

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

23 February 2018

1. Executive summary

1.1. The purpose of this document is to set out our conclusions on our November 2017 consultation on proposed changes to the wording of track access contracts in Control Period Six (CP6) 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 has responsibility for making any changes to the model contracts and, in turn, access beneficiaries' track access contracts. The conclusions set out in this document seek 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 conclusions outlined in this consultation are made without prejudice to future changes ORR may choose to make.

1.3. We also note that ORR is currently consulting on improvements to the drafting of Schedules 4, 7 and 8 of the passenger and freight model contracts.

2. Safety

Summary of proposal in our consultation

2.1. We did not consider that the proposals set out in our consultation (which are summarised later in this document) were likely to impact the safety of the network. However, we asked stakeholders for their views on this issue.

Summary of consultation responses

2.2. All consultees agreed that the changes suggested in our consultation would not impact the safety of the network.

Network Rail conclusion

2.3. We would like to thank stakeholders for considering this issue. We agree with consultees that the proposals set out in our consultation will not impact the safety of the network. We are confident that the conclusions that we reach in this document will also not impact network safety.

3. Consultation responses

3.1. We received four responses to our consultation from the following stakeholders:

- Arriva Plc (Arriva);
- DB Cargo;

- Merseytravel;
- Transport for London (TfL).

- 3.2. We would like to thank all of the above stakeholders for taking the time to respond to this consultation. We appreciate the feedback on our proposals. We have published non-confidential versions of the above consultation responses on our website¹.
- 3.3. We note that the large majority of stakeholders did not respond to this consultation and while the views expressed in these conclusions are considered to represent the views of those who did respond, the small number of responses means that these conclusions are limited in respect of representing an overall industry view. Nevertheless, it would appear from the level of response that that the matters were considered to not to be particularly controversial.
- 3.4. We have summarised, below, our conclusions in relation to each of the proposals in our consultation.

4. Proposed rounding of values in the track access contract

Summary of proposal in our consultation

- 4.1. 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 proposed that a rounding rule should be added to the contract so as to remove any ambiguity.
- 4.2. To remove uncertainty, we proposed that this rounding rule should be prescribed as part of the 'Initial Indexation Factor' definition. We proposed drafting in respect of the definition of the 'Initial Indexation Factor' in respect of both the model passenger and model freight contracts as set out in Schedule 4.
- 4.3. We also noted that the same issue manifested itself in paragraph 2.7.3 of the model freight contract regarding the 'Phased in charges indexation adjustment' where again no rounding rule was prescribed. We suggested that this rounding rule needed to be prescribed in paragraph 2.7.3 of model freight contract.
- 4.4. We also asked if consultees considered that there were any other places in the contract where a rounding rule was required but is currently absent.

Summary of consultation responses

- 4.5. TfL and Merseytravel were supportive of our proposals. DB Cargo agreed that the price variation formula that is currently in the freight, passenger and charter passenger model contracts could produce a result with a large number of

¹ Available [here](#)

decimal places and agreed with the principle of rounding to three decimal places. DB Cargo considered that it was, however, too early in the periodic review process for CP6 to apply this principle to draft proposals for contractual wording. DB Cargo noted that the drafting in Appendix 1.1 of the consultation document only applied to the passenger model contract and not the freight one. In discussion we thanked DB Cargo for noting this and clarified it was nevertheless our intention that the same rounding rule should apply to both the passenger and freight model contracts, the case for it arising as it is derived as a product of the formula, noting that the "IIF" is defined differently in the passenger and freight model contracts.

- 4.6. Arriva took a different view from other respondents noting that the rail industry had had track access contracts in place for over 20 years during which time operators and Network Rail had dealt with rounding without it being an issue for the consultee. Arriva did not support a change to introduce a rounding rule.
- 4.7. In expanding on its view Arriva noted that Network Rail had not provided any impact or risk assessment regarding this proposal and that it would expect to see a retrospective analysis from Network Rail to illustrate the potential effect.
- 4.8. We discussed this matter with Arriva, our view being that as with any straightforward rounding rule, there will always be a 50/50 chance that a given value derived through the formula will be rounded up or down. It follows that over the long run the net effect will be zero as there is an equal likelihood that a given figure will need to be rounded up or down. As such, any retrospective analysis would only provide an arbitrary view given on the data sampled in that analysis. For this reason we do not propose to conduct such an analysis, but we did highlight that all the information required for anyone to undertake such an analysis is in the public domain. Therefore, it would have possible for any operator to carry out this analysis themselves, if they so wished. For clarity, the RPI information is published on a monthly basis by the Office of National Statistics, the formula for calculating indexation factors based on these RPI values is set out in Schedule 7 of the model TAC, and our track access charges prices lists are published on our website (the revenue that we receive through charges is also published in our Regulatory Financial Statements).
- 4.9. Arriva did not accept our view that the long run net effect would be zero, expressing instead a view that it simply did not know what the impact would be. It noted that given the scale of the sums involved this could amount to significant losses for it across all contracts over the years.
- 4.10. Arriva indicated that it would be happy in principle with this change, if operator impact within existing contracts was indemnified by Network Rail. It suggested that drafting should be added stating that "Network Rail indemnifies the

Train Operator under this contract for any negative impact due to changes in rounding factors ". This suggestion is not acceptable to Network Rail as it would be asymmetric in effect.

- 4.11. Arriva also suggested that this was only an issue for existing contracts. Arriva suggested that if these proposals were advanced in contract negotiations it would see that this matter could be negotiated between the parties.
- 4.12. In answer to our question as to whether there were any other places in the contract where a rounding rule is required but is currently absent DB Cargo suggested that this might be the case regarding the definition of "Liability Cap" in Schedule 9 and the "Indemnity Incident Cap" in clause 11.6.5. With regard to a question raised by DB Cargo as to whether these considerations apply in the model passenger contract and the model charter contract, Network Rail noted in discussions with DB Cargo that the "Liability Cap" arises in the model passenger contract and we consider that it could benefit from a rounding rule, although as this would presumably be to the nearest pound or penny the magnitude of any rounding rule would be extremely small. We noted that the terms of "Liability Cap" and "Indemnity Incident Cap" are otherwise absent in these contracts. The table below provides a full analysis of where factors and caps arise.

Model TAC	Indemnity Incident Cap	Initial Indexation Factor Sch 7	Phased in Charges Indexation Adjustment Sch 7	Liability Cap Sch 9
Passenger	No	Yes	No	Yes
Charter	No	Yes	No	Yes
Freight	Yes	Yes	Yes	Yes
FOC Customer	Yes	Yes	Yes	Yes
Freight Customer	No	No	No	Yes

Summary of our conclusions

- 4.13. We suggest that there is sufficient merit to consider the introduction of a rounding rule in any parts of the CP6 model contracts where it might aid clarity. We acknowledge the point made by DB Cargo that it is too early to say that there are specific areas of the contract where this may be required, however whilst this case we believe that our examples of proposed drafting have successfully illustrated how this could be achieved in a simple way in places where it might be applicable. We recognise that this conclusion is not in accord with the views expressed by Arriva.

5. Proposed replacement of references to Train Service Database (TSDB)

Summary of proposals in our consultation

- 5.1. 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.

- 5.2. We proposed changes to the model contracts that 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 referred to the observation of data that is reflected in the Performance Monitoring System. We noted that the Performance Monitoring System already exists as a defined term in the contract and that the Performance Monitoring System is visible to all industry parties and provides an objective and auditable measure of the data provided.

Summary of consultation responses

- 5.3. TfL and Merseytravel were supportive of our proposals, whilst DB Cargo stated that as a freight operator without a track access contract based on the passenger model contract, it considered itself not best placed to comment on the proposals set out in Appendix 2.1 of the consultation document.
- 5.4. DB Cargo did make representations of behalf of its sister company, Rail Express Systems. It noted that the wording set out in Appendix 3.2 of the consultation did not mirror the current charter passenger model contracts in all respects. In discussion with DB Cargo we clarified that our intention would be to propose that the amendments made to paragraph 11.3(c) in our consultation are applied to the charter passenger model contract, albeit that some of the supporting but not adjacent text that would remain differs in certain respects between the charter passenger model contract and the passenger model contract.
- 5.5. DB Cargo further noted that something appeared to have gone awry with the lettering/numbering of paragraph 9.2 of Schedule 4 as set out in Appendix 2.1 of the consultation. Network Rail has since confirmed to DB Cargo that this was the result of a clerical error in preparing the consultation document.
- 5.6. Arriva also gave qualified acceptance of the proposal and stated that this was on the proviso that Network Rail had carried out due diligence in cross checking that this change works throughout all relevant contractual documents. In taking this view Arriva provided a helpful critique of the drafting of the consultation document with regard to its logic in identifying terms that were and were not defined within the model contract and their intended effect. Arriva also stated that Network Rail appeared not to have examined when an Emergency Timetable is developed in that in these circumstances Network Rail Control enters train schedules directly into TRUST if needed. In discussion we acknowledged this point but noted that we believed that it did not affect the validity of the overall proposal.

Summary of our conclusions

- 5.7. Given the support for this proposal amongst consultees we believe that it is worthy of further consideration.

6. Proposed change to the track access invoicing process

Summary of proposals in our consultation

- 6.1. We proposed that the track access charge invoicing process might be improved in two ways. Firstly by amending invoicing timescales to allow data from passenger operators correcting default consists to be more easily reflected in invoices issued by Network Rail. Secondly by prescribing the format of actual train consists data supplied to Network Rail where default consists have been applied.
- 6.2. Our proposed changes to the model contract to address this provided firstly 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. Secondly, we proposed a draft template table that could appear in the passenger model contract that would show the format in which train consist data should be supplied to Network Rail.

Summary of consultation responses

- 6.3. TfL and Merseytravel were supportive of all elements of our proposals. Arriva was also generally supportive but suggested that a period of 14 rather than 21 days should be provided for correcting default consists as this would align with other period end timescales. We explored this point in discussion with Arriva and took the view that a period of 14 days rather than 21 would be acceptable to Network Rail. DB Cargo stated that in order to be satisfied that 21 days was a realistic and achievable timescale it would need to see some analysis that showed the current average response time to actual relevant financial adjustments both in terms of passenger and charter passenger requests. We supplied an analysis to DB Cargo as set out in the paragraphs that follow.
- 6.4. Our first observation was that default consists only apply to passenger services, so DB Cargo charter services would be unaffected as charter consists are based on bids received from the operator. Nevertheless, to provide an overview that encompasses both passenger and charter passenger requests, we offered an analysis with regard to passenger operators.
- 6.5. In our analysis we firstly recognised that it is difficult to analyse the exact impact of default consist corrections as to do so would involve reviewing each item to individually to decipher when it was emailed to Network Rail and when it was corrected. However, to address the question, a sample of journeys was been taken, picked from four sets of data across two operators. The estimated time to correct was based on a three minute average which appears representative of the time typically taken. In our analysis;

- Operator 1 returned 113 corrections in one period, which would take an estimated 6 hours to correct. The first corrections were made two days after being sent to the team but not all corrections were made within 7 days.
- Operator 1 returned 3,016 corrections from one week. These would take an estimated 150 hours to correct which would be a full working week for 4 individuals in the team. We currently only have 4 individuals in the team who work through all data corrections and they could not spend their full time on default consist corrections. In the past when we have received so many corrections in a week, the full team help with corrections if possible; it seems that around 2,000 of these corrections were made within two weeks as all team members contributed but the remaining corrections were made in subsequent periods.
- Operator 2 returned 12 corrections and 17 corrections for two respective weeks. These corrections were made within two weeks of being sent to the team.

More generally, we noted that the response time varies dependant on;

- The number of default consist corrections to be made, per operator and across all operators.
- Workload and other outstanding manual corrections.
- Team resource and headcount, including vacancies and annual leave.

We correct all default consist amendments we receive if the operator responds by their contractual deadline. The financial adjustment the operator receives is therefore the same regardless of when they are corrected. All amendments are made within the relevant financial year so they are included within the annual EC4T wash-up.

- 6.6. Following consideration of this evidence DB Cargo said that it was content with our proposal. In further discussion DB Cargo also confirmed that it would also be content a period of 14 days rather than 21 days to make financial adjustments as suggested by Arriva.
- 6.7. With regard to our proposals prescribing the format of actual train consists data supplied to Network Rail, all consultees were supportive of the principle. DB Cargo suggested that the proposed table might be improved by the column designated "Actual consist unit number(s)" being designated "Train Consist (actual) Specified Equipment used". We thank DB Cargo for this suggestion and believe that it would indeed add clarity.

Summary of our conclusions

- 6.8. We conclude that if our proposal were to be adopted a period of 14 rather than 21 days to make financial adjustments would be acceptable to all consultees.

- 6.9. Irrespective of whether a change is made to the period for making financial adjustments there is support for the adoption of a template table for the notification of actual train consist data and we would be pleased to adopt the improved wording for the column heading in this as suggested by DB Cargo in paragraph 5.7.

7. Opportunities to reduce the use of paper invoices

Summary of proposals in our consultation

- 7.1. Unlike other proposals in our consultation that were quite specific, in this chapter of our consultation we simply took the opportunity to ask stakeholders what scope they thought might exist for moving towards the use of electronic rather than paper invoices of track access charges. We suggested that an 'opt-in' facility might be included in contracts so 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.
- 7.2. We noted that 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.

Summary of consultation responses

- 7.3. TfL and Merseytravel were supportive of our proposals. TfL added that an opt-in mechanism appeared a good way of introducing what would be a more efficient and environmentally friendly process.
- 7.4. DB Cargo considered that both the passenger and freight model contracts already allow for invoices to be sent electronically and that no further amendments or opt-in mechanisms needed to be added. It added that DB Cargo already received its invoices by email and would have no objection to this being extended to charter operators through the charter passenger model contract.
- 7.5. Arriva said that it was supportive to remove paper billing, however it would wish to see it carried out in a managed and informed manner. It expressed a particular concern that invoices should be sent by email rather than placing reliance on accessing Network Rail's portal.

Summary of our conclusions

- 7.6. There is clear support from respondents for moving towards the use of electronic rather than paper invoices of track access charges and we will look to work collaboratively with stakeholders to bring this into practice.

8. Proposed updating of references to freight performance statements

Summary of proposals in our consultation

- 8.1. 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.
- 8.2. 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.
- 8.3. 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 proposed to change the specification for the process in Appendix 3 to reflect the process actually followed.
- 8.4. To achieve this we proposed that the contract might be 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 requirements.
- 8.5. A paragraph regarding Period final statements was added at the end of Appendix 3 in the contract as there is no provision for statements other than interim statements in the current version of the model contract.
- 8.6. As Appendix 3 to Schedule 8 cross-refers to paragraph 9.2 of Schedule 8 it was necessary to propose consequential changes to that paragraph.

Summary of consultation responses

- 8.7. As passenger operators TfL, Merseytravel and Arriva had no comments regarding our proposals. DB Cargo concurred that the process set out in Appendix 3 of Schedule 8 to the freight model contract does not fully reflect the actual process currently adopted by the parties in practice. DB Cargo also made a number of helpful suggestions as to how our proposed drafting could

be improved. Revised drafting incorporating these suggestions appears in Appendix 1 and is referred to in the paragraphs that follow.

- 8.8. DB Cargo suggested revised opening text for paragraph 1 of Appendix 3 to Schedule 8. We preferred this drafting and have adopted it.
- 8.9. DB Cargo noted that the sub-clause numbering within paragraph 1 was incorrectly formatted during compilation of our consultation document. For consistency with the majority of the contract we had intended that the four sub-paragraphs should be lettered (a) through (d). We have similarly changed any numbered first-tier sub-paragraphs to alphabetic. We have corrected a sub-paragraph reference within our proposed paragraph 11 (itself now renumbered 9) to reflect this.
- 8.10. Within paragraph 1, we had omitted any reference to delay minutes attributed to Network Rail. These are provided in the Day 8 statement to which this paragraph refers, so we have included them in our proposed sub-paragraphs 1(b) and 1(c).
- 8.11. DB Cargo proposed drafting that referred to the formulation “in respect of such incidents the amount of MDTO/[MDNR] (as calculated in accordance with paragraph 6.2.1 of this Schedule 8)”. We were concerned about the effectiveness of this, as both MDTO and MDNR are defined as aggregate sums (i) for a whole Period and (ii) for all incident types. We felt that, whilst we understood the intent of the formulation, the text would be clearer if the longer formulation were used and have retained this in our proposed drafting. In each case this longer formulation uses the same terms as those used within the appropriate parts of the MDTO/MDNR definitions in 4.2.1 and 6.2.1 respectively, all of which are still defined terms. In discussions subsequent to their initial consultation response, DB Cargo confirmed that it is content with the re-wording of sub-paragraphs 1(a) to (c) as set out in Appendix 1.
- 8.12. DB Cargo objected to a change in paragraph 7 (proposed new paragraph 9) regarding lengthening the notification limit from 5 days after the last delay arising from an incident to 10 days after. After discussion we agree with DB Cargo’s view that the provisions of paragraphs 7 and 8 (proposed 9 and 10) are no longer necessary given the focus on daily statements and the provisions for dispute and error correction elsewhere in the Appendix. We have deleted these paragraphs from our proposed text and renumbered subsequent paragraphs accordingly.
- 8.13. DB Cargo proposed an addition of “total Service Variations” within proposed sub-paragraph 11(iii) (now 9(c)). This reflects current practice and we are content for it to be included.

8.14. DB Cargo proposed drafting for a new paragraph 9.2.2 in Schedule 8 to replace our proposed paragraphs 9.2.2, 9.2.3 and 9.2.4. We feel that the proposed text would improve clarity without changing the meaning we had intended and we support this drafting; it is also included in Appendix 1.

Summary of our conclusions

8.15. As DB Cargo suggested a number of improvements to our drafting which we support, we have provided revised drafting for the updating of references to freight performance statements in this document. This is shown in Appendix 1.

Appendix 1

Proposed changes to the freight model contract, Schedule 8

Existing drafting is shown in black with the proposed changes 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 an invoice or credit note as appropriate in respect of the balance, if any, shown on the ~~period final statement provided in accordance with paragraph 11 of Appendix 3, within 28 days after the provisionend of such period final statement~~Charging Period;
- (b) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the ~~period final statement provided in accordance with paragraph 12 of Appendix 3, within 28 days after the provision of such period final statement;~~ and
- (c) issue a credit note 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 (i) any of the period final statements referred to in sub-paragraphs 9.2.1(a) and 9.2.1(b) have not been provided within 28 days after the end of the Charging Period to which they relates or (ii) agreement referred to in sub-paragraph 9.2.1(c) has not been reached within those same 28 days, in both cases 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 (as appropriate) issued shall detail which of the relevant sums are thus settled and which remain outstanding; and any subsequent invoice or credit note (as appropriate) issued in respect of the same Charging Period under sub-paragraphs 9.2.1(a), 9.2.1(b) or 9.2.1(c) shall take account of the interim payments as well as remaining subject to paragraph 9.1.

~~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 within two Working Days after the end of each Week (or, 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 Week;~~ each day. Such interim statements shall be issued on the eighth day after the end of each particular day (or, if the eighth day is not a Working Day, on the next Working Day thereafter) indicating:
 - (a) ~~(ii) are~~ which incidents are Attributable to the Train Operator, and in respect of such incidents the Minutes Delay to Third Party Trains;
 - (b) which incidents are Attributable to Network Rail, and in respect of such incidents the Minutes Delay to Services;
 - (c) which incidents are Attributable to both the Train Operator and Network Rail, and in respect of such incidents (i) that portion of Minutes Delay to Third Party Trains which is allocated to the Train Operator and (ii) that portion of Minutes Delay to Services which is allocated to Network Rail; and
 - (d) which incidents in categories (a) to (c) above remain, at the time of production of the interim statement, under further investigation following a referral by the Train Operator under Condition B2.3.2 of the 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~~ (c) 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:
- (a) ~~(i)~~ the total Contract Miles; and
 - (b) ~~(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

- ~~7. If Network Rail's nominated representative under paragraph 4 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 4 above, Network Rail may notify the Train Operator of such further incident within five Working Days after the last Minutes Delay, cancellation of a Third Party Train or Cancellation caused by that incident.~~
- ~~8. If Network Rail notifies the Train Operator of any further incident under paragraph 7, 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

9. 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:
- (a) the total Cancellations and the aggregate of the Cancellation Sums payable under this Schedule 8;
 - (b) the total Late Notice Cancellations and the aggregate of the Late Notice Cancellation Sums payable under this Schedule 8;
 - (c) the total Service Variations and the aggregate of the Service Variation Sums payable under Schedule 4;
 - (d) the aggregate of the Disruption Sums payable under this Schedule 8; and
 - (e) 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.
10. 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:
- (a) the total Performance Sum for which Network Rail is liable under this Schedule 8; and

(b) 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

- 119.** 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.
- 1240.** Any statement issued by Network Rail under paragraph **119** shall be accompanied by an adjusting invoice or credit note.