

# **Network Rail's consultation on proposed changes to the wording of track access contracts in Control Period 6 (CP6)**

**6 November 2017**

## Executive summary

- 1.1. The purpose of this consultation is to set out some proposed changes on, and seek stakeholders' views on, the wording of Office of Rail and Road (ORR) model contracts in relation to freight and passenger track access contracts in relation to:
  - Proposed rounding of values in Track Access Contracts (TACs)
  - Proposed replacement of references to Train Service Database (TSDB)
  - Proposed change to the track access invoicing process
  - Opportunities to reduce the use of paper invoices
  - Proposed updating of references to freight performance statements.
- 1.2. ORR's model contracts contain standard provisions that give those entering into the contract a clear understanding of how their relationship is governed. Using model contracts reduces costs as fewer resources are needed to negotiate each provision. Each model contract sets out aspects of train operation such as each party's rights and obligations relating to charging and the rights to run services.
- 1.3. ORR has responsibility for making any changes to the model contracts and, in turn, access beneficiaries' track access contracts. This consultation is seeking to help inform ORR's thinking about what areas of the model contract could be changed, and how. This may inform its future thinking on the model contracts, particularly in the context of any changes it is likely to make as part of implementing its 2018 Periodic Review (PR18) proposals for CP6. As such and for the avoidance of doubt, the proposals outlined in this consultation are made without prejudice to future changes ORR may choose to make. Indeed, we understand that ORR envisages consulting in 2018 on changes to the model provisions.
- 1.4. The proposals contained in this consultation have arisen following discussion with users of the contract within Network Rail including route teams. In these discussions users suggested ways in which TACs could be improved in order to provide greater clarity in certain areas, reflect updated circumstances and promote their better operation.
- 1.5. In order to provide our customers with early visibility of the proposals and to provide an opportunity for customers to input to their development, a series of papers concerning the proposals was brought to the Access Framework Group of the Rail Delivery Group (RDG) during the summer of 2017. The Access Framework Group included representatives of a number of franchise owning groups and of open access passenger and freight operators. Those proposals for which there was broad industry support have been included in this consultation.

- 1.6. In addition to the proposals contained in this consultation, thought was given to including a further proposal regarding a contingency provision in the event of a delay to the start of CP6. This provision would apply if, for example, Network Rail objected to ORR's PR18 final determination. The provision would enable Network Rail to recover track access charges after 1 April 2019, notwithstanding that CP5 would have ended. Such a provision was used for PR08 and PR13. However, after discussion with ORR, we have agreed that it will consult on this provision in 2018.
- 1.7. In this consultation we are providing a wider opportunity for comment from all stakeholders. Following the end of the consultation period we will provide conclusions to the ORR to help inform its thinking.
- 1.8. With regard to our proposals, all extracts from the model contracts relate to the current CP5 model contracts and may require some other changes to correctly apply in CP6. It is considered that this can only be concluded when all proposed changes to the model contracts for CP6 are known.
- 1.9. We have provided a brief overview of our proposed approach to each proposal discussed in this consultation, below.

### **Proposed rounding of values in the track access contract**

- 1.10. There are sections of the TAC in which the application of a Retail Price Index (RPI) uplift results in a figure which may be calculated to an infinite number of decimal places but in respect of which no rounding rule is defined. We propose that a rounding rule should be added to the contract so as to remove any ambiguity.

### **Proposed replacement of references to Train Service Database**

- 1.11. TACs make reference to the uploading of data, which might include details of Restrictions of Use and Service Variations, to the TSDB. TSDB is now obsolete and no longer used for this purpose. We propose to replace such references to make them meaningful in respect of current industry processes and systems.

### **Proposed changes to the track access charge invoicing process**

- 1.12. We consider that the track access charge invoicing process might be improved in two ways:
  - Amending invoicing timescales to allow data from passenger operators correcting default consists to be more easily reflected in invoices issued by Network Rail.
  - Prescribing the format of actual train consist data supplied to Network Rail where default consists have been applied.

## Opportunities to reduce the use of paper invoices

1.13. We are taking the opportunity to ask stakeholders what scope might exist for moving towards the use of electronic rather than paper invoices of track access charges. We suggest that an 'opt-in' facility might be included in contracts which could provide that operators could be invoiced solely by electronic means. We believe that electronic billing offers a number of advantages over paper billing in terms of security, costs of production, environmental impact and timeliness.

## Proposed updating of references to freight performance statements

1.14. The freight model contract currently refers to a process regarding freight performance statements that does not reflect the actual process that is followed. We suggest that this might be updated to reflect the process that is actually followed.

## Responding to this consultation

1.15. We request responses to this consultation by 22 January 2018. Responses should be sent to [RegulatoryReform@networkrail.co.uk](mailto:RegulatoryReform@networkrail.co.uk)

1.16. Should you wish to discuss any aspect of your response by telephone, please do not hesitate to call Peter Craig on 07917 577940.

1.17. The questions set out in this consultation are summarised in section 8 of this document. We would welcome your views in relation to these questions in particular.

1.18. We intend to publish responses to this consultation on our website. Therefore, if you consider any part of your response to this consultation to be confidential, please state this clearly and provide a non-confidential version of your response suitable for publication.

## Future engagement and next steps

1.19. This consultation is an important way for stakeholders to express their views in relation to our proposed changes to the wording of TACs in CP6. At the end of our consultation period we will prepare a conclusions document that we shall supply to ORR so that it may consider if it might make changes to its model contracts. Please note that we expect to share all responses with ORR.

1.20. We anticipate that ORR may at some time conduct its own consultation on other changes to contractual wording in CP6. Details of such a consultation, if it were to take place are not yet known.

## Document structure

1.21. The remainder of this document is structured as follows:

- Safety
- Proposed rounding of values in TACs
- Proposed changes to the track access invoicing process
- Proposed replacement of references to TSDB
- Opportunities to reduce the use of paper invoices
- Proposed updating of references to freight performance statements
- Summary of consultation questions

## 2. Safety

2.1. Network Rail is a safety critical business. In preparing this consultation we have reviewed whether any of our proposals have the potential to affect the safety of the network. We consider that the proposed changes to the wording of TACs have an important role to play in helping to ensure the safety of our network. In particular, they provide us with the certainty as to the processes that apply in transactions between the parties to the contract and through this facilitate us operating, maintaining, renewing and enhancing the network safely. We do not consider that the proposals set out in in this consultation are likely to impact the safety of the network. If upon reading this consultation you consider that any of our proposals are likely to impact safety, please let us know.

**Question 1:** Do you consider that any of the proposals set out in this consultation are likely to impact the safety of the network?

### 3. Proposed rounding of values in the track access contract

#### Purpose and structure of the chapter

- 3.1. The purpose of this proposal contained in this chapter is to identify areas of the model freight and passenger where greater clarity is required as to the number of decimal places to which a figure is rounded and suggest changes that could be made to the contract.
- 3.2. In Appendices 1.1 and 1.2 of this consultation we set out detail of the changes that would be required to deliver this change.

#### Summary of our proposals

##### Background

- 3.3. An essential attribute of a contract between two parties is to provide certainty to the parties as to what is agreed in the contract. Whilst the model freight and passenger contracts have, in general, proved satisfactory in this regard they have undergone some evolutionary changes in cases where it has become apparent that such certainty is lacking. We propose changes to the contract that are consistent with this evolutionary approach to provide certainty in the application of rounding rules to values.

##### Current position

- 3.4. Certain formulae in the model freight and passenger contracts require the insertion of Retail Price Index (RPI) values in their calculation. RPI is a measure of the price of goods and services in the UK and is published by the Office of National Statistics. No difficulty arises in the application of this as RPI values are published to one decimal place. Nevertheless, a problem may arise when such RPI values are multiplied by other factors in formulae in the contract as it can produce figures to an infinite number of decimal places, the rounding treatment of which is only partly prescribed in the contract.
- 3.5. More specifically, in both the freight and passenger model contracts, in Schedule 7 the 'Initial Indexation Factor' is a defined term. It prescribes a formula, the inputs to which are RPI values and from which (as set out above) no problem arises as RPI values are published to one decimal place. When the formula is applied it produces an output figure to an infinite number of decimal places bringing a question as to how it should be treated in terms of rounding.
- 3.6. At present, as a pragmatic solution, Network Rail uses the same rounding rule as prescribed in paragraph 2.7.2 of the contract and rounds the value to three decimal places.

##### Proposed approach for CP6

- 3.7. To remove uncertainty, it is proposed that this rounding rule should be prescribed as part of the 'Initial Indexation Factor' definition. Proposed drafting

in respect of the definition of the 'Initial Indexation Factor' in respect of both the model passenger and model freight contracts is shown in Appendix 1.1.

- 3.8. The same issue manifests itself in paragraph 2.7.3 of the model freight contract regarding the 'Phased in charges indexation adjustment' where again no rounding rule is prescribed. This rounding rule needs to be prescribed in paragraph 2.7.3. Proposed drafting is shown in Appendix 1.2.

**Question 2:** Do you consider that when the formula that is currently in the contract is applied it produces an output figure to an infinite number of decimal places bringing a question as to how it should be treated in terms of rounding?

**Question 3:** Do you consider that the rounding rule of three decimal places as proposed is appropriate?

**Question 4:** Do you consider that there are any other places in the contract where a rounding rule is required but is currently absent?

## 4. Proposed replacement of references to Train Service Database

### Purpose and structure of the chapter

- 4.1. To propose changes to Schedule 4 of the model passenger contract to remove obsolete references to TSDB (Train Service Database).
- 4.2. The proposed changes to the model passenger contract are shown in Appendix 2.1.

### Summary of our proposals

#### Background

- 4.3. The model passenger track access contract makes reference to TSDB and the uploading of data to it with respect to the rights and obligations of the parties to the contract. Such data might include details of Restrictions of Use and Service Variations, the detail of which may be vital in decision making or any dispute that may arise concerning that decision making process. TSDB is, however, no longer in use and the system now in use involves data from multiple Common Interface Files (CIF) being automatically uploaded to the Performance Monitoring System by a third party supplier.

#### Current position

- 4.4. The model passenger TAC retains obsolete references to TSDB. In the case of the need to establish whether data has been uploaded to industry systems, the references in the contract to TSDB have no legal meaning.

#### Proposed approach for CP6

- 4.5. The proposed changes to the model contracts would provide for references to TSDB being replaced by reference to replacement systems that are now in use. While the existing wording refers to Network Rail entering data into a system, the process now in use does not involve Network Rail carrying out a data entry process and it is not possible to merely replace reference to TSDB with a reference to a replacement system. Instead, the proposed drafting refers to the observation of data that is reflected in the Performance Monitoring System. The Performance Monitoring System already exists as a defined term in the contract. The Performance Monitoring System is visible to all industry parties and provides an objective and auditable measure of the data provided.

**Question 5:** Do you consider that the drafting shown in Appendix 2.1 would have the intended effect? If not, what changes are required?

**Question 6:** Do you consider that reference to the observation of data in the Performance Monitoring System is an appropriate approach in the absence of TSDB?

## 5. Proposed changes to the track access invoicing process

### Purpose and structure of the Chapter

- 5.1. To propose changes to the passenger model contract to reflect provide improvements to the track access invoicing process which will amend billing timescales to allow data from passenger operators correcting default consists to be more easily reflected in invoices issued and to define the format in which such data should be provided to Network Rail.
- 5.2. All paragraph references in this chapter relate to Schedule 7 of the model passenger contract. To the extent which corresponding paragraphs exist in the model passenger charter contract, which is similarly constructed, the same changes would apply. Drafting relating to each of these contracts is shown in Appendices 3.1 and 3.2 respectively.
- 5.3. The remainder of this chapter is structured as follows:
  - Summary of our proposals
  - Proposals to amend track access invoicing timescales to allow data from passenger operators correcting default consists to be more easily reflected in invoices issued
  - Proposals to prescribe the format of actual train consist data supplied to Network Rail where default consists have been applied.

### Summary of our proposals

- 5.4. The track access invoicing process is a relatively complex one. The general aim of the process is that operators should be accurately invoiced for actual usage where possible and that this process should be completed in a timely manner. Invoicing processes have evolved over recent years and the opportunity has now arisen to propose changes to two areas of the process. Each area is dealt with separately in this chapter. However as they affect the drafting of sections of the contract that overlap, the changes required are consolidated in one section of text as shown in Appendices 3.1 and 3.2. A minor change is also proposed to make provision for issue of credit notes on the same principle as invoices.
- 5.5. For the avoidance of doubt, no changes are proposed to the model freight contract as the concept of default train consist is not applicable to freight traffic.

## **Amending invoicing timescales to allow data from passenger operators correcting default consists to be more easily reflected in invoices issued**

### **Background**

5.6. The model passenger contract provides for a situation in which the consist of a train is not known. In such circumstances a default consist is applied, the default consist being a parameter that has previously been negotiated between the parties and that is specified in the relevant track access contract. The opportunity exists in such circumstances for the operator to supply actual train consist data to Network Rail so that the correct charge may be applied and it is considered in the interests of both parties that this should be achieved wherever possible.

### **Current Position**

5.7. With regard to the timescales for notifying this consist data to Network Rail, paragraph 10.3(e) of the contract states that Network Rail should issue financial adjustments within seven days of the receipt of objections to default consist data being applied. As Network Rail has received on occasions more than 1,000 journeys to correct from one weekly report and the number of such corrections fluctuates greatly by week, it is not always possible to achieve this.

### **Proposed approach for CP6**

5.8. The proposed changes to the model contract would provide for Network Rail being required to issue financial adjustments within 21 days rather than seven days of the receipt of objections to default consist data being applied. It is believed that this is a realistic and achievable timescale which will bring benefits to both parties through greater accuracy in billing.

## **Amending the format of actual train consist data supplied to Network Rail where default consists have been applied**

### **Background**

5.9. Where default consists have been applied by Network Rail, operators have the opportunity to supply actual train consist data so that they may be accurately billed. The format in which such data should be supplied to Network Rail is not prescribed.

### **Current Position**

5.10. The difficulty in dealing with default consist data is compounded by the wide variety of formats in which different operators supply such data to Network Rail. This results in Network Rail spending a considerable amount of time re-formatting data into a standardised format so that it may be processed. To overcome this, the submission of data in a standardised format is sought.

## Proposed approach for CP6

5.11. It is proposed to insert a template table in the passenger model contract at the end of paragraph 10.3(c) that will show the format in which train consist data is to be supplied to Network Rail.

**Question 7:** Do you consider that the drafting shown in Appendices 3.1 and 3.2 would have the intended effect? If not, what changes are required?

**Question 8:** Do you consider that the time period available to Network Rail for amending default consist data should be amended to 21 days?

**Question 9:** Do you consider that the format of the drafting shown in Appendices 3.1 and 3.2 is appropriate?

## 6. Opportunities to reduce the use of paper invoices

### Purpose and structure of the chapter

- 6.1. Model contracts currently provide for invoices to be transmitted to customers by a variety of means with the default position requiring the issuing of paper invoices. Whilst we are aware that some operators may consider the issuance of paper invoices useful, we have identified that a considerable efficiencies could be made if the industry were to universally adopt the transmission of invoices through an electronic medium, rather than by a variety of more costly means of transmission. Additionally, we believe that electronic billing offers a number of advantages over paper billing in terms of security, environmental impact and timeliness. Ultimately model contracts might be amended to reflect the use of an electronic medium thereby crystallising such benefits across the industry through making the use of such a medium the default position.
- 6.2. In this chapter we invite respondents to comment on whether the opportunity to reduce the use of paper invoices would be welcomed and to offer any thoughts as to the requirements of future systems based upon the transmission of invoices by electronic means.

### Current Position

- 6.3 Network Rail issues invoices to its customers under various schedules of the contract, a key part of this being invoices for track access charges issued under Schedule 7. The Network Rail invoicing team has identified efficiency opportunities if invoices were to be issued by electronic means.

### Proposed approach for CP6

- 6.4 CP6 offers the opportunity to develop an opt-in mechanism within the contract that would allow operators to elect to adopt invoicing by electronic means if they wished to do so. Such a mechanism would operate on a similar basis to the opt-in provisions that are available to operators in relation to on-train metering (OTM). This approach would entail adding suitable drafting to the model contracts to provide provision for operators that might elect to adopt it. Use of such a mechanism would have the advantage that it would not require bespoke terms to be agreed with each operator adopting electronic invoicing, avoiding the need for negotiation and approval in each case. It would also ensure that all operators entering into such arrangements do so on the same basis.

**Question 10:** Do you consider that future proposals should be developed to provide for the transmission of invoices for track access charges solely by electronic means? If so, what are your views on an opt-in mechanism?

## **7. Proposed updating of references to freight performance statements**

### **Purpose and structure of the chapter**

- 7.1. To propose changes to Schedule 8 of the model freight contract so that Appendix 3 (on performance statements) is consistent with the current established processes.
- 7.2. The proposed changes to Appendix 3 of Schedule 8 of the model freight contract are shown in Appendix 4.1. This is preceded in Appendix 4.1 by consequential proposed changes to paragraph 9.2 of Schedule 8.

### **Background**

- 7.3. Appendix 3 to Schedule 8 of the model freight contract sets out the process and requirements for the production and agreement of performance statements. It sets out the rights and obligations of the parties to the process and would be expected to be relied upon in the case of any dispute that might arise as to whether those rights and obligations had been met.
- 7.4. Appendix 3 to Schedule 8 cross-refers to paragraph 9.2 of Schedule 8 which sets out the process for the issue of invoices and credit notes.

### **Current Position**

- 7.5. The timing and content of the statements we currently produce are not consistent with the provisions of Appendix 3, and in some cases those requirements are unclear (e.g. 1(b)(iii) is redundant given 1(b)(ii)). We do not believe that operators would want us to change the current procedures to match the contractual specification as to operate the process in this manner is considered to be impracticable by those involved in its daily operation. Instead we propose to change the specification for the process in Appendix to 3 reflect the process actually followed.

### **Proposed approach for CP6**

- 7.6. The structure of specification has been simplified to separate out the information that is supplied daily, weekly and per period. A significant proportion of the information is provided daily, one week in arrears, rather than weekly as provided for in the current Appendix 3. The content of the information provided in the interim statements has been clarified and the further processes carried out after the end of each Week and after the end of each Charging Period have been set out with relevant detail of what they require.
- 7.7. A paragraph regarding Period final statements has been added at the end of Appendix 3 in the contract regarding Period final statements as there was no provision for statements other than interim statements in the current version of the model contract.

7.8. As Appendix 3 to Schedule 8 cross-refers to paragraph 9.2 of Schedule 8 it has been necessary to propose consequential changes to that paragraph.

**Question 11:** Do you consider that the process currently described in the model freight contract does not reflect the process that is actually followed?

**Question 12:** Do you consider that the drafting shown in Appendix 4.1 would have the intended effect? If not, what changes are required?

## 8. Summary of consultation questions

**Question 1:** Do you consider that any of the proposals set out in this consultation are likely to impact the safety of the network?

**Question 2:** Do you consider that when the formula that is currently in the contract is applied it produces an output figure to an infinite number of decimal places bringing a question as to how it should be treated in terms of rounding?

**Question 3:** Do you consider that the rounding rule of three decimal places as proposed is appropriate?

**Question 4:** Do you consider that there are any other places in the contract where a rounding rule is required but is currently absent?

**Question 5:** Do you consider that the drafting shown in Appendix 2.1 would have the intended effect? If not, what changes are required?

**Question 6:** Do you consider that reference to the observation of data in the Performance Monitoring System is an appropriate approach in the absence of TSDB?

**Question 7:** Do you consider that the drafting shown in Appendices 3.1 and 3.2 would have the intended effect? If not, what changes are required?

**Question 8:** Do you consider that the time period available to Network Rail for amending default consist data should be amended to 21 days?

**Question 9:** Do you consider that the format of the drafting shown in Appendices 3.1 and 3.2 is appropriate?

**Question 10:** Do you consider that future proposals should be developed to provide for the transmission of invoices for track access charges solely by electronic means? If so, what are your views on an opt-in mechanism?

**Question 11:** Do you consider that the process currently described in the model freight contract does not reflect the process that is actually followed?

**Question 12:** Do you consider that the drafting shown in Appendix 4.1 would have the intended effect? If not, what changes are required?

## Appendix 1.1

### Proposed changes to the freight and passenger model contracts

*Existing drafting is shown in black with the changes proposed shown in red.*

**“Initial Indexation Factor”** is derived from the following formula:

$$\text{IIF} = \left( 1 + \frac{(\text{RPI}_{2013} - \text{RPI}_{2012})}{\text{RPI}_{2012}} \right)^2$$

where:

IIF means the Initial Indexation Factor;

RPI<sub>2012</sub> means the average value of the monthly RPI figures for the 12 months up to and including the month of December 2012;  
and

RPI<sub>2013</sub> means the average value of the monthly RPI figures for the 12 months up to and including the month of December 2013;

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

## Appendix 1.2

### Proposed changes to the freight model contract

*Existing drafting is shown in black with the changes proposed shown in red.*

2.7.3 The Phased in Charges Indexation Adjustment shall be derived:

- (a) in respect of the Relevant Year commencing on 1 April 2014, from the following formula:

$$PCIA_{2014} = \text{Initial Indexation Factor}$$

where:

$PCIA_{2014}$  means the Phased in Charges Indexation Adjustment in respect of the Relevant Year commencing on 1 April 2014; and

- (b) in respect of any Relevant Year  $t$  commencing on or after 1 April 2015, from the following formula:

$$PCIA_t = \left( 1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \bullet \text{Initial Indexation Factor}$$

where:

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

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

$RPI_{2013}$  means the average value of the monthly RPI figures for the 12 months up to and including the month of December 2013.

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

## Appendix 2.1

### Proposed changes to the passenger model contract

*Existing drafting is shown in black with the changes proposed shown in red.*

#### 9. Notification Factors

##### 9.1 Early notification

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

- (a) the Network Rail Restriction of Use is reflected in the New Working Timetable; or
- (b)
  - (i) details of the Network Rail Restriction of Use are notified to the Train Operator on or before D-26 for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by Network Rail), are not reflected in the New Working Timetable; and
  - (ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as **reflected in the Performance Monitoring System** ~~entered into train service database~~ at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

## 9.2 Notification by TW-22

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

- (c) details of the Network Rail Restriction of Use are notified to the Train Operator by TW -22; and
- (d)
  - (iv) the Network Rail Restriction of Use is reflected in the Working Timetable as **reflected in the Performance Monitoring System** ~~entered into the train service database~~ at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (v) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

## Appendix 3.1

### Proposed changes to the passenger model contract

*Existing drafting is shown in black with the changes proposed shown in red.*

#### 10.3 Invoices and right to object to invoices

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
  - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
  - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
  - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

~~or (iv)~~ (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.
- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice **or credit note**, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice **or credit note** are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice **or credit note** shall be final and binding on the parties. **Data shall be supplied to Network Rail in the format;**

Train ID	Start date & time	Train origin	Slot	Train slot destination	Actual consist unit number(s)

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within ~~seven~~ **twenty one** days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 4A of this Part 2 or under paragraph 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3(e), any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

## Appendix 3.2

### Proposed changes to the charter passenger model contract

Existing drafting is shown in black with the changes proposed shown in red.

#### 11.3 Invoices and right to object to invoices

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
- (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
  - (ii) Train Consist Data agreed by the parties under paragraph 11.3(a) in respect of any train movement; or
  - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,
- ~~or~~ (iv) (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 11.1.
- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. Data shall be supplied to Network Rail in the format;

Train ID	Start date & time	Train origin	Slot	Train destination slot	Actual consist unit number(s)

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within ~~seven~~ **twenty one** days of any Train Consist Data being agreed or determined in accordance with paragraph 11.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) Not used.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 11.3(e), any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

## Appendix 4.1

### Proposed changes to the freight model contract

*Existing drafting is shown in black with the changes proposed shown in red.*

#### **SCHEDULE 8, paragraph 9.2**

##### **9.2 Issue of invoice or credit note**

9.2.1 In respect of each Charging Period, subject to paragraph 9.1, ~~the liabilities of the Train Operator and of Network Rail for any Performance Sums (as such Performance Sums may be adjusted under paragraph 10), Service Variation Sums, Cancellation Sums, Late Notice Cancellation Sums, Normal Planned Disruption Sums, Enhanced Planned Disruption Sums, Disruption Sums and Prolonged Disruption Sums shall be set off against each other, and Network Rail shall:~~

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

9.2.2 In the event that the period final statement referred to in paragraph 9.2.1(a) has not been provided within 28 days after the end of the Charging Period to which it relates, Network Rail may agree with the Train Operator that an interim payment be made. If such agreement is reached then the invoice or credit note issued shall detail which of the relevant sums are thus settled and which remain outstanding; and any subsequent invoice or credit note issued in respect of the same Charging Period under paragraph 9.2.1(a) shall take account of the interim payment as well as the requirements of paragraph 9.1.

9.2.3 In the event that the period final statement referred to in paragraph 9.2.1(b) has not been provided within 28 days after the end of the Charging Period to which it relates, Network Rail may agree with the Train Operator that an interim payment be made. If such agreement is reached then the invoice or credit note issued shall detail which of the relevant sums are thus settled and which remain outstanding; and any subsequent invoice or credit note issued in respect of the same Charging Period under paragraph 9.2.1(b) shall take account of the interim payment as well as the requirements of paragraph 9.1.

9.2.4 In the event that the agreement referred to in paragraph 9.2.1(c) has not been reached within 28 days after the end of the Charging Period to which it relates, Network Rail may agree with the Train Operator that an interim payment be made. If such agreement is reached then the credit note issued shall detail

which of the relevant sums are thus settled and which remain outstanding; and any subsequent credit note issued in respect of the same Charging Period under paragraph 9.2.1(c) shall take account of the interim payment as well as the requirements of paragraph 9.1.

~~The invoice or credit note issued under paragraph 9.2.1 shall show:~~

- ~~(a) any Performance Sums, Service Variation Sums, Cancellation Sums, Late Notice Cancellation Sums, Normal Planned Disruption Sums, Enhanced Planned Disruption Sums, Disruption Sums and Prolonged Disruption Sums for which Network Rail or the Train Operator is liable; and~~
- ~~(b) any matter referred to in Appendix 3 which the Train Operator or Network Rail has disputed under paragraph 53 of Appendix 3 and which is still in dispute.~~

## APPENDIX 3: PERFORMANCE STATEMENTS

### Interim statements provided by Network Rail

1. ~~As soon as reasonably practicable after the end of each Week (or, in the case of paragraph 1(e), each Charging Period), and using~~ Using all reasonable endeavours to provide such interim statement on the eighth day ~~within two Working Days~~ after the end of each ~~day~~Week (or, if the eighth day is not a Working Day, on the next Working Day thereafter ~~in the case of paragraph 1(e), each Charging Period~~), Network Rail shall provide to the Train Operator ~~the following interim statements:~~ (a) an interim statement listing all incidents which: ~~(i)~~ are in connection with Services which were Planned to depart from their Origin during that ~~day~~Week; indicating:
    - ~~(i) (ii) are which incidents are~~ Attributable to the Train Operator, including in respect of each incident the Minutes Delay to Third Party Trains;  
which incidents are Attributable to Network Rail;
    - ~~(ii)~~ which incidents are Attributable to both the Train Operator and Network Rail, including in respect of each incident that portion of Minutes Delay to Third Party Trains which is allocated to the Train Operator; and
    - ~~(iii)~~ which incidents in categories (a) and (c) above remain, at the time of production of the interim statement, under further investigation following a referral by the Train Operator under Condition B2.3.2 of the Network Code.
    - ~~(iii) are wholly or partly MDTO (as calculated in accordance with paragraph 4.2.1 of this Schedule 8); and~~
    - ~~(iv) wholly or partly caused Minutes Delay for any Third Party Train, including the aggregate number of Minutes Delay in respect of Third Party Trains for each such incident;~~
  - ~~(b) an interim statement listing all incidents which:~~
    - ~~(i) are in connection with Services which were Planned to depart from their Origin during that Week;~~
    - ~~(ii) are Attributable to Network Rail; and~~
    - ~~(iii) are wholly or partly MDNR (as calculated in accordance with paragraph 6.2.1 of this Schedule 8);~~
2. ~~As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, Network Rail shall provide to the Train Operator (e)~~ an interim statement listing all Disruption Sums arising during that Week for which it believes the Train Operator is liable under paragraph 5 of this Schedule 8;

~~(d) an interim statement listing all incidents which are Attributable to both the Train Operator and Network Rail; and~~

3. As soon as reasonably practicable after the end of each Charging Period, and using all reasonable endeavours to provide such interim statement within six Working Days after the end of each Charging Period, Network Rail shall provide to the Train Operator ~~(e)~~ an interim statement listing:

- (i) the total Contract Miles; and
- (ii) the total number of Services,

in each case operated by the Train Operator during that Charging Period.

### **Interim statements provided by the Train Operator**

42. As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, the Train Operator shall provide to Network Rail the following interim statements:

- (a) an interim statement listing all Cancellations occurring during that Week for which the Train Operator considers it is entitled to a Cancellation Sum, and any Late Notice Cancellations for which the Train Operator considers it is entitled to a Late Notice Cancellation Sum, in each case under paragraph 8 of this Schedule 8;
- (b) an interim statement listing all Prolonged Disruptions occurring or continuing during that Week for which the Train Operator considers it is entitled to a Prolonged Disruption Sum under paragraph 7 of this Schedule 8; and
- (c) an interim statement listing all Service Variations arising during that Week for which the Train Operator considers it is entitled to a Service Variation Sum under Schedule 4.

### **Dispute of interim statement**

53. Within two Working Days of receipt of any interim statement under paragraph 1, ~~or 2, 3 or 4~~ of this Appendix the recipient shall notify the provider of the interim statement of any reason why it disputes the interim statement by endorsing the interim statement and returning it to the provider of such statement.

64. Within the next five Working Days after notification of any dispute under paragraph 53, nominated representatives of the parties shall meet and attempt to resolve that dispute.

75. If any matter is still in dispute ten Working Days after the meeting held under paragraph 64 above, either party may refer such matter for resolution under paragraph 9.3.1 of this Schedule 8.

## Deemed agreement

86. Except to the extent that it has, within two Working Days of receipt, notified the provider of an interim statement under paragraph 53 that it disputes the contents of such interim statement, the recipient shall be deemed to have agreed the contents of that statement.

## Further interim statement

97. If Network Rail's nominated representative under paragraph 64 has reasonable grounds to believe that any further incident was:

- (a) Attributable to the Train Operator;
- (b) Attributable to Network Rail; or
- (c) Attributable to both the Train Operator and Network Rail,

but was not shown as such in the information made available under paragraph 1 above, Network Rail may notify the Train Operator of such further incident within **tenfive** Working Days after the last Minutes Delay, cancellation of a Third Party Train or Cancellation caused by that incident.

108. If Network Rail notifies the Train Operator of any further incident under paragraph 97, Network Rail shall issue a further interim statement for the day in question showing the information required under paragraph 1, and the foregoing provisions of this Appendix shall apply to such further interim statement.

## Period final statements

11. After the resolution of any investigations listed in an interim statement in accordance with paragraph 1(d), and of any disputes notified under paragraph 5, Network Rail shall provide to the Train Operator a final statement in respect of each Charging Period, listing:

- (i) the total Cancellations and the aggregate of the Cancellation Sums payable under this Schedule 8;
- (ii) the total Late Notice Cancellations and the aggregate of the Late Notice Cancellation Sums payable under this Schedule 8;
- (iii) the aggregate of the Service Variation Sums payable under Schedule 4;
- (iv) the aggregate of the Disruption Sums payable under this Schedule 8; and
- (v) the aggregate of the Prolonged Disruption Sums payable under this Schedule 8,

in each case applicable to Services Planned to depart from their Origin during that Charging Period.

12. After the resolution of any incidents referred for further investigation under Condition B2.3.2 of the Network Code, Network Rail shall provide to the Train Operator a final statement in respect of each Charging Period, listing:
  - (i) the total Performance Sum for which Network Rail is liable under this Schedule 8; and
  - (ii) the total Performance Sum for which the Train Operator is liable under this Schedule 8,

in each case including such relevant calculations as the parties shall agree from time to time.

### **Statement of adjustment**

139. If Condition B3.3 of the Network Code (Adjustment to prior results) applies in respect of all or part of a Charging Period, Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to any Performance Sums, Cancellation Sums, Late Notice Cancellation Sums, Normal Planned Disruption Sums, Enhanced Planned Disruption Sums, Disruption Sums and Prolonged Disruption Sums already paid in respect of the Charging Period.
1410. Any statement issued by Network Rail under paragraph 139 shall be accompanied by an adjusting invoice or credit note.