

DATED _____ 2008

Between

NETWORK RAIL INFRASTRUCTURE LTD

- and -

THE WEST COAST RAILWAY COMPANY LIMITED

TRACK ACCESS ARRANGEMENT
AGREEMENT (CHARTER PASSENGER SERVICES)
FOR "THE JACOBITE" SERVICE
(FORT WILLIAM - MALLAIG) SUMMER 2008

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"Agreement"

means the agreement comprised herein including all schedules and appendices hereto and the Network Code;

"an after tax basis"

means payments of the monies which are the subject of the indemnity after:

- (a) first, if the cost, loss or other matter in respect of which the monies are to be paid gives rise to any relief from taxation for the beneficiary of the indemnity, by reducing the amount of such payment by the amount of tax saved (or deemed to be saved on the basis of the assumptions set out below) by the beneficiary by virtue of the relief; and
- (b) secondly, if the indemnity payment is subject to taxation in the hands of the beneficiary, by increasing the amount of the payment after any reduction under (a) above such that the net amount retained by the beneficiary after the deduction of the tax suffered (or deemed to be suffered on the basis of the assumptions set out below) by the beneficiary in respect of such indemnity payment equals the amount of the payment after any reduction under (a) above,

and, in applying the above, it shall be assumed that:

- (i) for the purposes of paragraph (a) above, the beneficiary has sufficient profits in the accounting period in which any relief

from tax first becomes available to utilise such relief; and

- (ii) for the purposes of paragraph (b) above, the beneficiary has no reliefs available in the accounting period in which the indemnity payment is subject to tax against which to offset such tax liability;

"Applicable Rules of the Route"	means, in respect of any particular Routes at any particular time, the Rules of the Route that apply in respect of those Routes as at that time;
"Applicable Rules of the Plan"	means, in respect of any particular Routes at any particular time, the Rules of the Plan that apply in respect of those Routes as at that time;
"associate"	has the meaning attributed to it in Section 17 of the Act;
"Banking Day"	means any day excluding Saturdays and Sundays on which Banks are open for business in London;
"Claims Allocation and Handling Agreement"	means the agreement of that name providing for (inter alia) the allocation and handling of third party claims against railway industry participants as approved from time to time by the Office of Rail Regulation;
"Collateral Agreements"	means the agreements listed in Schedule 3;
"Commencement Date"	means the date set out in paragraph 3 of Schedule 1;

"Confidential Information"	means any information of a confidential nature disclosed, whether in writing, orally or by any other means, directly or indirectly from one party to this Agreement to the other either before or after the date of this Agreement and in respect of this Agreement or the relationship created hereby;
"Default Interest Rate"	means the interest rate set out in paragraph 2 of Schedule 1;
"Emergency Access Code"	means the agreement called the Railway Industry Emergency Access Code providing, inter alia, for access to railway facilities in emergency situations;
"Event of Default"	means a Train Operator Event of Default or a Network Rail Event of Default as the context requires;
"Expiry Date"	means the date set out in paragraph 4 of Schedule 1;
"Insolvency Event"	means in relation to either of the parties 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 was substituted £50,000 or such higher figure as the parties may agree in writing from time to time;
 - (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 expiration 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 served 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);
- (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, in any case, a railway administration order (or application therefore) 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 pursuant to section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending, or unless, 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;

"Network Code"	Means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;
"Network Rail Event of Default"	has the meaning given to that term in Clause 9.2.3;
"Period"	means each consecutive period of 28 days during the term of this Agreement provided that: <ul style="list-style-type: none">(i) if the Commencement Date is not 1 April, the first Period shall commence on the Commencement Date and end at 23.59 hours on the day immediately preceding the first day of the immediately subsequent Period which shall be established on the assumption that the Commencement Date was 1 April; and(ii) the length of the first and last such Period in any relevant year (as defined in Schedule 7) may be varied by up to 7 days on reasonable prior notice from Network Rail to the Train Operator;
"Railway Code Systems"	means "Necessary Systems" within the meaning of the Systems Code;
"Routes"	means that part of the Network described in Schedule 2;
"Safety Case"	has the meaning given to that term in the Railways (Safety Case) Regulations 2000;
"Safety Obligations"	means all applicable obligations and laws concerning health and safety

(including any duty of care arising at common law, and any arising under statute, statutory instrument, or mandatory codes of practice) in Great Britain;

"Services"	means the railway passenger services described in Schedule 5;
"Specified Equipment"	means, in relation to each of the Routes, the railway vehicles to be used in the provision of Services on that Route in each case as specified in Schedule 5;
"Stabling"	means the parking or laying up of the Specified Equipment or such other railway vehicles as the Train Operator is permitted by this Agreement to use on the Network, such parking or laying up being necessary or expedient for giving full effect to the movements of Specified Equipment required for the provision of the Services; and "Stable" and "Stabled" shall be construed accordingly;
"Suspension Notice"	means a notice in writing served by the relevant party on the other party in accordance with Clause 9.3;
"Systems Code"	means the Code of Practice relating to the management and development of Railway Information Systems as approved by the Office of Rail Regulation and made under Network Rail's Network Licence;
"Termination Notice"	means a notice in writing served by the relevant party on the other party in accordance with Clause 9.4;
"Track Charges"	means the charges payable by or on behalf of the Train Operator in respect of the permission to use the Routes

granted under this Agreement as set out in or calculated in accordance with Schedule 7;

"Train Operator Event of Default"

has the meaning given to that term in Clause 9.2.1;

"Value Added Tax"

means Value Added Tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto or replacing, modifying or consolidating such legislation and any reference to "VAT" shall be construed accordingly.

1.2 Permission to use

References in this Agreement to permission to use the Routes shall, except where the contrary is indicated, be construed to mean permission:

1.2.1 to use the track comprised in the Routes for the provision of the Services using the Specified Equipment;

1.2.2 to make Ancillary Movements; and

1.2.3 to Stable, which, for the avoidance of doubt, shall be treated as the use of a Train Slot,

and to the extent reasonably necessary to give full effect to the permissions in Clauses 1.2.1, 1.2.2 and 1.2.3, and subject to Clause 1.3:

1.2.4 for the Train Operator and its associates to enter upon that part of the Network comprising the Routes, with or without vehicles; and

1.2.5 for the Train Operator and its associates to bring things on to 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:

- (a) the Network Code;
- (b) the Applicable Rules of the Route; and
- (c) the Applicable Rules of the Plan

and to any other restriction on such permission which may from time to time be imposed by Network Rail in accordance with this Agreement.

1.3 Permission under Clauses 1.2.4 and 1.2.5

In relation to the permissions specified in Clauses 1.2.4 and 1.2.5:

- (a) the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of Network Rail, 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 Network Rail; and
- (c) whilst exercising any rights conferred by Clauses 1.2.4 and 1.2.5, the Train Operator shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as Network Rail shall specify.

1.4 Network Code

Where the context admits, words and expressions defined in and rules of interpretation set out in the Network Code shall apply throughout this Agreement and references to the Network Code in such words, expressions and rules shall be construed as references to this Agreement.

1.5 References to Person

A "person" shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of these, and includes that person's legal personal representatives, successors and permitted assigns.

1.6 References to Tables

Where in any of the Schedules to this Agreement there is a reference to any Table such reference shall be construed as a reference to the table annexed to that particular Schedule.

1.7 Clauses, Schedules, Paragraphs and Conditions

Unless otherwise stated, references to Clauses and Schedules are to clauses and schedules of this Agreement and references to sub-clauses or paragraphs are, unless otherwise stated, references to sub-clauses of the Clause or paragraphs of the Schedule in which the reference appears.

References to any Condition shall be construed as a reference to the relevant part of the Network Code.

2. CONDITIONS PRECEDENT

2.1 Conditions Precedent

Subject to Clause 2.3, the provisions of this Agreement shall not have effect until the following conditions precedent shall have been satisfied in full:

2.1.1 The Train Operator is authorised by a licence granted under section 8 of the Act to be the operator of trains for the provision of the Services or it is exempt from the requirement to be so authorised under section 7 of the Act;

2.1.2 Network Rail 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;

2.1.3 each of the Collateral Agreements is executed and delivered by the respective parties thereto and is unconditional in all respects (save only for the fulfilment of any condition relating to this Agreement becoming unconditional);

2.1.4 the Safety Case of each of the parties is accepted in accordance with the Railways (Safety Case) Regulations 2000; and

2.1.5 the Train Operator has produced evidence, to the reasonable satisfaction of Network Rail, that it has the benefit of third party liability insurance cover on terms which satisfy the requirements of the Office of Rail Regulation as published in the document entitled "Guidance on Insurance against Third Party Liability" (or some such similar name).

2.2 Obligations to Satisfy Conditions Precedent

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 Commencement Date:

- (a) in the case of Network Rail, the conditions precedent contained in Clause 2.1.2 and, insofar as within its control, Clauses 2.1.3 and 2.1.4; and

- (b) in the case of the Train Operator, the conditions precedent contained in Clause 2.1.1 and 2.1.5 and, insofar as within its control, Clause 2.1.3 and 2.1.4.

2.3 Entry into Effect

2.3.1 Clause 1, Clause 2 and Clauses 10 to 18 inclusive of this Agreement and Part A (Organisation of the Network Code and Definitions), Part C (Modifications to the Network Code), Part D (Timetable Change), Part F (Vehicle Change) and Part G (Network Change) of the Network Code shall take effect and be binding upon the parties immediately upon signature of this Agreement.

2.3.2 All Clauses of this Agreement and Parts of the Network Code other than those listed in Clause 2.3.1 shall come into effect and be binding upon the parties on the Commencement Date, provided that each of the conditions precedent referred to in Clause 2.1 shall by then have been satisfied in full.

2.4 Consequences of Non-fulfilment

If the conditions precedent set out in Clause 2.1 have not been satisfied in full on or before the Commencement Date, this Agreement shall lapse and neither party shall have any liability to the other save in respect of any breach of its obligations under this Clause 2.

3. PERMISSION TO USE THE ROUTES

Network Rail hereby grants the Train Operator permission to use the Routes for the operation of Services and related Ancillary Movements.

4. SAFETY

The Train Operator shall comply with any reasonable request by Network Rail as respects any aspect of the Train Operator's operations which affects or is likely to affect the performance of Network Rail's health and safety duties.

5. NETWORK CODE

5.1 The Network Code is incorporated in and shall form part of this Agreement.

5.2 Except where the Office of Rail Regulation shall have directed otherwise in the exercise of its powers under the Act or the Network Code, Network Rail

shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the Network Code.

- 5.3 Each of the parties agree that for the purposes of the Network Code there is no Engineering Strategy applicable to this Agreement and, accordingly, any amendments to the Rules of the Route or Rules of the Plan proposed by Network Rail under Part D of the Network Code shall be deemed to be within and consistent with the Engineering Strategy.

6. OBLIGATIONS OF THE PARTIES

6.1 Operation and Maintenance of Trains

6.1.1 The Train Operator shall ensure that the Specified Equipment is maintained and operated to a standard which will permit provision of the Services in accordance with the Working Timetable.

6.1.2 The Train Operator shall ensure that adequate and suitably qualified personnel are engaged in the provision of the Services.

6.1.3 The Train Operator shall comply with its obligations under the Sporting Events (Alcohol) Act 1985.

6.1.4 The Train Operator shall liaise with the police and station facility owners, where appropriate to do so, with a view to ensuring that adequate arrangements are in place at all stations at or from which the Services stop, depart and/or arrive, for the proper maintenance of crowd control and good public order.

6.2 Track Charges

Each of the parties shall perform its obligations set out in Schedule 7.

6.3 Operation and Maintenance of the Network

6.3.1 Network Rail shall ensure that adequate and suitably qualified personnel are engaged in the operation and maintenance of that part of the Network comprising the Routes.

6.3.2 Network Rail shall ensure that the Network is maintained and operated to a standard which shall permit the provision of the Services using the Specified Equipment in accordance with the Working Timetable and the making of Ancillary Movements.

6.3.3 Each of the parties shall use its reasonable endeavours to reduce trespass, vandalism and intrusions by animals onto the Network in each case as may affect the Routes, the Specified Equipment and the operation of railway vehicles and Specified Equipment on the Routes. The parties' reasonable endeavours shall include such consultation and joint action between Network Rail and the Train Operator as is reasonable in all the circumstances. This Clause 6.3.3 is without prejudice to the other obligations of the parties under this Agreement.

6.4 Use of Railway Code Systems

6.4.1 The parties shall use the Railway Code Systems in their dealings with each other in connection with matters provided for in this Agreement. Both parties shall observe and comply with the provisions of the Systems Code.

6.4.3 The Train Operator consents to the use by Network Rail of any data or information supplied by the Train Operator to Network Rail in the course of complying with its Safety Obligations for the purpose of monitoring the Train Operator's performance of its obligations under this Agreement and calculating the amount of Track Charges.

6.5 Stabling

6.5.1 The Train Operator shall use all reasonable endeavours to specify in the applicable Bid any Stabling requirements to enable the train movement envisaged by any particular Train Slot to be completed without obstructing the Network.

6.5.2 Network Rail shall use all reasonable endeavours to provide such Stabling facilities as are necessary or expedient for the provision of the Services in accordance with the Working Timetable.

6.6 Services Specification

Each of the parties shall perform its obligations set out in Schedule 5.

7. PERFORMANCE

Each of the parties shall perform its obligations set out in Schedule 8.

8. INDEMNITIES AND LIABILITY FOR PERFORMANCE

8.1 The Train Operator shall indemnify Network Rail and keep it indemnified (on an after tax basis) against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by Network Rail:

- (a) as a result of a failure by the Train Operator to comply with its obligations under the Safety Obligations;
- (b) as a result of any Environmental Damage arising directly from the operations of the Train Operator or the proper taking by Network Rail in accordance with Condition E2 of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct or indirect result of the activities of the Train Operator; or
- (c) as a result of any damage to the Network arising directly from the Train Operator's negligence or the Train Operator's failure to comply with its obligations under this Agreement,

save to the extent that any such damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses result from Network Rail's negligence or its breach of this Agreement, and provided that this indemnity shall not extend to loss of revenue or other indirect loss and shall be subject to any limitations provided for in the Claims Allocation and Handling Agreement.

8.2 Network Rail shall indemnify the Train Operator and keep it indemnified (on an after tax basis) against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by the Train Operator:

- (a) as a result of a failure by Network Rail to comply with its obligations under the Safety Obligations;
- (b) as a result of any Environmental Damage to the Network arising directly from the operations of the British Railways Board prior to 1st April 1994 or from the operations of Network Rail; or

- (c) as a result of 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 Agreement arising directly from Network Rail's negligence or failure to comply with its obligations under this Agreement,

save to the extent that any such damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses result from the Train Operator's negligence or its breach of this Agreement, and provided that this indemnity shall not extend to loss of revenue or other indirect loss and shall be subject to any limitations provided for in the Claims Allocation and Handling Agreement.

8.3 Liability for Late Trains

The rights and obligations of the parties set out in Schedules 7 and 8 represent the parties' sole entitlement as between themselves to any compensation in respect of any damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses arising from cancellations, interruptions or delays to trains.

8.4 Restrictions on Claims

8.4.1 A party wishing to claim under the indemnity in Clause 8.1 or Clause 8.2 must notify the other party of the relevant facts giving rise to that claim as soon as reasonably practicable (and in any event within 90 days) of its first becoming aware of those facts.

8.4.2 A party wishing to claim under the indemnity in Clause 8.1 or Clause 8.2 shall consult with the other party as to the ways in which the circumstances giving rise to that claim and any damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders or out of pocket expenses connected with that claim may be prevented, mitigated or restricted and shall take all reasonable steps to prevent, mitigate and restrict any and all of the same.

8.5 Exclusion of Claims for Consequential Loss

Neither party to this Agreement may recover from the other party any loss of revenue (including fare revenue, subsidy, access charges, Track Charges and incentive payments) or other consequential loss in connection with the subject matter of this Agreement caused to it by the other party, save to the extent otherwise provided in this Agreement or any other agreement between them.

9. TERM AND EVENTS OF DEFAULT

9.1 Term

Subject to Clause 2, this Agreement shall come into effect on the Commencement Date and continue in force until the earlier of:

9.1.1 termination pursuant to this Clause 9; and

9.1.2 23.59 hours on the Expiry Date.

9.2 Events of Default

9.2.1 Train Operator Events of Default

The following shall be 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 by a licence granted under section 8 of the Act unless it is otherwise exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to the Train Operator;
- (c) any breach by the Train Operator of this Agreement or any breach by the Train Operator of the Safety Obligations or any material breach by the Train Operator of any of the Collateral Agreements which, by itself or taken together with any other such breach by the Train Operator, Network Rail reasonably considers constitutes a serious threat to the safe operation of any part of the Network;
- (d) any Track Charges or other amount due by the Train Operator to Network Rail pursuant to this Agreement remains unpaid for more than 5 Banking Days after their due date except where liability to pay any such sum shall be contested by the Train Operator in good faith and with timely recourse to appropriate means of redress;
- (e) any breach of this Agreement 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, will or is likely to result, in serious financial loss to Network Rail; and

- (f) any breach of this Agreement 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, will or is likely to result, in material disruption to train operations of other train operators.

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

9.2.3 Network Rail Events of Default

The following shall be Network Rail Events of Default:

- (a) Network Rail ceases to be authorised to be the operator of that part of the Network comprised in the Routes by a licence granted under section 8 of the Act unless otherwise exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to Network Rail;
- (c) any breach by Network Rail of this Agreement or the Safety Obligations or any material breach by Network Rail of any of the Collateral Agreements which, by itself or taken together with any other such breach by Network Rail, the Train Operator reasonably considers constitutes a serious threat to the safe operation of the Services; and
- (d) any other breach of this Agreement or any material breach of any of the Collateral Agreements by Network Rail which, by itself or taken together with any other such breach, results, will or is likely to result, in serious financial loss to the Train Operator.

9.2.4 Network Rail shall notify the Train Operator promptly on becoming aware of the occurrence of a Network Rail Event of Default.

9.3 Suspension

9.3.1 Right to suspend

- (a) Network Rail may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.

- (b) The Train Operator may serve a Suspension Notice where a Network Rail Event of Default has occurred and is continuing.

9.3.2 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 thereof or any other part of the Network;
- (d) in the case of a Suspension Notice served on Network Rail: details of any necessary suspension of the Services; and
- (e) 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, 5 Banking Days shall be a reasonable grace period).

9.3.3 Effect of Suspension Notice served by Network Rail

Where Network Rail has served a Suspension Notice on the Train Operator:

- (a) the Train Operator shall comply and procure compliance with any reasonable restriction thereby imposed on it;
- (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 Network Rail to the Train Operator pursuant to Clause 9.3.5(d); and
- (c) service of a Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Track Charges or ability to cancel Services subject to Part VIII of Schedule 7.

9.3.4 Effect of a Suspension Notice served by the Train Operator

Where the Train Operator has served a Suspension Notice on Network Rail:

- (a) it shall have the effect of suspending the Train Operator's permission to use the Routes to provide or procure the provisions of the Services to the extent specified in such Suspension Notice;
- (b) in relation to Services suspended as specified in such Suspension Notice, the amount of any charges shall be abated in full; and
- (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 Network Rail pursuant to Clause 9.3.5(d).

9.3.5 Suspension to be proportionate to breach

- (a) A Suspension Notice served pursuant to Clause 9.3.3 in respect of any of the Train Operator Events of Default specified in sub-clauses (a) to (e) (inclusive) of Clause 9.2.1 shall, so far as reasonably practicable, apply only to the:
 - (i) railway vehicles;
 - (ii) Services;
 - (iii) Routes; or
 - (iv) categories of train movements or railway vehicles

(or (as the case may be) parts or part thereof) to which the relevant Train Operator Event of Default relates and the remainder of the rights and obligations of the parties shall remain in full force and effect.
- (b) A Suspension Notice served pursuant to Clause 9.3.4 in respect of any Network Rail Event of Default shall, so far as reasonably practicable, apply only to the:
 - (i) railway vehicles;
 - (ii) Services;
 - (iii) Routes; or
 - (iv) categories of train movements or railway vehicles

(or (as the case may be) parts or part thereof) to which the relevant Network Rail Event of Default relates and the remainder of the rights and obligations of the parties shall remain in full force and effect.

- (c) The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall, with all reasonable diligence, take such steps as shall be reasonable and necessary to remedy the Event of Default and shall keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.
- (d) Where a party served with a Suspension Notice has complied with its obligations under Clause 9.3.5(c) (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 shall have 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 shall have effect.

9.4 Termination

9.4.1 Network Rail's Right to Terminate

Network Rail 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 Clause 9.3.5(c);
- (c) where the Train Operator Event of Default described in Clause 9.2.1(a) has occurred and is continuing; or
- (d) where the Train Operator Event of Default specified in a Suspension Notice served by Network Rail is not capable of being remedied and three months have elapsed from the service of the said Suspension Notice .

9.4.2 Train Operator's Right to Terminate

The Train Operator may serve a Termination Notice on Network Rail:

- (a) where Network Rail fails to comply with its obligations under Clause 9.3.5(c);
- (b) where the Network Rail Event of Default described in Clause 9.2.3(a) has occurred and is continuing; or
- (c) where the Network Rail 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 the said Suspension Notice.

9.4.3 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;
- (c) where the relevant Event of Default is capable of remedy:
 - (i) the steps 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 Charges, 5 Banking Days shall be a reasonable grace period).

9.4.4 Effect of Termination Notice

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

- (a) the service of such Termination Notice shall not affect the parties' continuing obligations under this Agreement up to the date of termination as specified in the Termination Notice or such later date as the party which has served the Termination Notice may notify to the other following the service of the

Termination Notice but prior to the date upon which it shall have been specified to have effect;

- (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;
- (c) this Agreement shall terminate on the later of:
 - (i) the date and time specified in the Termination Notice or such later date and time as the party which has served the Termination Notice may notify to the other prior to the date and time upon which it shall have been specified to have effect; and
 - (ii) the date and time upon which notice of such termination shall have been given to the Office of Rail Regulation.

9.5 Consequences of Termination

Immediately prior to, upon or following termination or expiry of this Agreement, the Train Operator shall comply or procure compliance with all reasonable directions given by Network Rail regarding the positioning and location of the Specified Equipment. If the Train Operator fails to comply or procure compliance with any such directions Network Rail 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 Network Rail in taking such steps shall be paid promptly by the Train Operator to Network Rail. If so requested by the Train Operator, Network Rail shall provide such evidence of such costs as it shall reasonably request. This Clause 9.5 shall survive termination of this Agreement irrespective of the reason for termination.

9.6 Exclusion of Common Law Termination Rights

The suspension and termination rights set out in this Clause 9 shall be the parties' only rights to suspend or terminate this Agreement whether pursuant to its terms or at law.

10. COMMUNICATIONS AND NOTICES

10.1 Method of Sending Written Notices

10.1.1 Any notice given under or pursuant to this Agreement shall, unless otherwise provided in this Agreement, be in writing and shall be sent to the party on whom the notice is to be served at the address for service of that party specified in Schedule 1 or to such other address as that party may from time to time have notified to the other in accordance with this Clause 10.1:

- (a) by prepaid first class post when sent from and to any place within the United Kingdom;
- (b) by hand or by recorded delivery;
- (c) by facsimile; or
- (d) by electronic data transfer.

10.1.2 If there shall be specified in Schedule 1 any person to whom copies of notices shall also be sent, the party serving a notice in the manner required by this Clause 10.1 shall send a copy of the notice in question to such person at the address for serving 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 in accordance with this Clause 10.1. Such copy notice shall be sent immediately after the original notice.

10.2 Deemed Receipt

Notices required to be in writing and served in accordance with Clause 10.1 shall be deemed to have been received by the party to be notified:

- (a) if by prepaid first class post, from and to any place within the United Kingdom, three days after posting unless otherwise proven;
- (b) if by hand or by recorded delivery, when delivered;
- (c) if by facsimile, (subject to confirmation of uninterrupted transmission by a transmission report) upon sending where such transmission occurs before 17:00 hours on the day of transmission and, in any other case, at 09:00 hours on the day following the day of transmission; and

(d) if by electronic data transfer, upon sending.

11. DISPUTES AND CLAIMS

- 11.1 Any dispute or claim arising under Clause 6.2, Clause 8, Clause 9, Clause 12 or (save where otherwise specified in Schedule 7) Schedule 7 of this Agreement shall be resolved by mediation followed, if necessary, by arbitration pursuant in each case to the Access Dispute Resolution Rules. Any arbitration award in respect of a dispute or claim arising out of Clause 6.2 or Schedule 7 shall be treated as confidential and paragraph C6.3 of the Access Dispute Resolution Rules shall not apply in relation thereto.
- 11.2 Except as provided in the Network Code, any dispute or claim arising in connection with the meaning or scope of Clause 1.2, Schedule 2 or (save where otherwise specified in Schedule 5) Schedule 5 of this Agreement shall be resolved by the Industry Committee followed, if either party shall be dissatisfied with the decision of the Industry Committee or the ruling of the Chairman thereof (as the case may be), by arbitration, pursuant in each case to the Access Dispute Resolution Rules.
- 11.3 Save as otherwise provided in Clauses 11.1 and 11.2 and save as otherwise provided in Parts D, F and G of the Network Code and elsewhere in this Agreement, any dispute or claim arising out of or in connection with this Agreement shall be resolved by the Industry Committee followed, if either party shall be dissatisfied with the decision of the Industry Committee or the ruling of the Chairman thereof (as the case may be), by referral to such other body, other than a mediator, as the Industry Committee may specify, pursuant in each case to the Access Dispute Resolution Rules.

12. ASSIGNMENT

- 12.1 This Agreement is personal to the parties and neither party may assign or otherwise transfer its rights and obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
- 12.2 The assignment or transfer of this Agreement shall have no effect unless approved by the Office of Rail Regulation and effected in accordance with the conditions (if any) of its consent.

13. INVALIDITY

If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the

legality, validity and enforceability of the remainder of this Agreement shall not be affected.

14. NON WAIVER

No waiver by either party of any default by the other in the performance of any obligation under this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other right or remedy and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

15. PAYMENTS, INTEREST AND VAT

Payments

- 15.1 Subject to Clause 15.3 and without prejudice to the specific provisions of Clause 15.2, all sums due or payable by either party under this Agreement shall be paid free and clear of any deduction or withholding, save only as may be required by law or where any sum shall be contested in good faith by the party from whom payment is due and payable and with timely recourse to appropriate means of redress.
- 15.2 In the event that any deduction or withholding in respect of duties, taxes or charges of a taxation nature is required by law from any sum due or payable by either party under this Agreement, the payer shall:-
- 15.2.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;
 - 15.2.2 account to the relevant taxation or other authorities within the period for payment permitted by the applicable law for the full amount of the deduction or withholding; and
 - 15.2.3 furnish to the payee within the period for payment permitted by the relevant law either an official receipt of the relevant taxation or other authorities involved in respect of all amounts so deducted or withheld or if such receipts are not issued by the taxation or other authorities concerned a certificate of deduction or equivalent evidence of the relevant deduction or withholding.
- 15.3 Where either party wishes to contest any amount payable under an invoice issued to it by the other party, the first mentioned party shall (save where an

invoice is payable within 7 days of receipt in which event notification in manner following shall be within 7 days), within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute and shall pay the undisputed amount in accordance with the terms of the invoice.

- 15.4 All invoices shall be sent by electronic or facsimile transmission (with confirm-AT copy by prepaid first class post) to the address for service of the recipient referred to in Schedule 1.
- 15.5 Subject to Clause 15.3, all invoices shall, unless otherwise specified in Schedule 7 or 8, be:-
- (a) paid within 28 days of the date of their receipt; and
 - (b) reasonably itemised.
- 15.6 All payments shall unless otherwise specified elsewhere in this Agreement be made by direct debit mandate, standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer, to a London clearing bank or such other financial institution approved by the party entitled to the payment (such approval not to be unreasonably withheld or delayed) and shall be made to the account of the payee the details of which may from time to time be notified by one party to the other provided that such notification is given not less than 14 days before any such payment is due.

Interest

- 15.7 Without prejudice to any other rights or remedies which either of the parties may have in respect of non-payment of any amount or any failure to credit on the date it is due and payable, such amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the due date until the date of actual payment or crediting (as well after judgement as before).

VAT

- 15.8 Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one party to the other the payer shall, in addition to any payment required for that supply, pay upon presentation of a valid tax invoice such VAT as is chargeable in respect of it.
- 15.9 Where under this Agreement one party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other then 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, or for any person with which 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.

15.10 Where under this Agreement 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 Customs & Excise 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.

16. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England and subject to Clause 11 the parties irrevocably agree that the Courts of England are to have exclusive jurisdiction to settle any dispute or controversy of whatever nature which may arise out of or in connection with this Agreement or a breach thereof.

17. CONFIDENTIALITY

17.1 Except as permitted by Clause 17.2, all Confidential Information shall be held confidential during the continuance of this Agreement and thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other party.

17.2 Either party shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

- (a) to the Office of Rail Regulation;
- (b) to the Health and Safety Executive;
- (c) to London Underground Limited, to the extent that:
 - (i) such information is in respect of the interaction between the operation of the Services and the operation of railway passenger services by London Underground Limited on the Network; and
 - (ii) it is necessary to divulge such information for the safe and efficient operation of railway passenger services on the Network;

- (d) to any Affiliate of such party upon obtaining an undertaking of strict confidentiality from such Affiliate;
- (e) to any officer or servant 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 expedient to enable the party in question to perform its obligations under this Agreement or to enforce its rights under this Agreement, upon obtaining an undertaking of strict confidentiality from such officer, servant 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 lender, security trustee, bank or other financial institution from whom such party is seeking or obtaining finance, or any advisers to any such entity, upon obtaining an undertaking of strict confidentiality from the entity or advisers in question;
- (h) to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any stock exchange or regulatory body or any written request of any taxation authority;
- (i) to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;
- (j) pursuant to the order of any court or tribunal of competent jurisdiction (including the Industry Committee or any sub-committee thereof).

18. MISCELLANEOUS

18.1 No variation of this Agreement (including, without limitation, any variation made pursuant to any provision of this Agreement (whether as a result of the exercise of a party's discretion or otherwise howsoever) which would, apart from that provision, require the approval of the Office of Rail Regulation under Section 22 of the Act, shall be effective unless in writing and signed by the parties and duly approved by the Office of Rail Regulation unless:

- (i) the variation is made pursuant to the Network Code; or

(ii) this Agreement expressly contemplates otherwise.

18.2 This Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements in relation to that subject matter. This Clause 18.2 shall not have the effect of excluding any term implied by law.

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

IN WITNESS whereof the Train Operator and Network Rail have by their duly authorised representatives respectively entered into this Agreement on the date first above written.

Signed by _____)
on behalf of Network Rail Infrastructure Ltd)

Signed by _____)
on behalf of West Coast Railway)
Company Limited)

SCHEDULE 1

CONTACT PARTICULARS

1. (a) Network Rail's address for the service of notices is:-

Network Rail Infrastructure Ltd
40 Melton Street
London
NW1 2EE

Tel: 020 7557 8000
Fax: 020 7557 9000

All written notices to be marked
"URGENT: ATTENTION THE SOLICITOR AND COMPANY SECRETARY"

and copied to:

Director, Operations and Customer Services
Network Rail Infrastructure Ltd
40 Melton Street
London
NW1 2EE

Tel: 020 7557 8257
Fax: 020 7557 9113

- (b) The Train Operator's name, company registration number and address for the service of notices is:

West Coast Railway Company Limited
Jesson Way
Crag Bank
Carnforth
Lancashire
LA5 9UR

Company No: 03066109

Tel: 01524 732100
Fax: 01524 735518

All written notices to be marked:

"URGENT: ATTENTION THE CHAIRMAN"

2. The Default Interest Rate shall be 2 per cent above the average of the base lending rates published by Barclays Bank plc during any period in which an amount is payable under this Agreement and remains unpaid.
3. The Commencement Date: 15 May 2008
4. The Expiry Date: 31 October 2008

SCHEDULE 2

THE ROUTES

The Routes comprise all that part of the Network between Fort William and Mallaig which satisfies the Train Characteristics (as defined in Schedule 5) and, for the purpose of Ancillary Movements only, that part of the Network between Carnforth and Fort William [Tom-na-Faire Depot](#) which satisfies the Train Characteristics (as defined in Schedule 5).

SCHEDULE 3

COLLATERAL AGREEMENTS

1. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement.
2. The Emergency Access Code

SCHEDULE 4

RULES OF THE ROUTE AND RULES OF THE PLAN

1. Network Rail shall provide the Train Operator with copies of the Applicable Rules of the Route and Applicable Rules of the Plan in respect of any particular Routes within a reasonable period of receiving a request for such documents from the Train Operator. The Train Operator undertakes to Network Rail that it shall not request, under this Agreement, copies of the Applicable Rules of the Route or the Applicable Rules of the Plan unless they are in respect of a part or parts of the Network over which it is reasonably likely that the Train Operator will bid to operate Train Services (as defined in Schedule 5) under this Agreement.
2. Notwithstanding the provisions of Condition D3.4, if Network Rail proposes any amendment to the Applicable Rules of the Route or the Applicable Rules of the Plan it shall only be required to consult the Train Operator about such amendment if:
 - (i) it affects all or any of the Routes at a time which is likely to affect any Train Slot for which the Train Operator has Bid or has notified Network Rail that it is likely to Bid under this Agreement and which Network Rail has not then rejected or the Train Operator has not then withdrawn; or
 - (ii) it is in respect of other Routes about which the Train Operator notifies Network Rail in writing that it wishes to be consulted.

The Train Operator undertakes to Network Rail that it shall not require, under this Agreement, to be consulted regarding any amendments to the Applicable Rules of the Route or the Applicable Rules of the Plan unless it considers that such amendments are reasonably likely to affect the operation or proposed operation of any Train Service (as defined in Schedule 5) under this Agreement.

SCHEDULE 5

THE SERVICES AND THE SPECIFIED EQUIPMENT

Part I: Definitions

1. In this Schedule 5, unless the context otherwise requires:

"Scheduled"	means scheduled to run in accordance with the Working Timetable;
"Train Characteristics"	means the characteristics of a Service which are notified to Network Rail at the time of a Bid made pursuant to paragraph 3.1 of Part II of this Schedule; and
"Train Service"	means a Train Slot which is or is intended to be a passenger carrying movement and which is operated by the Train Operator under this Agreement including any part of the Train Slot that is an Ancillary Movement.

Part II: The Services

2. **Right to operate**

2.1 Subject to paragraph 2.2, the Train Operator may Bid to operate trains for the carriage of passengers by railway using the Specified Equipment on the Routes on any Monday to Friday between the dates of 19 May and 10 October 2008 (inclusive), on any Saturday between the dates of 28 June and 30 August 2008, and on any Sunday between the dates of 29 June and 31 August 2008 (inclusive) as follows:

2.1.1 one Train Service from Fort William to Mallaig which, subject to Network Rail's Flexing Right, shall depart from Fort William at 10.20 hours and shall arrive at Mallaig at 12.25 hours; and

2.1.2 one Train Service from Mallaig to Fort William which, subject to Network Rail's Flexing Right, shall depart from Mallaig at 14.10 hours and arrive at Fort William at 16.00 hours.

2.2 The permission to use set out in paragraph 2.1 is subject to the following conditions:-

2.2.1 the Train Operator using all its reasonable endeavours to operate each of the Train Services with steam driven Specified Equipment; and

2.2.2 the Train Operator using ticketing arrangements which are specific and exclusive to the Train Services.

2.3 The Train Operator may Bid to operate specific Ancillary Movements:

2.3.1 between Fort William [Tom-na-Faire Depot](#) and Fort William Station;

2.3.2 between Mallaig Station and Mallaig Ground Frame; and

2.3.3 between Carnforth and Fort William [Tom-na-Faire Depot](#)

3. Bid Content

3.1 The Train Operator shall, in making a Bid for the operation of a Train Service under this Agreement and without prejudice to any other information which it is entitled or required to supply under Part D of the Network Code, indicate with that Bid the following characteristics ("Train Characteristics"):

(a) the type of Specified Equipment to be operated in sufficient detail to enable all such Route investigations as Network Rail reasonably considers to be necessary to be carried out; and

(b) the length of and number of seats on the train, and the performance capability of the particular combination of traction and rolling stock in question.

3.2 Network Rail shall promptly notify the Train Operator if it requires any information as to the type of Specified Equipment to be operated on behalf of the Train Operator in addition to that indicated in any Bid in order to enable it to carry out Route investigations.

4. Flexing Right

- 4.1 All rights of the Train Operator set out in paragraph 2 shall, for the avoidance of doubt, be subject to Network Rail's Flexing Right, as set out in Part D of the Network Code.

5. Variation of Bid by the Train Operator

- 5.1 The Train Operator may, if it wishes to vary any of the aspects of an accepted Bid, make a Bid for a Train Slot with such varied characteristics as it requires on the basis that:-

- (a) if the later Bid is accepted by Network Rail the Bid which it varies shall be deemed to lapse; and
- (b) if the later Bid is rejected the earlier accepted Bid remains in force unless withdrawn by written notice from the Train Operator to Network Rail.

- 5.2 No later Bid made on the basis set out in paragraph 5.1 shall be rejected by reason only of its being inconsistent with the rights of the Train Operator under the earlier accepted Bid.

6. General Restrictions on Rights of Train Operator

Network Rail shall be entitled to reject any Bid by the Train Operator under this Agreement to operate a Train Service on Routes not open for the carriage of passengers by railway without giving any reasons for this, and the Train Operator shall have no right of appeal in respect of any such rejection.

7. Stations and Depots

The Train Operator shall not be entitled, under this Agreement, to operate a Train Service which is to stop at any station or depot at which the Train Operator does not have the necessary access authorisation to effect such a stop. It is the responsibility of the Train Operator to ensure that it obtains all rights of access to stations, light maintenance depots and any third party facilities which may be required in connection with any Train Slot Bid to operate under this Agreement. Promptly following a request by Network Rail to do so, the Train Operator shall provide such evidence of the relevant access rights as may be reasonably required by Network Rail.

Part III: The Specified Equipment

8. The Specified Equipment comprises the following types of rolling stock:

- Steam Locomotive 5972
- Steam Locomotive 45231
- Steam Locomotive 45407
- Steam Locomotive 48151
- Steam Locomotive 62005
- Diesel Locomotive Class 33, 37, 47 or 57
- Nine Mark I Coaches (with a limit of seven Mark I Coaches per Train Service)

provided that Network Rail may reject any Bid to use and/or operate rolling stock on any part of the Network on which it is not permitted to be operated by virtue of any Applicable Rules of the Route or Applicable Rules of the Plan or due to lack of Route clearance.

Part IV: Risks - Steam Operation

9.1 The following provisions of this Part IV shall apply when the Specified Equipment Bid to be operated is steam driven.

9.2 The Train Operator shall take all precautions as are reasonably practicable to ensure that:-

- (a) any risk of fire occurring as a result of the operation of steam driven Specified Equipment is eliminated; and
- (b) any risk of injury to any person or damage to property caused by fire resulting from the operation of steam driven Specified Equipment is eliminated,

and, to this end, the Train Operator shall provide at least one representative to act as fire patroller along the Routes. At all times as s/he is patrolling such representative shall carry a Personal Track Safety Certificate and shall wear a fire resistant boiler suit.

9.3 By 08.30 hours on the day on which a Train Slot or the first of a series of Train Slots is Scheduled to be operated by steam driven Specified Equipment (each an "Affected Train Slot"), Network Rail shall determine a fire risk categorisation, which shall be one of nil, low, medium, high or extreme, by reference, inter alia, to the weather forecast or forecasts received by Network Rail from the Meteorological Office or other body which provides forecasting services, and to report or reports concerning fire risks

received from any occupier of land (including, but not limited to, the Forestry Commission) adjacent to the Routes.

- 9.4 Where, pursuant to paragraph 9.3, Network Rail determines an extreme fire risk categorisation for the day on which the Affected Train Slot or Slots is/are Scheduled to operate, Network Rail may give notice (“Withdrawal Notice”) to the Train Operator that:-
- (a) Network Rail reasonably considers that there is a significant risk of fire if the Affected Train Slot or Affected Train Slots is/are operated by steam driven Specified Equipment; and
 - (b) accordingly, the permission granted by Network Rail to operate the Affected Train Slot or Affected Train Slots by steam driven Specified Equipment is withdrawn; and
 - (c) requesting the Train Operator to notify Network Rail within half an hour of receipt of a Withdrawal Notice, whether it wishes to operate the Affected Train Slot or any one or more of the series of Affected Train Slots by non-steam driven Specified Equipment, failing which each Affected Train Slot shall be deemed to be cancelled but without either party having any liability to the other under this Agreement or otherwise in respect of such cancellation and the Working Timetable shall, where necessary, be amended accordingly.
- 9.5 If the Train Operator (or its nominated agent) notifies Network Rail, in accordance with paragraph 9.4, that it wishes to operate the Affected Train Slot or any one or more of the series of Affected Train Slots by non-steam driven Specified Equipment, then, provided such Specified Equipment is permitted to operate over the relevant Routes in accordance with the Applicable Rules of the Plan, such notification shall be treated as a Spot Bid accepted by Network Rail, and the Working Timetable shall, where necessary, be amended accordingly.
- 9.6 A Withdrawal Notice, which may be given either by telephone or facsimile (and, if given by telephone, a facsimile may be sent subsequently for confirmatory purposes only), shall be given by Network Rail to the Duty Manager at Crag Bank, Jesson Way, Carnforth, Lancashire, LA5 9UR, facsimile number 01524 735518, or to such other representative of the Train Operator as the Train Operator may notify in writing to Network Rail from time to time for the purposes of this Part IV.
- 9.7 The public liability insurance arrangements of the Train Operator shall be without restriction in respect of fire and fire related damage risks.

9.8 The Train Operator shall indemnify Network Rail and keep it indemnified (on an after tax basis) against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) (hereinafter referred to as "Losses") incurred or suffered by Network Rail:-

- (a) as a result of the operation of any Service under this Agreement using steam driven Specified Equipment (which for the avoidance of doubt shall include all fire related Losses) save to the extent that any such Losses result from Network Rail's breach of this Agreement, and provided that the indemnity in respect of the matters referred to in this sub-paragraph (a) shall not extend to loss of revenue by Network Rail, other indirect loss or the matters referred to in sub-paragraph (b) below and shall be subject to any limitations provided for in the Claims Allocation and Handling Agreement; and
- (b) as a result of third party injury and/or third party property damage caused by fire and the indemnity in respect of the matters referred to in this sub-paragraph (b) shall not be subject to any limitations provided for in the Claims Allocation and Handling Agreement.

SCHEDULE 6

Not used

SCHEDULE 7
TRACK CHARGES

Part I - Definitions

1. In this Schedule 7, unless the context otherwise requires:

"Fire Patrol Charge"	means the applicable charge set out in paragraph 3.2;
"Non-Core Operational Charge"	means the supplemental charge calculated in accordance with paragraph 3.3;
"Route Clearance Charge"	means the charge calculated in accordance with paragraph 3.4;
"Scheduled"	means scheduled in the Working Timetable;
"Slot Charge"	means the fixed charge set out in paragraph 3.1;
"train mile"	in relation to a train, means a mile travelled by that train on the Network in connection with the provision of Train Services;
"Train Service"	has the meaning given to that term in Schedule 5; and
"Train Slot"	means a Train Slot to which this Agreement applies.

Part II - Principles of Charging

2. **Charges**

Network Rail may levy and the Train Operator shall pay, in each case in respect of each Train Slot:-

(a) a Slot Charge, as established in accordance with paragraph 3.1;

- (b) a Fire Patrol Charge (if any), as calculated in accordance with paragraph 3.2;
- (c) a Non-Core Operational Charge (if any), as calculated in accordance with paragraph 3.3;
- (d) a Route Clearance Charge (if any), as calculated in accordance with paragraph 3.4;

Part III - Charges

3.1 Slot Charge

The Slot Charge for the two Train Services operated per day, pursuant to paragraph 2.1 of Schedule 5, shall be £[] (exclusive of VAT) and the Slot Charge for each Ancillary Movement operated pursuant to paragraph 2.3.3 of Schedule 5 shall be £[] (exclusive of VAT).

3.2 Fire Patrol Charge

3.2.1 The Fire Patrol Charge, which shall be payable in respect of each day on which the Train Operator operates a Train Service, shall be:-

- (a) nil, if the fire risk categorisation (determined pursuant to paragraph 9 of Schedule 5) is low or nil;
- (b) nil, if the fire risk categorisation (determined pursuant to paragraph 9 of Schedule 5) is extreme and all Train Services for that day are cancelled or non steam driven Specified Equipment is used throughout that day;
- (c) £[] (exclusive of VAT) in respect of Mondays to Saturdays and £[] (exclusive of VAT) in respect of Sundays, plus £[] (exclusive of VAT) per train mile patrolled by road vehicle, if the fire risk categorisation (determined pursuant to paragraph 9 of Schedule 5) is medium or high.

3.2.2 The Train Operator shall have the right to request evidence of how a fire risk categorisation has been determined. If an error is revealed as a result of the Train Operator exercising such right Network Rail shall, where appropriate, reduce the Fire Patrol Charge accordingly.

3.3 Non-Core Operational Charge

3.3.1 The Train Operator shall, in respect of any Train Service that it wishes to operate wholly or partly outside of the Core Operational Period (that is which it wishes to operate at any time when the Route in question is not generally open to passenger carrying movements) for the Route in question or wholly or partly outside of the Core Passenger Operational Network (that is which it wishes to operate over a Route not generally open for the carriage of passengers by railway), pay a Non-Core Operational Charge calculated in the terms set out in paragraph 3.3.2.

3.3.2 The Non-Core Operational Charge applicable to any Train Service to which paragraph 3.3.1 relates shall consist of the aggregate of all reasonable out-of-pocket costs and expenses incurred by Network Rail (including any costs incurred by Network Rail in respect of additional staff reasonably required to facilitate such a Train Service) by reason of the operation of that Train Service being outside of the Core Operational Period or, as the case may be, outside of the Core Passenger Operational Network but only to the extent that, on or prior to accepting the relevant Bid, Network Rail provides the Train Operator with details, reasonably satisfactorily to the Train Operator, of those items in respect of which Network Rail will, or is likely to, levy the Non-Core Operational Charge.

3.4 Route Clearance Charge

Where any Route clearance or investigation work is required as a result of a Bid received from the Train Operator which involves in excess of checking the relevant equipment against the relevant sectional appendices for the Routes concerned, Network Rail shall be entitled to charge the Train Operator its reasonable costs in carrying out such work (whether or not the Train Service, the subject of the Bid, is operated) provided that it notifies the Train Operator of its intention to carry out such work and obtains the Train Operator's consent (failing receipt of which within a reasonable time Network Rail shall be entitled to reject the Bid in question) before incurring such costs. Network Rail shall endeavour to keep the level of its reasonable costs to the minimum reasonably required.

Part IV - Payment

4.1 Network Rail shall invoice the Train Operator within 7 days of the expiry of each Period. Each invoice shall detail the amount of the charges in respect of each Train Slot scheduled to operate during the relevant Period. The Train Operator shall pay or procure the payment to Network Rail of the

charges set out in paragraph 2 as are attributable to any Period within 7 days of the invoice date.

SCHEDULE 8

PERFORMANCE REGIME

Part I: Definitions

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

"Access Charge Supplement" has the meaning given to that term in Part VII;

"Applicable Timetable" means, in respect of a Planned Service or other train scheduled to depart its point of origin on a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D3.6.1 of the Network Code:

(a) in the case of a Planned Service, by 1000 hours on day A where such Planned Service is to operate after 0001 hours on day C where day A is the second day before, and day B is the day before (excluding in the case of Saturdays, in respect of day A and, in the case of Sundays, in respect of both day A and day B) day C on which the Planned Service is to operate; and

(b) in the case of a train other than a Planned Service, at any time

and which is applicable to the Planned Service or other train (as the case may be);

"Cancellation" means a train which fails to operate at all having regard to the Planned start point of that train, and "Cancelled" shall be construed accordingly;

"Delay Cap"	means, in respect of each Trigger of a Recording Point and calculated separately for each Service Incident, the lesser of (a) the relevant Train Group Cancellation Minutes multiplied by four and (b) 180 minutes;
"Diversion"	means a train which operates but which is diverted off its Planned Route so that it fails to call at one or more of the intermediate stations at which it is Planned to call;
"First Point"	means, in relation to a Service Leg, the first Recording Point on the Network which the Planned Service is Planned to Trigger on that Service Leg;
"Interim Statement"	means a written summary showing, in respect of Network Rail performance, the information required under paragraph 3.4 and, in respect of Train Operator performance, the information required under paragraph 4.3;
"Minutes Delay"	means the number of minutes of delay in respect of a Trigger of a Recording Point calculated in accordance with Part V;
"Monitoring Point"	means, in relation to a Service Leg, its Planned Destination save that if that Planned Destination is not a Recording Point located on the Network, "Monitoring Point" in relation to that Service Leg shall mean the last Recording Point on the Network which that Service Leg is Planned to Trigger;
"Performance Minutes"	means the minutes allocated to Network Rail under paragraph 3.1 or, as the case may be, the minutes allocated to the Train Operator under paragraph 4.1;

"Planned"	means scheduled in the Applicable Timetable;
"Planned Destination"	means, in respect of a Planned Service, a station or point where a Service Leg of that Planned Service is Planned to terminate;
"Planned Incident"	means an incident described as such in paragraph 6.6;
"Planned Service"	means a passenger carrying Service (excluding any Ancillary Movement) of the Train Operator under this Agreement which is scheduled in the Applicable Timetable, and so that for the purposes of this Schedule:- (a) where a Service ("Planned Service A") is to operate from a point of origin to a destination over a particular Route and then return to that point of origin over the same, or a substantially similar, Route, the outward journey and the return journey shall together constitute one Planned Service; and (b) where a Service ("Planned Service B") is to operate by way of a circular tour or substantially by way of a circular tour, the entire journey shall constitute one Planned Service;
"Planned Service Cancellation"	means the Cancellation, Diversion or Termination of a Planned Service;
"Possession"	means a blockage of or a speed restriction on or the isolation of power supplies to any track or section of track forming part of any of the Routes for the purposes of or in connection with the carrying out of an engineering

	inspection or work by or on behalf of Network Rail;
"Network Rail Cap"	means, in respect of a Planned Service, the number of minutes specified in the Appendix as Network Rail Cap for that Planned Service;
"Network Rail Rate"	means, in respect of a Planned Service, the rate, expressed as pounds per minute, specified in the Appendix as the Network Rail Rate for that Planned Service;
"Network Rail Threshold"	means, in respect of a Planned Service, the number of minutes specified in the Appendix as the Network Rail Threshold for that Planned Service;
"Recording Point"	means: <ul style="list-style-type: none">(a) a location on the Network ("Network Rail Recording Point") at which Network Rail records the times at which trains arrive, pass or depart using the Performance Monitoring System; or(b) a location not on the Network ("Train Operator Recording Point") at which the Train Operator records the times at which Planned Services arrive, pass or depart using the Performance Monitoring System;
"Recovery Time"	means additional time incorporated in the Applicable Timetable to allow for a train to regain time lost in delay during an earlier part of its journey;
"Service Incident"	means, in respect of a Planned Service, an incident in connection with, arising from or caused by that Planned Service

	or any of its associated Ancillary Movements;
"Service Leg"	has the meaning given to that term in paragraph 1.3, and so that a Planned Service may have more than one Service Leg;
"Termination"	means a train which operates but which: (a) fails to reach its Planned final destination station, or (b) commences after its Planned station start point;
"Train Cancellation"	means the Cancellation, Diversion or Termination of any train, other than a Planned Service or any of its associated Ancillary Movements;
"Train Group"	means any of the groupings of trains listed in the Appendix but excluding therefrom any trains operated by or on behalf of the Train Operator under this or any other access agreement, and "relevant Train Group" shall be construed accordingly;
"Train Group Cancellation Minutes"	means, in respect of a Train Cancellation, the number of minutes specified in the Appendix as the Train Group Cancellation Minutes for the Train Group of which the train, the subject of the Train Cancellation, forms part, and "relevant Train Group Cancellation Minutes" shall be construed accordingly;
"Train Group Rate"	means, in relation to a Train Group, the rate, expressed as pounds per minute, specified in the Appendix for that Train Group and "relevant Train Group Rate" shall be construed accordingly;

- "Train Operator Cap" means, in respect of a Planned Service, the amount specified in the Appendix as the Train Operator Cap for that Planned Service;
- "Trigger" means the act of a train arriving at, passing or departing from a Recording Point;
- "Week" means Sunday to the immediately following Saturday (both days inclusive) save that where a Week would otherwise fall within two Periods ("Period A" and "Period B") for the purposes of this Schedule each of the following shall constitute a Week:-
- (a) Sunday to the last day of Period A (both days inclusive); and
 - (b) the first day of Period B to the immediately following Saturday (both days inclusive); and
- "working day" means each of Monday to Friday (inclusive) excluding common law and statutory public holidays.
- 1.2 For the purposes of this Schedule 8 events in respect of a train shall be treated as occurring on the day on which the train was Planned to depart from its point of origin.
- 1.3 In respect of Planned Service A (as described in the definition "Planned Service") the outward journey shall constitute one Service Leg of the Planned Service and the return journey shall constitute another Service Leg of that Planned Service. In respect of Planned Service B (as described in the definition "Planned Service"), the Train Operator, with its Bid, may nominate as Monitoring Points, in addition to the last Recording Point on the Network which the Planned Service is Planned to Trigger (the "Last Recording Point"), up to two other Recording Points on the Network. In such circumstances, the journey from the point of origin to the first Monitoring Point shall constitute one Service Leg of the Planned Service, the journey between the first and second Monitoring Points shall constitute a further Service Leg of the Planned Service and the journey from the second Monitoring Point to the Last Recording Point

shall constitute a final Service Leg of the Planned Service, each of which shall be shown in the Applicable Timetable as an end to end journey.

Part II: General Principles and Performance Information

- 2.1 This Schedule 8 shall not apply to any Planned Service which is Cancelled pursuant to paragraph 9 of Schedule 5, or which is Cancelled before the rolling stock in respect of that Planned Service first arrives on the Network. If any Planned Service is Cancelled after the rolling stock in respect of that Planned Service arrives on the Network the party to whom responsibility for such Cancellation is allocated pursuant to this Schedule 8 shall pay the other an amount equal to the Slot Charge (as defined in Schedule 7) for that Service.
- 2.2 Each of the Train Operator and Network Rail shall use all reasonable endeavours to keep the other of them informed of any known or anticipated delay to, or Cancellation, Termination or Diversion of, Planned Services or any Ancillary Movements associated therewith.
- 2.3 Each of Network Rail and the Train Operator shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Planned Services and other trains.
- 2.4 Network Rail shall, for each day, use reasonable endeavours to record in the Performance Monitoring System:
 - (a) the time at which Planned Services and other trains delayed by Planned Services Trigger Network Rail Recording Points;
 - (b) Minutes Delay to Planned Services and Planned Service Cancellations and the incident(s) causing them together with the allocation of responsibility made under Part VI; and
 - (c) Minutes Delay to trains other than Planned Services and Train Cancellations in each case wholly or partly as a result of a Service Incident or Incidents for which Network Rail allocates responsibility to the Train Operator under paragraph 6.4 or joint responsibility under paragraph 6.5.

- 2.5 The Train Operator shall promptly (and in any event within one hour of the Trigger occurring) enter or procure that there is entered into the Performance Monitoring System the time at which Planned Services Trigger Train Operator Recording Points and shall advise Network Rail as to the incident(s) causing any Minutes Delay in respect of each such Trigger. Without prejudice to the foregoing, the Train Operator shall record and so enter, or procure that there is recorded or so entered, into the Performance Monitoring System the time of departure of a Planned Service from its point of origin (if the point of origin is not on the Network) and the time of arrival of a Planned Service at its final destination (if the final destination is not on the Network).
- 2.6 In respect of each Trigger of a Network Rail Recording Point, Network Rail shall use its reasonable endeavours to record separately, as unallocated delay, those minutes of delay of three minutes or more included in Minutes Delay for which it is unable to identify the incident(s) which caused that delay. The Train Operator shall co-operate with Network Rail on request by providing all such information as it has in its possession regarding the identification of the incident(s) which caused that delay. All unallocated delay shall be excluded from the Performance Minutes allocated to Network Rail or the Train Operator under this Schedule.
- 2.7 Network Rail shall provide to the Train Operator through the Performance Monitoring System as soon as reasonably practicable, and in any event no later than the following working day, the information recorded under paragraphs 2.4, 2.5 and 2.6. The Train Operator shall be deemed to have agreed the information recorded by Network Rail and Network Rail shall be deemed to have agreed the information recorded by the Train Operator except, in either case, to the extent that it has, within two clear working days of the information being provided under this paragraph 2.7, notified the other that it disputes the information. Any such notification shall specify the reasons for the dispute, so as to assist resolution of the dispute. The parties shall endeavour to resolve each such dispute within two working days of its notification.
- 2.8 Network Rail shall be entitled, within 5 working days of a Trigger occurring, to reallocate responsibility to the Train Operator each minute delay included in Minutes Delay where further information becomes available to Network Rail which would otherwise result in responsibility for the relevant incident being allocated to the Train Operator in accordance with paragraph 6.4.
- 2.9 Network Rail shall have no liability to the Train Operator under the terms of this Schedule in respect of Minutes Delay to a Planned Service or a Planned Service Cancellation caused, in either case, by that Planned Service being presented to Network Rail at the First Point after the time Planned for such presentation. In such circumstances, Network Rail shall use its reasonable

endeavours to facilitate the movement of the Planned Service as expeditiously as possible subject to (a) any access rights which it may have granted to third parties, (b) any Possessions which it may wish to take in accordance with the Applicable Rules of the Route or Applicable Rules of the Plan and (c) any restrictions on the use of the Network in the Applicable Rules of the Route or Applicable Rules of the Plan.

Part III - Network Rail Performance

3.1 The Performance Minutes allocated to Network Rail in respect of any Service Leg of a Planned Service shall be equal to:-

- (a) zero, if either MDR or MLP (each as defined below) is zero or if the Planned Service does not arrive at or pass the Monitoring Point for that Service Leg;
- (b) otherwise, P rounded to the nearest whole minute

where:

$$P = \frac{\text{MDR}}{(\text{MDR} + \text{MDT})} \times \text{MLP}, \text{ and}$$

MDR means the aggregate of Minutes Delay on that Service Leg by the Planned Service for which Network Rail is allocated responsibility under paragraph 6.3 and 50% of the aggregate of Minutes Delay on that Service Leg by the Planned Service for which Network Rail is allocated joint responsibility under paragraph 6.5;

MDT means the aggregate of Minutes Delay on that Service Leg by the Planned Service for which the Train Operator is allocated responsibility under paragraph 6.4 and 50% of the aggregate of Minutes Delay on that Service Leg by the Planned Service for which the Train Operator is allocated joint responsibility under paragraph 6.5;

MLP means the greater of zero and the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the Planned Service arrives at or passes the Monitoring Point for that Service Leg is later than the time at which the Planned Service is Planned so to arrive at or pass that Monitoring Point.

3.2 Subject to the provisions of paragraph 3.3, if the Performance Minutes allocated to Network Rail in respect of a Service Leg exceed the Network Rail Threshold in respect of the relevant Planned Service, Network Rail shall be liable to pay to the Train Operator in respect of that Service Leg a sum equal to the excess

multiplied by the Network Rail Rate provided that in respect of any Planned Service (and whatever the number of Service Legs) Network Rail shall not be liable under this paragraph 3.2 for an amount greater than the Network Rail Cap in respect of the Planned Service multiplied by the Network Rail Rate.

- 3.3 If, in respect of a Service Leg of any Planned Service, the Planned Service fails to arrive at or pass the Monitoring Point for that Service Leg as a result of incident(s) for which Network Rail is allocated responsibility under paragraph 6.3 then in respect of the Planned Service Network Rail shall be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.2 in respect of any of the Service Legs of the Planned Service) a sum equal to the Network Rail Cap in respect of the Planned Service multiplied by the Network Rail Rate.
- 3.4 Within five working days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement showing in respect of each Planned Service which was Planned to depart from its point of origin during that Week and for which Network Rail is liable to make payment under this Part III either:-
- (a) MDR, MDT and MLP for each Service Leg of the Planned Service in respect of which Network Rail is liable to the Train Operator under paragraph 3.2; or
 - (b) the Service Leg on which the Planned Service failed to arrive at or pass its Monitoring Point in respect of which Network Rail is liable to the Train Operator under paragraph 3.3.

Any unresolved dispute under paragraph 2.7 in relation to a Planned Service the subject of an Interim Statement shall be indicated as such on the Interim Statement. Within two working days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return a copy of the Interim Statement to Network Rail, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

Part IV - Train Operator Performance

- 4.1 The Performance Minutes allocated to the Train Operator in respect of any Train Group shall be equal to the sum of:-
- (a) the aggregate of DT for each Trigger by each train in that Train Group, where DT is the sum of:-

- (i) that part of Minutes Delay in respect of the Trigger caused by one or more Service Incidents for which the Train Operator is allocated responsibility under paragraph 6.4; and
- (ii) 50% of that part of Minutes Delay in respect of the Trigger caused by one or more Service Incidents for which the Train Operator is allocated joint responsibility under paragraph 6.5

provided that the part of Minutes Delay in respect of any one Trigger by any one train delayed by any one Service Incident shall not exceed the relevant Delay Cap; plus

- (b) the Train Group Cancellation Minutes in respect of each Train Cancellation in that Train Group due wholly or partly as a result of a Service Incident for which the Train Operator is allocated responsibility under paragraph 6.4 and 50% of the Train Group Cancellation Minutes in respect of each Train Cancellation in that Train Group due wholly or partly as a result of a Service Incident for which the Train Operator is allocated joint responsibility under paragraph 6.5.

4.2 The Train Operator shall be liable to pay to Network Rail in respect of each Train Group a sum equal to the Performance Minutes allocated to the Train Operator in respect of that Train Group multiplied by the relevant Train Group Rate provided that, for each Planned Service, the aggregate liability of the Train Operator in respect of all Train Groups shall not exceed the Train Operator Cap.

4.3 Within five working days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement listing all Service Incidents during that Week for which the Train Operator is allocated responsibility under paragraph 6.4 or joint responsibility under paragraph 6.5 and showing, for each such Service Incident, the Performance Minutes allocated to the Train Operator in respect of each Train Group. Any unresolved dispute under paragraph 2.7 in relation to any such Service Incident shall be indicated as such on the Interim Statement. Within two working days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return a copy of the Interim Statement to Network Rail, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

Part V - Calculation of Minutes Delay

5.1 Subject to paragraph 5.2 the Minutes Delay for a train in respect of a Trigger of a Recording Point shall be equal to:

- (a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train so Triggers the Recording Point is later than the time at which that train is Planned so to Trigger the Recording Point; and
- (b) in respect of each other recorded Trigger by a train, the lesser of:-
 - (i) the number of minutes in respect of the Trigger calculated as in paragraph 5.1(a) above; 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 relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);

A_2 is the Planned time between such Triggers; and

B is any Recovery Time between such Triggers.

5.2 The Minutes Delay calculated in accordance with paragraph 5.1 shall be allocated to the incident(s) causing those Minutes Delay as described in Part VI. Any minutes of delay which are included in any Minutes Delay and which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall for the purposes of this Schedule 8 be deemed to be zero.

Part VI: Allocation of Responsibility

6.1 For the purposes of this Schedule 8 responsibility for each minute of delay included in Minutes Delay, each Train Cancellation and each Planned Service Cancellation shall be allocated according to the responsibility for the incident which caused such Minutes Delay, Train Cancellation or Planned Service Cancellation as established in accordance with the following provisions of this Part VI.

- 6.2 In assessing the causes of any Minutes Delay, Train Cancellation or Planned Service Cancellation there shall be taken into account all incidents contributing thereto including:
- (a) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents contributing thereto;
 - (b) where a train is affected by the cancellation or delay of an Ancillary Movement, the incidents giving rise to that cancellation or delay; and
 - (c) where a Possession overruns, due to the start of such Possession being delayed by a late running train (including a Planned Service or an Ancillary Movement associated therewith), the incident(s) giving rise to that late running.
- 6.3 Subject to paragraph 6.5, Network Rail shall be allocated responsibility for an incident other than a Planned Incident if that incident is wholly or mainly:
- (a) caused by breach by Network Rail of any of its obligations under this Agreement; or
 - (b) caused by circumstances within the control of Network Rail (whether or not Network Rail is at fault) in its capacity as operator of the Network; or
 - (c) caused by acts or omissions of Network Rail's staff or Network Rail's contractors in relation to the Network; or
 - (d) subject to paragraph 6.7, caused by any incident in connection with rolling stock on the Network for which another train operator would be allocated responsibility if it were the Train Operator under this Agreement except (the "Exception") where such incident causes Minutes Delay to any Planned Service or any Planned Service Cancellation as a result of the other train operator being a subcontractor to or agent of the Train Operator for the Planned Service or any associated Ancillary Movement affected by the incident.
- 6.4 Subject to paragraph 6.5, the Train Operator shall be allocated responsibility for an incident other than a Planned Incident if that incident is wholly or mainly:
- (a) caused by breach by the Train Operator of any of its obligations under this Agreement; or
 - (b) caused by circumstances within the control of the Train Operator (whether or not the Train Operator is at fault) in its capacity as an operator of trains; or

- (c) caused (whether or not the Train Operator is at fault) by or in connection with any rolling stock operated by or on behalf of the Train Operator pursuant to any permission to use all or any part of the Network granted under an agreement between Network Rail and the Train Operator or any act, omission or circumstance in connection with such rolling stock (whether or not originating in connection with such rolling stock), including:
 - (i) the operation of such rolling stock;
 - (ii) any act, omission or circumstance in connection with such rolling stock originating in connection with any station (other than in connection with signalling under the control of Network Rail at that station); and
 - (iii) circumstances arising from Network Rail refusing to allow steam driven equipment to operate on the Network because of emissions or other pollution (including the risk of fire) resulting from the operation of such equipment; or
- (d) caused by circumstances arising off the Network other than those which are caused by Network Rail in its capacity as operator of the Network; or
- (e) caused by acts or omissions of the staff, customers or contractors of the Train Operator; or
- (f) caused by a Planned Service not being promptly accepted off the Network for reasons not caused by Network Rail in its capacity as operator of the Network; or
- (g) caused by the Exception referred to in paragraph 6.3(d).

6.5 Network Rail and the Train Operator shall be allocated joint responsibility for:

- (a) any incident caused by or in connection with an act, omission or circumstance originating in connection with a station which:
 - (i) is an act, omission or circumstance in connection with the Network which prevents the passage of a Planned Service into or through that station at the time it is Planned to pass into or through that station; and

- (ii) prevents the access of passengers through the station to or from the Planned Service ; or
 - (b) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 6.3 or 6.4.
- 6.6 An incident in connection with a Possession shall be treated as a Planned Incident to the extent that there is Recovery Time in respect of that incident.
- 6.7
- (a) For the purposes of paragraph 6.3(d), where rolling stock operated by or on behalf of another train operator 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 any rolling stock referred to in paragraph 6.4(c) which is scheduled to leave or enter the Network at the connection with that light maintenance depot or network other than the Network is then delayed behind the first mentioned rolling stock, such delay to the first mentioned rolling stock shall not be an incident for which Network Rail is allocated responsibility but such delay to the rolling stock referred to in paragraph 6.4(c) shall be an incident for which the Train Operator is allocated responsibility.
 - (b) For the purposes of paragraphs 6.3 and 6.4, any delay of rolling stock in entering or leaving the Network at a connection with a light maintenance depot which is due to any breach by Network Rail of its obligations under a connection agreement in relation to such light maintenance depot shall be deemed to be an act, omission or circumstance in connection with such rolling stock and, save as provided in paragraph 6.3(d), shall be an incident for which the Train Operator is allocated responsibility and shall not be an incident for which Network Rail is allocated responsibility.

Part VII - Access Charge Supplement

7. The Train Operator shall pay Network Rail a supplement ("Access Charge Supplement") for each Planned Service at the rate specified in the Appendix (as adjusted in accordance with Part X).

Part VIII - Payment

- 8.1 Within 10 days after the end of each Period, the parties shall meet (the "Part VIII Meeting") to attempt resolution of any outstanding disputes notified under paragraph 2.7, 3.4 or 4.3 in relation to that Period and to agree the amount payable under this Schedule in respect of that Period.

- 8.2 The aggregate of any and all sums for which each party is liable under this Schedule in relation to Planned Services which were Planned to depart from their point of origin during a Period and which had been agreed under paragraph 8.1 shall be set off against each other and the balance, if any, shall be invoiced by Network Rail to the Train Operator or, as the case may be, by the Train Operator to Network Rail within 14 days after the end of the Period and shall be payable by the other party within 28 days after the end of the Period.
- 8.3 Where any amount which is the subject of this Schedule is in dispute:-
- (a) the undisputed amount shall be accounted for in accordance with paragraph 8.2 (and shall be subject to set off accordingly);
 - (b) the disputed balance ("disputed balance") shall be accounted for in the calculations made under paragraph 8.2 for the Period in which the dispute is resolved or otherwise determined (and shall be subject to set off accordingly); and
 - (c) the disputed balance shall carry interest (accruing daily and compounded monthly) at the Default Interest Rate from the date on which the disputed balance would but for such dispute have been due to be so accounted for until the date of such account.

Part IX - Disputes

9. If there remains any matter in dispute which the parties are unable to resolve at the Part VIII Meeting, each party shall promptly, and in any event within seven days after the Part VIII Meeting, prepare a written summary of the matter(s) in dispute and the reasons for each such dispute and shall submit the summary to its senior officer and to the senior officer of the other party. Within 28 days after the Part VIII Meeting the senior officers from each party shall meet with a view to resolving all such disputes. If the senior officers fail to resolve any such dispute at or within 14 days after their meeting, then either party may require that the matter(s) in dispute be resolved by the Access Dispute Resolution Committee and if either party is dissatisfied with the decision of that Committee or the ruling of the Chairman thereof (as the case may be) such party shall be entitled to refer the matter for arbitration, pursuant in each case to Part C of the Access Dispute Resolution Rules. Notwithstanding that the parties may have elected to adopt the whole or any part of Part C of the Access Dispute Resolution Rules to apply in the arbitration paragraph C6.3 of those rules shall not apply.

Part X - Coding of Planned Services

10. Each Planned Service and its associated Ancillary Movements shall be allocated an eight character code in the Performance Monitoring System (being a different code to that which applies to services of the Train Operator operated under any other access agreement) to allow for monitoring of the Planned Service and its associated Ancillary Movements. In addition, each such associated Ancillary Movement and each Service Leg of a Planned Service shall be allocated different train identities in the Performance Monitoring System.

APPENDIX - SCHEDULE 8

Planned Service Description	Network Rail Threshold	Network Rail Rate	Network Rail Cap	Train Operator Cap	Access Charge Supplement
Fort William - Mallaig	30 minutes	£[] per Performance Minute	50 minutes per Planned Service	£[] per Planned Service	£[] per mile per Planned Service

Train Group Description	Train Group Cancellation Minutes	Train Group Rate (£ per minute)
(a) First ScotRail Services	40	[]
(b) Freight Services	30	[]

Notes to the Appendix :

1. The Train Groups described as First ScotRail Services consist of those passenger carrying services operated by the train operator First ScotRail.
2. "Freight Services" comprise all non passenger carrying services other than ancillary movements (ECS and light locomotives).