



5 September 2014

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90 York Way
London
N1 9AG

Hull Trains Company Limited
Fourth Floor
Europa House
184 Ferensway
Hull
HU1 3UT

HULL TRAINS COMPANY LIMITED: APPROVAL OF AMENDMENT TO TRACK ACCESS CONTRACT

Pursuant to section 22 of the Railways Act 1993, I hereby approve the amendment of the Track Access Contract dated 12 February 2010 between Network Rail Infrastructure Limited and Hull Trains Company Limited in accordance with the terms of the Thirteenth Supplemental Agreement dated 5 September 2014 as submitted to the Office of Rail Regulation earlier today, a copy of which is enclosed with this notice.

A handwritten signature in black ink, reading 'Ian Williams', is positioned above the printed name.

IAN WILLIAMS

Duly Authorised by the Office of Rail Regulation



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18 September 2014

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Dear Mark and Andy

Hull Trains Company Limited: 13th Supplemental Agreement

On 5 September 2014 the Office of Rail Regulation (ORR) approved the 13th supplemental agreement to the track access contract dated 12 February 2010 between Network Rail Infrastructure Limited (Network Rail) and Hull Trains Company Limited (Hull Trains) (jointly the parties) submitted earlier that day under section 22 of the Railways Act 1993 (the Act). This followed an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.

Original purpose of the agreement

The original main purpose of the agreement was to grant Hull Trains an extension of its track access rights from the Principal Change Date (PCD) 2016 to PCD 2021. In addition the existing Schedules 2 and 5 would be replaced with new schedules in the latest model contract format. Rights to departure time ranges/arrivals were to cease at PCD 2016, and

contingent rights would be granted to access St Pancras when access to King's Cross was not available.

Whilst other aspects of the rights approved are as originally requested, for reasons set out below, the rights have only been extended until PCD 2019.

Consultation

Network Rail undertook the usual industry consultation, with responses being received from East Midlands Trains Limited (EMT) and First Capital Connect Limited (FCC).

First Capital Connect

FCC said that it supported the application but that the draft agreement should be amended to limit Hull Trains to the use of platforms 1-4 at St Pancras. The necessary amendment was made prior to our approval of the agreement.

East Midlands Trains

EMT said that it was happy in principle with Hull Trains having access to St Pancras, subject to the rights being explicitly limited to the four platforms mentioned by FCC and providing EMT was not disadvantaged by any adverse impact on the quantum, turnaround times and performance of its services. EMT added that in order to mitigate any performance issues for both EMT and Hull Trains, it would be desirable for Hull Trains to only use one dedicated platform.

Hull Trains advised EMT that it recognised EMT's concerns about robust planning and confirmed that it wished to use St Pancras for planned services only in exceptional cases during engineering work, such as the recent Peterborough blockade. In these cases early engagement with other operators would take place, as Hull Trains' aspiration to use St Pancras might well be impossible to meet. Hull Trains would also like to work off one platform in such circumstances, but recognised that this might not always be possible.

In terms of day to day disruption, Hull Trains would consider itself to be firmly "last on the graph" and would assume that these rights would very rarely be used and, when used, it envisaged they would be for very late or very early services using "white space" - effectively positioning moves for rolling stock.

We advised FCC that we would be suggesting to the parties that the draft agreement be amended by the inclusion of a footnote restricting access to St Pancras similar to that which applied to Hull Trains' rights to use Liverpool Street. FCC advised that it was content, and the approved agreement includes the necessary provision.

Our review

Our review of the application covered four areas:

Duration

Hull Trains initially requested to extend its contract for an additional five years from December 2016, when it was due to expire. This would leave it with a seven-year contract. When considering the duration of access contracts we must have regard to the law as set out in The Railways Infrastructure (Access & Management) Regulations, Article 17 of which states that track access contracts shall in principle be for a period of five years. The infrastructure manager may agree to shorter or longer periods in specific cases, but any period of longer than five years shall be justified by the existence of commercial contracts, specialised investment or risks.

We explained this to Hull Trains and as it was unable to demonstrate that it met any of these conditions it therefore agreed to accept an extension to PCD 2019 rather than PCD 2021.

Use of Railways Infrastructure Reopener

We advised the parties that the agreement would need to include the standard *Use of Railways Infrastructure Reopener* schedule, which is being included in all new contracts or contract extensions, together with a suitable enabling provision. The approved agreement includes the necessary provisions.

ERTMS Compensation

We also advised the parties that we would require the inclusion of an ERTMS Compensation schedule, together with a suitable enabling provision. This is required for open access operators (and possibly for freight operators, depending on the point at which we are in a position to issue directions in respect of any new freight operator contracts) to establish a process should the parties disagree on an element of the Part G compensation so the train operator understands that the compensation it will receive will be determined fairly and Network Rail gets the comfort that the ERTMS project will not be delayed by the dispute. The approved agreement includes the necessary provisions.

Drafting

We made a number of observations on the drafting of the agreement, which have also been included in the approved agreement.

Our decision

In considering the application and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We consider that approval of this agreement is consistent with these duties, in particular those relating to protecting the interests of users of railway services (section



4(1)(a)) and enabling Hull Trains to plan the future of its business with a reasonable degree of assurance (section 4(1)(g)).

Administration

Please find enclosed a copy of the approval notice together with a copy of the agreement. Copies of the approval notice and the agreement will be sent to Keith Merritt at the Department for Transport and placed on our public register. Copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to Chris Armitage at Network Rail, Lanita Masi at EMT and John Beer at FCC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B Hopkinson', written over a horizontal line.

Brian Hopkinson

THIRTEENTH SUPPLEMENTAL AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED
as Network Rail

and

HULL TRAINS COMPANY LIMITED
as Train Operator

relating to the Track Access Agreement dated 12
February 2010

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THIS THIRTEENTH SUPPLEMENTAL AGREEMENT is dated 5th September 2014 and made

BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, ("Network Rail"), a company registered in England under number 2904587, having its registered office at Kings Place, 90 York Way, London, N1 9AG; and
- (2) **HULL TRAINS COMPANY LIMITED**, (the "Train Operator"), a private company limited by shares registered in England under company number 3715410, having its registered office at 4th Floor, Europa House, 184 Ferensway, Hull HU1 3UT.

WHEREAS:

- (A) The parties entered into a Track Access Agreement (Passenger Services) dated 12 February 2010 following directions issued by the Office of Rail Regulation pursuant to Section 17 of the Act (the "Agreement").
- (B) The parties wish to amend the Agreement in the terms described below.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

In this Supplemental Agreement, words and expressions defined in and rules of interpretation set out in the Agreement shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise.

2. EFFECTIVE DATE AND TERM

- 2.1 The amendments made to the Agreement as set out in this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect on the Expiry Date or earlier termination of the Agreement.
- 2.2 "Effective Date" means the date on which ORR issues its approval.

3. AMENDMENTS TO THE AGREEMENT

- 3.1 In the Definitions set out in Clause 1.1 of the Agreement, the definition of "Expiry Date" shall be deleted in its entirety and replaced with the definition set out below.

"**Expiry Date**" means 01:59 hours on the Principal Change Date in 2019."

- 3.2 In Clause 5.6 The Services and the Specified Equipment the words "Schedules 5 and 13" shall be deleted and replaced with the words "Schedules 5, 13 and 14".
- 3.3 A new Clause 21 shall be added worded as follows:

"Clause 21 ERTMS COMPENSATION

Subject to the provisions contained therein, Schedule 15 shall have effect."

- 3.4 Schedule 2 of the Agreement shall be deleted in its entirety and replaced with the Schedule 2 set out in Appendix A of this Supplemental Agreement.
- 3.5 Schedule 5 of the Agreement shall be deleted in its entirety and replaced with the Schedule 5 set out in Appendix B of this Supplemental Agreement.
- 3.6 A new Schedule 14 Use of Railways Infrastructure Reopener as set out in Appendix C of this Supplemental Agreement shall be added.
- 3.7 A new Schedule 15 ERTMS Compensation as set out in Appendix D of this Supplemental Agreement shall be added.

4. **EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE AGREEMENT**

The parties agree that the Agreement, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and during the period in which the amendments made by this Supplemental Agreement are to have effect, all references in the Agreement to “the Agreement”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Agreement as amended by this Supplemental Agreement.

5. **THIRD PARTY RIGHTS**

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

6. **LAW**

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with English law.

7. **COUNTERPARTS**

This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

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

SIGNED by P. VENSTER)
)
duly authorised for and on behalf of)
NETWORK RAIL)
INFRASTRUCTURE LIMITED)



SIGNED by A.J. WYKE)
)
duly authorised for and on behalf of)
HULL TRAINS COMPANY LIMITED)



Appendix A

SCHEDULE 2: THE ROUTES

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

Appendix B

SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

1 Definitions

1.1 In this Schedule unless the context otherwise requires:

“Calling Pattern”	means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;
“Clockface Departures”	means, in respect of any Service, a pattern whereby departures from the point of origin of that Service, or any specified intermediate point, are fixed at the same number or numbers of minutes past each hour;
“Contingent Right”	means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5;
“Day”	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
“Exercised”	has the meaning ascribed to it in Part D of the Network Code;
“Firm Right”	has the meaning ascribed to it in Part D of the Network Code;
“Journey Time”	means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service;
“Journey Time Review Notice”	has the meaning ascribed to it in paragraph 7.5;
“Maximum Journey Time”	means, in respect of a Passenger Train Slot, the corresponding Maximum Journey Time, if any, set out in column 4 of Table 6.1;
“Maximum Key Journey Time”	means, in respect of a Passenger Train Slot, the corresponding Maximum Key Journey Time, if any, set out in column 4 of Table 6.1;
“Modification Notice”	has the meaning ascribed to it in paragraph 7.10;
“Network Change”	has the meaning ascribed to it in Part G of the Network Code;
“Passenger Train Slot”	means a Train Slot intended by the Train Operator to be used for the provision of a Service;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Reduced Regular Calling Pattern”	has the meaning ascribed to it in paragraph 4.1;
“Regular Calling Pattern”	has the meaning ascribed to it in paragraph 4.1;
“Scheduled”	means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;

“Service Group”	means any one or more (as the context may require) of the service groups described in this Schedule;
“Timetable Period”	means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
“Timing Load”	means, in relation to a Service, the timing reference code as defined from time to time in the Working Timetable;
“Train Service Code” or “TSC”	means the eight character code applied in the Performance Monitoring System and used to identify Services;
“Weekday”	means any day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday; and
“xx20”	means, as an example of this notation, 20 minutes past the hour.

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

2 Passenger Train Slots

Table 2.1: Passenger Train Slots

1						2		
Service Group PF01								
Service description – Hull – London Kings Cross						Passenger Train Slots		
From	To	Via	Description	TSC	Timing Load	Weekday	Saturday	Sunday
Kings Cross	Hull	Retford	N/A	21750001	5 car Class 180 DMU	7	5	5
Hull	Kings Cross	Retford	N/A	21750001	5 car Class 180 DMU	7	5	5

Passenger Train Slots

- 2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 on the Days and within the Peak and Off-Peak times so listed using Specified Equipment that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Rights for the purposes of Part D of the Network Code.
- 2.2 In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 the Train Operator has Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at any other station listed in its Calling Pattern.
- 2.3 Not Used

Table 2.2: Additional Passenger Train Slots - Not Used

2.4 Not Used

2.5 Not Used

Ancillary Movements

2.6 The Train Operator has Firm Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights of the Train Operator, including:

- (a) movements for the purpose of maintenance of rolling stock to and from maintenance depots;
- (b) movements for driver training purposes; and
- (c) empty stock movements.

2.7 For the purpose of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:

- (a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the route in question; or
- (b) where the route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the route without passengers on board.

Relief Passenger Train Slots

2.8 The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to:

- (a) the relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in table 2.1 or 2.2; and
- (b) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.

2.9 The Train Operator shall not be entitled to operate Services on the Routes on 25 or 26 December.

2.10 In respect of any Public Holiday other than 25 and 26 December the Train Operator may operate a Weekday services for any of the Services listed in Table 2.1.

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

3 Intervals – Not Used.

4 Calling Patterns

Table 4.1: Calling Patterns

1					2	3
Service Group PF01						
Service description Kings Cross - Hull						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
Kings Cross	Hull	Retford	N/A	21750001	Grantham, Retford, Doncaster, Selby, Howden, Brough	Liverpool Street ¹ , Hitchin, Cambridge, Ely, Peterborough, Newark Northgate, Gainsborough Lea Road ² , Stevenage ³ , St Pancras (Platforms 1-4) ⁴

Notes to Table:

- ¹ The Train Operator may only call at Liverpool Street where it is unable to operate services to and from Kings Cross and where its services are subject to diversion.
- ² The Train Operator may only call at Gainsborough Lea Road where it is unable to operate services via Retford and where its services are subject to diversion.
- ³ The Train Operator may only bid to call at Stevenage a maximum of two Passenger Train Slots in the northbound direction per Weekday, a maximum of four Passenger Train Slots in the northbound direction on Saturdays and a maximum of five Passenger Train Slots in the northbound direction on Sundays with such Passenger Train Slots limited to the pick up of passengers only. In the southbound direction the Train Operator may only bid to call at Stevenage a maximum of three Passenger Train Slots on Weekdays, a maximum of four Passenger Train Slots on Saturdays and a maximum of four Passenger Train Slots on Sundays with such Passenger Train Slots limited to set down of passengers only.
- ⁴ The Train Operator may only call at St Pancras (Platforms 1- 4) where it is unable to operate services to and from Kings Cross and where its services are subject to diversion.

Calling Patterns

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

Additional calls

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

5 Specified Equipment

Specified Equipment

5.1 In order to provide the Services specified in this Schedule 5 the Train Operator has:

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

Class 180 DMU

and

(b) Contingent Rights to operate any railway vehicles registered with Network Rail's rolling stock library,

subject to obtaining any necessary route clearance for the route in question.

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

Train length

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

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

6 Journey Time Protection – Not Used

7 Provisions applicable to Journey Time protection – Not Used

8 Other rights

Table 8.1: Platform Rights - Not Used

8.1 Not Used.

8.2 Not Used.

Table 8.2: Connections - Not Used

8.3 Not Used.

8.4 Not Used.

Table 8.3: Departure time ranges

Table 8.3 (a): Departure time ranges ¹

1					2	3	4
Service Group PF01							
Service description Kings Cross - Hull							
From	To	Via	Description	TSC	Days	Station	Departure time ranges
Kings Cross	Hull	Retford	N/A	21750001	Weekdays	Kings Cross	07:05 – 07:35 09:35 – 10:05 11:35 – 12:05 13:35 – 14:05 15:35 – 16:05 18:35 – 19:05 20:15 – 20:45
Kings Cross	Hull	Retford	N/A	21750001	Saturdays	Kings Cross	N / A
Kings Cross	Hull	Retford	N/A	21750001	Sundays	Kings Cross	N / A
Hull	Kings Cross	Retford	N/A	21750001	Weekdays	Hull	06:15 – 06:45 08:15 – 08:45 10:15 – 10:45 12:15 – 12:45 15:00 – 15:30 17:00 – 17:30 19:00 – 19:30
Kings Cross	Hull	Retford	N/A	21750001	Saturdays	Kings Cross	N / A
Hull	Kings Cross	Retford	N/A	21750001	Sundays	Hull	N / A

¹ These rights shall cease to exist from 01:59 hours on the Principal Change Date in 2016

Table 8.3(b): Arrival time ranges²

1					2	3	4
Service Group PF01							
Service description Kings Cross - Hull							
From	To	Via	Description	TSC	Days	Station	Arrival time ranges
Hull	Kings Cross	Retford	N/A	21750001	Weekdays	Kings Cross	09:10 – 09:40

² These rights shall cease to exist from 01:59 hours on the Principal Change Date in 2016

Departure time ranges

- 8.5.1 For each Service specified in column 1 of Table 8.3(a), the Train Operator has Firm Rights, on the Days specified in column 2, to one departure time from the station specified in column 3 within each of the ranges specified in column 4.
- 8.5.2 For each Service specified in column 1 of Table 8.3(b), the Train Operator has Firm Rights, on the Days specified in column 2, to one arrival time at the station specified in column 3 within each of the ranges specified in column 4.
- 8.5.3 On the Principal Change Date in 2016 Table 8.3(a) and Table 8.3(b) and paragraphs 8.5.1 to 8.5.3 inclusive shall be deleted and replaced with the words “Not Used”.

Table 8.4: Stabling facilities - Not Used

- 8.6 Not Used.

Table 8.5: Turnaround times - Not Used

- 8.7 Not Used.

Table 8.6: Quantum of Additional Calls – Not Used

- 8.8 Not Used.

Appendix C

SCHEDULE 14: USE OF RAILWAYS INFRASTRUCTURE REOPENER

1 Automatic effect

1.1 General

This contract shall have effect—

(a) with the modifications; and

(b) from the date

specified by ORR in a Schedule 14 notice.

1.2 Retrospective effect

No relevant notice may have retrospective effect.

2 Schedule 14 notice

2.1 Meaning

A Schedule 14] notice is a notice given by ORR to the parties for the purposes of this contract which modifies this Schedule 14 by replacing this Schedule 14 with the specified provisions arising from the requirements of paragraph 18(5) of the Railways Infrastructure (Access and Management) Regulations 2005.

2.2 Contents of Schedule 14 notice

A Schedule 14 notice shall state—

(a) the modifications which are to be made to this Schedule 14; and

(b) the date from which specified modifications are to have effect.

3 Definitions

In this Schedule 14—

“**Schedule 14 notice**” has the meaning ascribed to it in paragraph 2.1; and

“**specified**” means specified in a Schedule 14 notice.

Appendix D

SCHEDULE 15: ERTMS COMPENSATION

Definitions

In this Schedule 15 —

“ERTMS” means European Rail Traffic Management System;

“Expert” means a person appointed in accordance with paragraph 2 to resolve the matter of ERTMS compensation; and

“Part G Compensation” means Part G of the Network Code relating to compensation.

1. Effect of this schedule

- 1.1 The Part G Compensation associated with ERTMS that has not been agreed by the parties shall be suspended pending an Expert determination made in accordance with this schedule.
- 1.2 The purpose of this schedule will be to allow either party to refer the Part G Compensation in dispute, associated with the ERTMS implementation project to an Expert for his final determination.
- 1.3 Any ERTMS Part G Compensation that is agreed by the parties shall not be the subject of the Expert determination.
- 1.4 This schedule and the Expert determination shall apply only to the disputed Part G Compensation associated with the ERTMS implementation project. It shall not apply to any other disputes associated with the ERTMS Network Change / Part G.
- 1.5 The Train Operator waives the right to object to the relevant ERTMS Network Change solely in relation to Part G Compensation once this Schedule 15 has been invoked.
- 1.6 The Expert determination shall not delay the implementation of the ERTMS project.

2. Expert

- 2.1 An Expert is a person appointed in accordance with this paragraph 2 to resolve the matter of ERTMS Part G Compensation.
- 2.2 The parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of his appointment.
- 2.3 If the parties are unable to agree on an Expert or the terms of his appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the Office of Rail Regulation to appoint an Expert in Part G Compensation matters, of repute and with railway experience, and to agree with the Expert the terms of his appointment.
- 2.4 The Expert is required to prepare a written decision and give notice (including a copy of

the decision) to the parties within a maximum of three months of the matter being referred to the Expert.

- 2.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this paragraph 2 then:
- (a) either party may apply to the Office of Rail Regulation to discharge the Expert and to appoint a replacement Expert with the required expertise; and
 - (b) this paragraph 2 shall apply to the new Expert as if he were the first Expert appointed.
- 2.6 The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 2.7 To the extent not provided for by this paragraph 2, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.
- 2.8 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this paragraph 2.
- 2.9 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the Part G Compensation which may include any issue involving the interpretation of any provision of this contract and Part G of the Network Code, his jurisdiction to determine the matters and issues referred to him and/or his terms of reference. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.
- 2.10 In determining the Part G Compensation payable to the Train Operator, the Expert shall take into account factors including the following:
- (a) the cost of fitting ERTMS;
 - (b) the impact on train services;
 - (c) any additional Train Operator resource costs;
 - (d) any increased maintenance costs; and
 - (e) any compensation already agreed between the parties.
- 2.11 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.
- 2.12 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 2.13 Each party shall act reasonably and co-operate to give effect to the provisions of this

paragraph 2 and otherwise do nothing to hinder or prevent the Expert from reaching his determination.

3. Payment of Compensation

- 3.1 The compensation determined by the Expert under this Schedule 15 shall be paid by way of the normal Part G compensation mechanisms.