the meaning ascribed to it in Schedule 5;

“Performance Data Accuracy Code”	means the version of the Performance Data Accuracy Code referred to in Part B of the Network Code;
“Performance Monitoring System”	means the recording system which HAL is required to operate under Part B of the Network Code;
“Performance Sum”	means, in relation to a Service Group, a sum of money which HAL or the Train Operator is liable to pay to the other under this Schedule 8, as calculated in accordance with paragraph 9 or 10, as the case may be;
“Period”	means each consecutive period of 28 days during the term of this contract commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from HAL to the Train Operator;
"Rebenchmarking Implementation Date"	means: <ul style="list-style-type: none">(c) the Initial Rebenchmarking Implementation Date; and(d) following the occurrence of a Material Change, such date as may be agreed as part of the process under Part C of the HAL Network Code;
“Recording Point”	means a point at which HAL records Trains using the Performance Monitoring System;
“Recovery Time”	means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;
“Relevant Year”	means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

“Restriction of Use”	<p>means, in respect of any day, any restriction of use in respect of the Network outside of the White Period of all or any part of the Routes (other than one caused by Recovery Time which was contained in the Applicable Timetable Planning Rules relevant to that day) notified to each Timetable Participant (as defined in Part D of the HAL Network Code) on or before D-26 which results in:</p> <ul style="list-style-type: none">(a) a material difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or(b) a material difference between the New Working Timetable (as defined in Part D of the HAL Network Code) on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;
“Season Ticket”	<p>means any ticket valid for unlimited travel on a Service for not less than a period of one calendar month;</p>
“Service Code”	<p>means the third, fourth and fifth digits of an eight character train service code applied in the Performance Monitoring System to Trains and used to identify them;</p>
“Service Group”	<p>means a collection of Services contained within the service groups specified in column A of Appendix 1;</p>
“Short Term Timetable Proposal”	<p>means the short term timetable proposal issued at t-22;</p>
“Train”	<p>means each train operating a Service which is:</p> <ul style="list-style-type: none">(a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and(b) used to provide services for the carriage of passengers by railway, <p>but excludes any and all trains making an Ancillary Movement;</p>
“Train Operator Performance Point”	<p>means, in relation to a Service Group, the Train Operator performance point specified in column F of Appendix 1;</p>

- "White Period"** means such periods of time as are specified in the Applicable Engineering Access Statement during which HAL is permitted to undertake scheduled maintenance or other work in respect of the Network; and
- "Working Timetable Proposal"** means the working timetable proposal issued at t-41.

1.2 *Interpretation*

For the purposes of this Schedule 8:

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

1.3 *Suspension Notices*

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

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

2 **Calculation of Minutes Late**

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

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

where:

L in respect of a Train is the lesser of:

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

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

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

3 Calculation of Minutes Delay

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

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

where:

- A_1 is the number of minutes between the time at which the Train triggers the Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a Recording Point (rounded down to the nearest whole minute);
- A_2 is the relevant time lapse scheduled in the Applicable Timetable between those same two Recording Points; and
- B is any Recovery Time between those Recording Points incorporated in the Applicable Timetable;

provided that:

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

4 Recording of performance information

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

Without prejudice to its obligations under Part B of the Network Code, HAL shall use the Performance Monitoring System to record for each day in respect of each Train scheduled in the Applicable Timetable:

- (a) the time at which the Train stops to set down passengers at each Monitoring Point;

- (b) each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;
- (c) the time at which the Train triggers each Recording Point;
- (d) the Minutes Delay for that Train at each Recording Point;
- (e) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:
 - (i) the incident(s) causing each minute of any delay included in Minutes Delay; and
 - (ii) those Minutes Delay for which HAL is unable to identify a cause; and
- (f) for each Charter Destination Point in respect of Trains for which the Charter Destination Point is a destination for the purposes of a Passenger's Charter, the time of the Train's arrival.

The provisions of this Schedule 8, which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code.

4.2 *Recording of allocated responsibility for Minutes Delay and Cancelled Stops*

HAL shall for each day and for each Train scheduled in the Applicable Timetable record separately in the Performance Monitoring System those Minutes Delay and Cancelled Stops caused by incidents:

- (a) for which HAL is allocated responsibility in accordance with paragraph 5.2;
- (b) for which the Train Operator is allocated responsibility in accordance with paragraph 5.3;
- (c) for which HAL and the Train Operator are allocated joint responsibility, in accordance with paragraph 5.4;
- (d) for which no cause can be identified; and
- (e) which are planned incidents in accordance with paragraph 5.7.

4.3 *Failed Recording Points*

Without prejudice to its obligations under Part B of the Network Code, HAL shall use all reasonable endeavours:

- (a) to restore as soon as reasonably practicable any failed Recording Point; and
- (b) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Schedule 8.

4.4 *Provision of information by Train Operator*

The Train Operator shall record and shall continue to record such information as HAL may reasonably require and which it is reasonable to expect the Train Operator to have or procure in connection with any Minutes Delay that may arise and shall provide such information to HAL promptly after such information first becomes available to the Train Operator.

HAL shall promptly notify the Train Operator upon HAL becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraph 4.1. Any such notification shall be in sufficient detail to enable the Train Operator to institute the recording of such information in connection with the Trains for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. The Train Operator shall institute such recording as soon as it is reasonably able following receipt of the notification from HAL and will provide HAL with the resulting information no later than 1700 hours two Working Days following the day on which it was recorded.

5 Allocation of responsibility for Minutes Delay and Cancelled Stops

5.1 *Assessment of incidents causing Minutes Delay and Cancelled Stops*

- (a) In assessing the cause of any Minutes Delay or Cancelled Stop, there shall be taken into account all incidents contributing thereto including:
 - (i) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and
 - (ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running;
- (b) The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident;
- (c) HAL shall identify:
 - (i) in respect of each incident recorded under paragraph 4.1(e)(i) as causing Minutes Delay, the extent to which that incident caused each of the Minutes Delay; and
 - (ii) in respect of each incident recorded under paragraph 4.1(b), the extent to which that incident caused the Cancelled Stop;
- (d) So far as HAL is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Stops is to be allocated to HAL or to the Train Operator or to them jointly in accordance with the following provisions of this paragraph 5.

5.2 *HAL responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which HAL is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to HAL. Unless and to the extent

otherwise agreed, HAL shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:

- (a) by breach by HAL of any of its obligations under this contract; or
- (b) (whether or not HAL is at fault) by circumstances within the control of HAL in its capacity as operator of the Network; or
- (c) (whether or not HAL is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract.

5.3 *Train Operator responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 5.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7) if that incident:

- (a) is caused wholly or mainly:
 - (i) by breach by the Train Operator of any of its obligations under this contract; or
 - (ii) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains; or
 - (iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance originating in connection with or at any station (other than in connection with signalling under the control of HAL at that station or physical works undertaken by HAL at that station), any light maintenance depot or any network other than the Network; or
- (b) causes delay to:
 - (i) rolling stock operated by or on behalf of another train operator which is delayed in entering or leaving the Network due to any act, omission or circumstance originating in connection with a light maintenance depot or network other than the Network and, as a result of that delay, rolling stock operated by or on behalf of the Train Operator which is scheduled to leave or enter the Network at the connection with that light maintenance depot or other network is then delayed behind the first mentioned rolling stock; or

- (ii) the commencement of a Train's journey, which is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator.

5.4 *Joint responsibility incidents*

- (a) HAL and the Train Operator shall be allocated joint responsibility for:
 - (i) any incident which is not a planned incident (as defined in paragraph 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:
 - (1) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and
 - (2) prevents the access of passengers through the station to or from the Train;
 and paragraphs 5.2 and 5.3 shall not apply to any such incident; or
 - (ii) any identified incident in respect of which HAL and the Train Operator are equally responsible and for which neither HAL nor the Train Operator is allocated responsibility under paragraph 5.2 or 5.3.
- (b) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which HAL and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to HAL and 50% to the Train Operator.

5.5 *Unidentified incidents Minutes Delay*

Responsibility for Minutes Delay on any day in respect of a Service Group caused by incidents which are unidentified, as recorded under paragraph 4.2(d), shall be allocated as follows:

- (a) if there are any Minutes Delay in respect of the Service Group recorded as being caused by incidents for which HAL or the Train Operator are allocated responsibility:
 - (i) 50% of the unidentified Minutes Delay under paragraph 4.2(d) shall be allocated to HAL, the Train Operator and joint responsibility incidents *pro rata* to the aggregate Minutes Delay for that Service Group respectively recorded as being their responsibility under this paragraph 5 for that day; and
 - (ii) the balance of the Minutes Delay under paragraph 4.2(d) shall be allocated to HAL; and
- (b) if no Minutes Delay on that day in respect of the Service Group are recorded as being caused by incidents for which HAL or the Train Operator are allocated responsibility, then HAL and the Train

Operator shall each be allocated 50% of the unidentified Minutes Delay recorded under paragraph 4.2(d).

5.6 *Unidentified incidents: Cancelled Stops*

Responsibility for Cancelled Stops on a day in respect of a Service Group caused by incidents which are unidentified shall be allocated 50% to HAL and 50% to the Train Operator.

5.7 *Planned incidents*

An incident shall be treated as a planned incident if and to the extent that:

- (a) such incident was a Restriction of Use notified in accordance with Schedule 4 by HAL to the Train Operator; or
- (b) there is Recovery Time in respect of that incident.

5.8 *Allocation of responsibility for Minutes Delay at Service Group level: aggregate Minutes Delay*

In respect of a Service Group, the aggregate Minutes Delay on a day shall be the aggregate of all Minutes Delay recorded under paragraphs 4.2(a) to 4.2(d) in respect of all Trains in that Service Group scheduled in the Applicable Timetable.

5.9 *Allocation of responsibility for Minutes Delay at Service Group level: HAL Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to HAL shall be the aggregate of any Minutes Delay allocated to HAL under paragraph 5.2, paragraph 5.4 and paragraph 5.5.

5.10 *Allocation of responsibility for Minutes Delay at Service Group level: Train Operator Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to the Train Operator shall be the aggregate of any Minutes Delay allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.5.

5.11 *HAL Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to HAL shall be the aggregate of any Cancelled Stops allocated to HAL under paragraph 5.2, paragraph 5.4 and paragraph 5.6.

5.12 *Train Operator Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to the Train Operator shall be the aggregate of any Cancelled Stops allocated to the Train Operator under paragraph 5.3, paragraph 5.4 or paragraph 5.6.

6 Statement of allocated responsibility

6.1 Initial statement

For each day, HAL shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day:

- (a) the allocation of responsibility for incidents made by HAL under paragraph 5; and
- (b) a summary for each Service Group showing:
 - (i) the aggregate Minutes Delay and Cancelled Stops recorded under each category set out in paragraph 4.2; and
 - (ii) a list of the Minutes Delay and Cancelled Stops (in each case broken down by incident) recorded as the responsibility of HAL and as the responsibility of the Train Operator.

6.2 Further statements

If HAL's nominated representative has reasonable grounds to believe that any further incident was the responsibility of the Train Operator or of HAL but was not shown as such in the information made available in accordance with paragraph 6.1, then HAL may, within seven days after the last Minutes Delay or Cancelled Stop caused by that incident, issue a notice in accordance with paragraph 15 revising the information and/or allocations of responsibility made available under paragraph 6.1.

6.3 Adjustment statements

If Condition B3.3 (adjustment to prior results) applies in respect of all or part of a Period, then HAL shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period, and any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 28 days of HAL's statement.

6.4 Disputes about statements of allocated responsibility

- (a) Except to the extent that it has, within two Working Days of receipt, notified HAL in accordance with paragraph 15 that it disputes the contents of a statement under paragraphs 6.1 or 6.2, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.
- (b) The parties shall attempt to resolve disputes notified in accordance with paragraph 6.4(a) as follows:
 - (i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and

- (ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.
- (c) Negotiations under paragraph 6.4(b)(ii) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 6.4(a) occurred.

7 Allocation of Minutes Late to HAL

In respect of each Monitoring Point, the Minutes Late on a day at that Monitoring Point allocated to HAL (MLNR) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLNR = \frac{(MDNR \cdot ML)}{MD} + DMLNR$$

or if MD is equal to zero

$$MLNR = (HP \cdot ML) + DMLNR$$

where:

- ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;
- MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;
- MDNR is that part of such MD allocated to HAL in accordance with paragraph 5.9;
- DMLNR is the deemed minutes late at that Monitoring Point on that day allocated to HAL, derived from the following formula:

$$DMLNR = RC \cdot CM$$

where:

- RC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which HAL is allocated responsibility in accordance with paragraph 5.11; and
- CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1; and
- HP is the proportion of Minutes Delay allocated to HAL under paragraph 5.2 in the immediately preceding 13 Period (or, where fewer than 13 Periods have elapsed during the term of this Contract, the number of Periods which have elapsed), derived from the following formula:

HP = HRIMD/AMD

where:

HRIMD means either:

- (a) (where 13 or more Periods have elapsed during the term of this Contract) the total number of Minutes Delay allocated to HAL under paragraph 5.2 in the immediately preceding 13 Periods; or
- (b) (where fewer than 13 Periods have elapsed during the terms of this Contract) the total number of Minutes Delay allocated to HAL under paragraph 5.2 in all of the preceding Periods which have elapsed during the term of this Contract; and

AMD means either:

- (c) (where 13 or more Periods have elapsed during the term of this Contract) the aggregate of the number of Minutes Delay allocated to HAL under paragraph 5.2 and the number of Minutes Delay allocated to the Train Operator under paragraph 5.3 in the immediately preceding 13 Periods; or
- (d) (where fewer than 13 Periods have elapsed during the term of this Contract) the aggregate of the number of Minutes Delay allocated to HAL under paragraph 5.2 and the number of Minutes Delay allocated to the Train Operator under paragraph 5.3 in all of the preceding Periods which have elapsed during the term of this Contract.

8 Allocation of Minutes Late to the Train Operator

In respect of each Monitoring Point, the Minutes Late at that Monitoring Point on a day allocated to the Train Operator (MLT) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLT = \frac{MDT \cdot ML}{MD} + DMLT$$

or if MD is equal to zero

$$MLT = (TP \cdot ML) + DMLT$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;

MDT is that part of such MD allocated to the Train Operator in accordance with paragraph 5.10;

DMLT is the deemed minutes late at that Monitoring Point on that day allocated to the Train Operator, derived from the following formula:

$$DMLT = TC \cdot CM$$

where:

TC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which the Train Operator is allocated responsibility in accordance with paragraph 5.12; and

CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.

TP is the proportion of Minutes Delay allocated to the Train Operator under paragraph 5.3 in the immediately preceding 13 Periods (or, where fewer than 13 Periods which have elapsed during the term of this Contract, the number of Periods which have elapsed), derived from the following formula:

$$TP = TRIMD/AMD$$

where:

TRIMD means either:

(e) (where 13 or more Periods have elapsed during the term of this Contract) the total number of Minutes Delay allocated to the Train Operator under paragraph 5.3 in the immediately preceding 12 Periods; or

(f) (where fewer than 13 Periods have elapsed during the term of this Contract) the total number of Minutes Delay allocated to the Train Operator under paragraph 5.3 in all of the preceding Periods which have elapsed during the term of this Contract; and

AMD means either:

(g) (where 13 or more Periods have elapsed during the term of this Contract) the aggregate of the number of Minutes Delay allocated to HAL under paragraph 5.2 and the number of Minutes Delay allocated to the Train Operator under paragraph 5.3 in the immediately preceding 13 Periods; or

(h) (where fewer than 13 Periods have elapsed during the term of this Contract) the aggregate of the number of Minutes Delay allocated to HAL under paragraph 5.2 and the number of Minutes Delay allocated to the Train Operator under paragraph 5.3 in all of the preceding Periods which have elapsed during the term of this Contract.

9 HAL Performance Sums

9.1 Subject to paragraph 9.3, in respect of a Service Group, the HAL Performance Sum (NRPS) for each Period shall be calculated according to the following formula:

$$NRPS = (NRPP - NRWAML) \cdot BF \cdot NRPR$$

where:

NRPP is the HAL Performance Point for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;

NRWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to HAL in accordance with the following formula:

$$NRWAML = \sum \frac{(MLNR \cdot MPW)}{SP}$$

where:

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

MLNR is the Minutes Late allocated to HAL in respect of each Monitoring Point in that Period, in accordance with paragraph 7;

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

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed equal zero; that shall $\frac{(MLNR \cdot MPW)}{SP}$

BF is the relevant busyness factor estimated for the Period according to the following formula:

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

where:

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

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

SD is the aggregate number of stops to set down passengers at that Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that $\frac{(MPW \cdot SD)}{AS}$ shall equal zero; and

NRPR is the relevant HAL payment rate for that Service Group specified in column E of Appendix 1 as indexed in accordance with paragraph 13,

provided that:

- (i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of NRPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then the value of NRPS shall be deemed to be equal to the Capped Value in respect of such Period;
- (ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;
- (iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:

$$CV_t = \left(1 + \frac{(RPI_{t-1} - RPI_{[\bullet]})}{RPI_{[\bullet]}} \right) \cdot \text{Initial Indexation Factor}$$

where:

CV_t means the CV indexation in Relevant Year t;

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

RPI_[•] means the RPI published or determined with respect to the month of [•].

9.2 Where NRPS is less than zero, HAL shall pay the amount of the NRPS to the Train Operator. Where NRPS is greater than zero, the Train Operator shall pay that amount to HAL.

9.3 Notwithstanding paragraphs 9.1 and 9.2, HAL's aggregate liability for NRPS under or in connection with this Agreement shall be capped as follows:

- (i) for any Period, the Aggregate NRPS shall not exceed the HAL periodic Cap calculated in accordance with paragraph 9.4; and

(ii) for any Contract Year, the Aggregate NRPS shall not exceed £[●] (indexed in accordance with the CV indexation factor specified in paragraph 9.1)

and HAL shall have no further liability for NRPS in excess of the above limitations.

9.4 In respect of:

(i) the first Period of each Contract Year, the HAL Periodic Cap shall be £[●] (indexed in accordance with the CV indexation factor specified in paragraph 9.1);

(ii) the second Period of each Contract Year, the HAL Periodic Cap shall be £[●] (indexed in accordance with the CV indexation factor specified in paragraph 9.1) plus an amount equal to the difference between: (a) the NRPS payable by HAL for the first Period in such Contract Year; and (b) £[●]; and

(iii) any subsequent Period of each Contract Year, the HAL Periodic Cap shall be £[●] (indexed in accordance with the CV indexation factor specified in paragraph 9.1) plus an amount equal to the difference between: (a) the NRPS payable by HAL in the immediately preceding Period; and (b) the HAL Periodic Cap in respect of such immediately preceding Period, provided that the HAL Periodic Cap shall not exceed the amount specified in paragraph 9.3 (ii).

10 Train Operator Performance Sums

10.1 Subject to 10.3, in respect of a Service Group, the Train Operator Performance Sum (TPS) for each Period shall be calculated according to the following formula:

$$TPS = (TPP - TWAML) \cdot BF \cdot TPR$$

where:

TPP is the Train Operator Performance Point for the Service Group specified in column F of Appendix 1;

TWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to the Train Operator in accordance with the following formula:

$$TWAML = \sum \frac{(MLT \cdot MPW)}{SP}$$

where:

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

MLT is the Minutes Late allocated to the Train Operator in respect of each Monitoring Point in that Period, in accordance with paragraph 8;

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

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that $\frac{MLT \cdot MPW}{SP}$ shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

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

where:

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

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

SD is the aggregate number of stops to set down passengers at the Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that $\frac{MPW \cdot SD}{AS}$ shall equal zero; and

TPR is the relevant Train Operator payment rate for that Service Group specified in column I of Appendix 1 as indexed in accordance with the provisions in paragraph 13.

10.2 Where TPS is less than zero, the Train Operator shall pay the amount of the TPS to HAL. Where TPS is greater than zero, HAL shall pay that amount to the Train Operator.

10.3 Notwithstanding paragraphs 10.1 and 10.2, the Train Operator's aggregate liability for TPS under or in connection with this Agreement shall be capped as follows:

(i) for any Period, the Aggregate TPS shall not exceed the TO Periodic Cap calculated in accordance with paragraph 10.4; and

(ii) for any Contract Year, the Aggregate TPS shall not exceed £[●] (indexed in accordance with the provisions in paragraph 13) and the Train Operator shall have no further liability for TPS in excess of the above limitations.

10.4 In respect of:

(i) the first Period of each Contract Year, the TO Periodic Cap shall be £[●] (indexed in accordance with the CV indexation factor specified in paragraph 9.1);

(ii) the second Period of each Contract Year, the TO Periodic Cap shall be £[●] (indexed in accordance with the CV indexation factor specified in paragraph 13) plus an amount equal to the difference between: (a) the TPS payable by the Train Operator for the first Period in such Contract Year; and (b) £[●]; and

(iii) any subsequent Period of each Contract Year, the TO Periodic Cap shall be £[●] (indexed in accordance with the CV indexation factor specified in paragraph 13) plus an amount equal to the difference between: (a) the TPS payable by the Train Operator in the immediately preceding Period; and (b) the TO Periodic Cap in respect of such immediately preceding Period, provided that the TO Periodic Cap shall not exceed the amount specified in paragraph 10.3(ii).

11 Notification of Performance Sums

11.1 Notification

Within 14 days after the end of each Period, HAL shall provide the Train Operator with a statement for each Service Group for that Period showing:

- (a) any Performance Sums for which HAL or the Train Operator is liable, together with such supporting information (other than information in respect of incidents recorded as the responsibility of HAL) as the Train Operator may reasonably require; and
- (b) any matter referred to in paragraph 6.1 which the Train Operator has disputed in accordance with paragraph 6.4(a) and which is still in dispute.

11.2 Disputes

Within 14 days after receipt by the Train Operator of a statement required under paragraph 11.1, the Train Operator shall notify HAL of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 6. Such disputes and any matter referred to in paragraph 11.1(b) shall be resolved in accordance with the procedure in paragraph 16. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.

12 Payment procedures

12.1 Payments and set-off

- (a) In respect of any and all Performance Sums for which HAL and the Train Operator are liable in any Period, the aggregate liabilities of HAL and the Train Operator shall be set off against each other. The balance shall be payable by HAL or the Train Operator, as the case may be, in accordance with paragraph 3.1 of Schedule 7.

- (b) Subject to paragraph 12.2, and save as otherwise provided, all other sums payable under this Schedule 8 shall be paid in accordance with paragraph 3.1 of Schedule 7.

12.2 Payments in the event of dispute

Where any sum which is payable under this paragraph 12 is in dispute:

- (a) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 12.1;
- (b) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid or set off (as the case may be) within 28 days after the end of the Period in which the dispute is resolved or determined; and
- (c) from the date at which such balance would but for the dispute have been due to be paid or set off, the disputed balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate, unless the dispute relates to an incident the responsibility for which is the subject of a Joint Inquiry, in which case interest shall be payable at the prevailing base rate of Barclays Bank plc.

13 Payment rates

- 13.1 Each payment rate in columns E and I of Appendix 1 shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

$$R_t = R_{t-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

R_t is the relevant rate in the Relevant Year t;

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

RPI_{t-1} has the same meaning as set out in Paragraph 9.1 above of this Schedule 8; and

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

but so that in relation to the Relevant Year commencing on [●], R_t shall have the relevant value specified in the relevant column (either E or I) of Appendix 1, multiplied by the Initial Indexation Factor and in the next following Relevant Year, R_{t-1} shall have the same value.

14 Not used

15 Notices

- 15.1 All notices under this Schedule 8 shall be given in writing and shall be sent by prepaid first class post, email or fax or delivered by hand to the party in question at the address for service last notified by that party.
- 15.2 Any such notice shall be deemed to have been duly received:
- (a) if sent by prepaid first class post, three days after posting unless otherwise proven;
 - (b) if sent by hand, when delivered;
 - (c) if sent by facsimile, (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a business day, on the day of transmission and, in any other case, at 0900 hours on the next following business day ("business day" for these purposes being a day which is not a Saturday, Sunday or a public holiday in the place where the transmission is to be received); and
 - (d) if sent by email, (unless a notice of non-delivery is received) upon receipt.

16 Disputes

- 16.1 If any dispute is notified under paragraph 11.2 it shall be resolved according to the following procedure:
- (a) within seven days of service of the relevant notice (or, if the dispute relates to an incident the responsibility for which is or is to be the subject of a Joint Inquiry, within seven days of publication of the conclusion of that Joint Inquiry), the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
 - (b) if, for any reason, within seven days of the meeting referred to in paragraph 16.1(a), the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;
 - (c) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and
 - (d) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the ADRR.

17 Amendments to Appendix 1

17.1 Circumstances in which parties agree to amend Appendix 1

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

17.2 Procedure for amendments to Appendix 1

- (a) The party who wishes to amend Appendix 1 shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
 - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month six months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
 - (ii) in any other case, prior to the date from which it proposes such change shall have effect.
- (b) Any notice under paragraph 17.2(a) shall:
 - (i) specify as far as possible that party's proposed amendments to Appendix 1; and
 - (ii) be accompanied by information and evidence in reasonable detail supporting the change proposed and setting out the reasons for it.
- (c) The party receiving a notice issued under paragraph 17.2(a) shall respond to that notice in writing, in reasonable detail and with reasons for its response, within 56 days of service of such notice.
- (d) Promptly (and in any event within 34 days) following the service of any response under paragraph 17.2(c), the parties shall endeavour to agree whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.
- (e) If the parties fail to reach agreement within 90 days of service of a notice under paragraph 17.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached within that period, either party may refer the matter for resolution in accordance with the ADRR and the parties shall agree in a Procedure Agreement (such term to have the same meaning as in the ADRR) that:
 - (i) the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement issued by ORR including in relation to the introduction of any capped value in respect of any Service Group in Appendix 1; and
 - (ii) that the relevant ADRR Forum will set out its reasoning in any determination.
- (g) Not used.
- (h) Any agreed amendment to Appendix 1 in connection with the proposal referred to in paragraph 17.1 which is agreed by the parties or determined by the relevant ADRR Forum shall apply with effect from either:
 - (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 17.2(a)(i) applies); or

- (ii) the date proposed by the party requesting the change (where paragraph 17.2(a)(ii) applies), unless otherwise agreed by the parties or determined by the relevant ADRR Forum in accordance with paragraph 17.2(f).

- (i) Not used.

17.3 *Adjustments to the Performance Monitoring System*

HAL shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.2 such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance Monitoring System is not made until after that date, HAL shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period commencing on the date when in accordance with paragraph 17.2 such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement.

17.4 *Costs of implementing amendment*

HAL shall (subject to any determination of the relevant ADRR Forum as to costs, where a matter is referred to that forum under paragraph 17.2(f)) be entitled to ninety percent (90%) of costs incurred by or on behalf of HAL in assessing and implementing any amendments to Appendix 1 and the Performance Monitoring System, provided that those costs shall be the minimum reasonably necessary for HAL to assess and implement that amendment.

17.5 *Relationship with Appendix 3 and remainder of Schedule 8*

References in this paragraph to amendments to Appendix 1 shall include any amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.

17A ETCS Amendments

17A.1 *Circumstances in which ETCS Amendments can be made*

- (a) Either party may by notice to the other propose that amendments are made to this Schedule 8 (and to any other provisions of this contract as a result of those amendments) as a consequence of the introduction of ETCS on any of the Routes that the Train Operator has permission to use ("**ETCS Amendments**"). Any such amendments shall have regard to any equivalent amendments which the ORR may approve or determine in respect of the Wider UK Rail Network.

17A.2 ETCS Amendments agreed by the parties

- (a) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:
 - (i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and
 - (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.
- (b) The party receiving a notice under paragraph 17A.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.
- (c) Promptly, and in any event within 20 Working Days following service of a response pursuant to paragraph 17A.2(b), the parties shall use reasonable endeavours to agree the wording of the proposed ETCS Amendments and the date on which they are to have effect.

17A.3 Not used.

18. Compensation for sustained poor performance

18.1 Definitions

In this paragraph 18, unless the context otherwise requires:

“Average Periodic Liability” means one thirteenth of the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which HAL is liable in each case in respect of the relevant Calculation Term;

“Calculation Term” means the 13 Periods immediately preceding each Periodic Liability Date;

“Periodic Liability Date” means the first day of the first, fourth, seventh and eleventh Periods in each Relevant Year; and

“SPP Threshold” means the value specified in respect of the end of the relevant Calculation Term in Appendix 3 (as indexed in accordance with paragraph 19).

18.2 Indemnity

HAL shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the Average Periodic Liability shows HAL has exceeded (that is, equalled or been worse than) the relevant SPP Threshold.

18.3 Determination of Relevant Losses

Subject to paragraph 18.4, the liability of HAL under paragraph 18.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:

$$\text{SPPL} = \text{RL} - \text{PS}$$

where:

RL means the Train Operator's Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3; and

PS means the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which HAL is liable in each case in respect of the relevant Calculation Term;

18.4 *Restrictions on claims by Train Operator*

The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 18 if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 18 or otherwise.

19 **SPP Indexation**

19.1 *SPP Indexation*

Each value specified in Appendix 3 shall be multiplied by the SPP indexation figure for the Relevant Year.

19.2 *Application of SPP Indexation*

The SPP indexation figure in Relevant Year t shall be derived from the following formula:

$$SPPI_t = \left(1 + \frac{(RPI_{t-1} - RPI_{[\bullet]})}{RPI_{[\bullet]}} \right) \cdot \text{Initial Indexation Factor}$$

where:

SPPI_t means the SPP indexation in Relevant Year t;

RPI_{t-1} has the meaning as set out in Paragraph 9.1 above of this Schedule 8; and

RPI_[•] has the meaning as set out in Paragraph 9.1 above of this Schedule 8.

20 **Review**

20.1 The provisions of this paragraph 20, and in particular any rebenchmarking exercise, shall be conditional on (i) all affected Infrastructure Managers; and (ii) all affected train operating companies, in each case operating on the Crossrail route providing relevant information to enable HAL to carry out a rebenchmarking exercise in accordance with the requirements of this paragraph 20. HAL shall use all reasonable but commercially prudent endeavours to obtain such relevant information from affected Infrastructure Managers and affected train operating companies.

- 20.2 Subject to paragraph 20.1, the Matters Subject to Rebenchmarking may be rebenchmarked in accordance with this paragraph 20:
- 20.1.1 to reflect the operation of the Services on the Network during the Initial Benchmarking Period;
 - 20.1.2 to reflect the operation of railway services on the Network during each five year period following the occurrence of the effective date of this contract; and
 - 20.1.2 following the occurrence of a Material Change.
- 20.3 Subject to paragraph 20.1, within:
- 20.3.1 four (4) months of the expiry of the Initial Benchmarking Period;
 - 20.3.2 four (4) months of every fifth anniversary of the expiry of the Initial Benchmarking Period; or
 - 20.3.3 twelve (12) months of the occurrence of a Material Change,
- (as the case may be), (i) in relation to paragraph 20.3.1, the Train Operator shall be entitled to request that the Matters Subject to Rebenchmarking are rebenchmarked but HAL shall only be required to use its reasonable endeavours to establish the necessary level of cooperation (as set out in paragraph 20.1) to effect such rebenchmarking (if the requirements of clause 20.1 are not met by HAL using its reasonable endeavours there shall be no such rebenchmarking, if they are met then such rebenchmarking shall relate to the whole of the Crossrail route, rather than to the HAL infrastructure in isolation); and (ii) in relation to paragraph 20.3.2 or paragraph 20.3.3 HAL or a Train Operator shall be entitled to require that the Matters Subject to Rebenchmarking are rebenchmarked, in each case in accordance with this paragraph 20 by submitting a Proposal for Change pursuant to Part C of the HAL Network Code. The purpose of any such Proposal for Change shall be to determine what changes, if any, should be made to the Matters Subject to Rebenchmarking in such circumstances to achieve a level of performance of the Network which is substantially similar to the level of performance of the Network immediately prior to the Initial Benchmarking Period.
- 20.4 HAL and the Train Operator acknowledge and agree that:
- 20.4.1 any rebenchmarking of the Matters Subject to Rebenchmarking in relation to this contract may affect other train operators under other track access contracts; and
 - 20.4.2 those effects (and any consequential changes required to those other track access contracts) will need to be taken into account as part of such rebenchmarking exercise.
- 20.5 Following the Matters Subject to Rebenchmarking being revised in accordance with Part C of the HAL Network Code and subject to paragraph 20.6:

- 20.4.1 the Matters Subject to Rebenchmarking set out in this contract shall be deemed to have been amended to reflect such revised values from the Rebenchmarking Implementation Date;
- 20.4.2 the calculations of the performance payments previously undertaken pursuant to this Schedule 8 shall be repeated using the revised Matters Subject to Rebenchmarking in substitution for the original Matters Subject to Rebenchmarking with effect from the first Period to commence on or after the date on which the changes to this contract take effect; and
- 20.4.3 HAL shall notify the Train Operator within 35 days after the end of the Period in which this contract is amended of the amount of any payment required from either party to the other to take account of the repeated calculations and the provisions of paragraphs 11, 12 and 16 shall apply in respect of those amounts.
- 20.6 Without prejudice to HAL's and the Train Operator's respective rights under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, if the Train Operator (or any other train operator using the Network) is dissatisfied with the changes to the Matters Subject to Rebenchmarking then the Train Operator shall promptly notify HAL and any other train operators using the Network and the matter shall be referred to Arbitration in accordance with the ADRR in force at the relevant time, and such determination will be binding on HAL, the Train Operator and each other train operator using the Network.

21 Restrictions of Use

- 21.1 HAL will be permitted access to the Network in order to undertake scheduled maintenance and other works to the Network during the White Period.
- 21.2 In the event of a Restriction of Use, HAL shall (i) not charge any applicable station or track access charges; and (ii) pay to the Train Operator a percentage of the applicable cancellation payment rate (such rate to be calculated using the parameters set out in Appendix 1 - i.e. Cancellation Minutes x Payment Rate) in respect of the movement of any Train which is cancelled, diverted off the Route over which it was scheduled to run or incurs a delay in excess of the cancellation equivalent delay minutes (as against the Working Timetable) during the period in which the Restriction of Use continues (the "**Cancellation Payment**"), in accordance with the following scale:
- (a) 45% of the Cancellation Payment is payable if the Restriction of Use is notified by Working Timetable Proposal; or
 - (b) 65% of the Cancellation Payment is payable if the Restriction of Use is notified by the Short Term Timetable Proposal: or
 - (c) 85% of the Cancellation Payment is payable if the Restriction of Use is notified by the Actual Timetable.

- 21.3 Notwithstanding anything else set out in this paragraph 20, HAL's aggregate liability for the Cancellation Payment payable on a Restriction of Use for any Contract Year shall not exceed £[●],
- 21.4 For the avoidance of doubt, HAL does not agree to compensate the Train Operator for any losses, liabilities, damages, compensation and/or other expenses arising or incurred during, or as a result of, a Restriction of Use.
- 21.5 This paragraph 21 shall not alter the effect of any other provisions of this Schedule 8.

22 Corresponding Day

- 22.1 If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition of "Corresponding Day" and the parties have failed to reach agreement on the Corresponding Day by the date falling eight weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved as a dispute in accordance with the ADRR.
- 22.2 The parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum's remit shall be to:
- 22.2.1 reach a decision which is fair and reasonable; and
 - 22.2.2 identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D -26 in either case which has been produced in accordance with the HAL Network Code which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or
 - 22.2.3 where a Corresponding Day cannot be identified in accordance with paragraph 22.2.2 above, determine a notional Corresponding Day. The relevant ADRR Forum may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.

APPENDIX 1

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Service Group	HAL				TOC									
	Performance Point	Payment Rate			Performance Point	Payment Rate			Cancellation Minutes	Cap	Service Code	Direction	Monitoring Point	Weighting
		(Not Used)	(Not Used)	Total		(Not Used)	(Not Used)	Total						

APPENDIX 2 – CHARTER DESTINATION POINTS

Not Used.

APPENDIX 3 - SPP THRESHOLD

	Period:	3	6	10	13
2018/19					
2019/20					

SCHEDULE 9: LIMITATION ON LIABILITY

1 Definitions

In this Schedule

“Liability Cap” means:

- (a) in relation to the first Contract Year, the sum of £[155 million]; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 * \left(\frac{RPI_n}{RPI_1} \right)$$

where:

- (i) C_1 is the sum of £[155 million];
- (ii) C_n is the Liability Cap in the n th subsequent Contract Year;
- (iii) RPI_n is the Retail Prices Index published or determined with respect to the first month of the subsequent Contract Year n ; and
- (iv) RPI_1 is the Retail Prices Index published or determined with respect to the month in which this contract became effective under Clause 3.1.

2 Application

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 11.5.

3 Limitation on HAL’s liability

In relation to any claim for indemnity made by the Train Operator to which this Schedule 9 applies:

- (a) HAL shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and
- (b) to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and HAL shall have no further liability for it.

4 Limitation on Train Operator’s liability

In relation to any claims for indemnity made by HAL to which this Schedule 9 applies:

- (a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

- (b) to the extent its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Train Operator shall have no further liability for it.

5 Disapplication of limitation

To the extent that any Relevant Losses:

- (a) result from a conscious and intentional breach by a party; or
- (b) are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with its Safety Obligations,

such Relevant Losses:

- (i) shall not be subject to the limitation of liability in Schedule 9; and
- (ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Contract Year for the purposes of the limitations of liability in this Schedule 9.

6 Exclusion of legal and other costs

The limits on the parties' liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7 Exclusion of certain Relevant Losses

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this contract.

8 Continuing breaches

Nothing in this Schedule 9 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

- (a) is a continuing breach of contract which continues for more than 12 months;
- (b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or
- (c) is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3(b) or 4(b).

9 Final determination of claims

For the purpose of this Schedule 9, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which

any right of appeal or review has been lost, whether by expiry of time or otherwise.

SCHEDULE 10: NOT USED

IN WITNESS whereof the duly authorised representatives of HAL and the Train Operator have executed this contract on the date first above written.

Signed by

Print name

Duly authorised for and on behalf of
HEATHROW AIRPORT LIMITED

Signed by

Print name

Duly authorised for and on behalf of
[Name of Train Operator]