

## SCHEDULE 10

### Part A

#### The Services Element

##### Delivery Period

1. The Services Element of the Usage Payments in respect of any month (or part of a month) falling before or wholly within the Delivery Period (other than the month in which the Delivery Period ends, where the last day of the month falls after the last day of the Delivery Period) shall be determined as follows:

for each such month the Services Element shall (subject to adjustment in accordance with paragraphs 6, 7 and 8) be the aggregate of:

(a)  $£20,675 \times N$

Where  $N$  = the number of Trains for which a Take Over Certificate or Qualified Take Over Certificate has been issued on or prior to the last day of the preceding month

plus

(b) in respect of each Train for which a Qualified Take Over Certificate is issued during that month, or in respect of which a Take Over Certificate is issued during that month without a Qualified Take Over Certificate having previously been issued in respect thereof, an amount equal to  $£20,675 \times$

Where

A = the number of complete days in that month (including any days in that month before the commencement of the Delivery

Period) during which such Train has held a Take Over Certificate or Qualified Take Over Certificate; and

$$B = 30.$$

Provided always that

- (1) this paragraph 1 shall have effect subject to Clause 8.4.2; and
- (2) this paragraph 1 shall have effect subject to Clauses 8.16 and 10.10 (and for the avoidance of doubt where payments cease to be made under Clause 8.16 or are held constant under Clause 10.10, the amounts that would otherwise have been payable but for the operation of such Clauses in the period to the date on which (in the case of Clause 8.16) a Train subsequently receives a Take Over Certificate or a Qualified Take Over Certificate or (in the case of clause 10.10) the Contractor has obtained both of the Certificates of Final Completion shall not then become payable.

### **Post-Delivery Period**

2.1 Subject to paragraph 5, the total Services Element of the Usage Payments payable by the Company (in respect of all Trains including NL Trains) for any month during the Post-Delivery Period (including a month in which the Delivery Period ends where the last day of the month falls after the last day of the Delivery Period) shall be the amount specified therefor in Part B of Schedule 9 (as adjusted in accordance with paragraphs 6, 7 and 8) save that in a month in which a termination of this Contract occurs the payment shall be an amount equal to:

$$\frac{A}{B} \times Y$$

where:

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A = the number of complete days in that month prior to the date of termination provided that A shall not be greater than 30; and

B = 30; and

Y = the monthly Services Element of the Usage Payments for that month.

2.2 Paragraph 2.1 has effect subject to proviso (2) to paragraph 1 as if set out, mutatis mutandis, in this paragraph 2.

### **Secondary Usage Period**

3. Subject to paragraph 5, the total Services Element of the Usage Payments payable by the Company (in respect of all Trains including NL Trains) for any month in the Secondary Usage Period shall be the amount specified therefor in Part C of Schedule 9 (as adjusted in accordance with paragraphs 6, 7 and 8) save that in a month in which a termination of this Contract occurs the payment shall be an amount equal to:

$$\frac{A}{B} \times Y$$

where:

A = the number of complete days in that month prior to the date of termination provided that A shall not be greater than 30;

B = 30; and

Y = the monthly Services Element of the Usage Payment for that month.

### **Tertiary Usage Period**

4. Subject to paragraph 5, the total Services Element payable by the Company (in respect of all Trains including NL Trains) for any month during the Tertiary Usage

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Period shall be an amount equal to the amount specified therefor in Part D of Schedule 9 (as adjusted in accordance with paragraph 6, 7 and 8) save that in a month in which a termination of this Contract occurs the payment shall be an amount equal to:

$$\frac{A}{B} \times Y$$

where:

A = the number of complete days in that month prior to the date of termination provided that A shall not be greater than 30;

B = 30; and

Y = the monthly Services Element of the Usage Payment for that month.

### **Hand Back Extension Period**

5. For any month (or part of a month) falling within a Hand Back Extension Period, the Services Element of the Usage Payments shall be determined as agreed in accordance with Clause 6.7(b).

### **Indexation**

6.1 An adjustment to the Services Element of the Usage Payments in respect of indexation shall be made annually on 31 March in each year for the Contract Duration (the *adjustment date*) and shall have effect from (and including) 1 April in such year to (and including) 31 March in the following year (such period being referred to in this paragraph 1 as the *relevant year*) and shall be calculated as follows.

6.2.1 On each adjustment date occurring prior to the expiry of the Delivery Period, the amount determined in accordance with paragraph 1 and the monthly Services

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Element of the Usage Payments specified in Part A of Schedule 9 shall each be adjusted by multiplying such amount by the Multiplication Factor.

6.2.2. On the expiry of the Delivery Period, each monthly Services Element of the Usage Payments specified in Part B of Schedule 9 that is due to accrue before the next adjustment date shall be adjusted by multiplying such amount by the Multiplication Factor calculated as at the previous adjustment date.

6.2.3 On each adjustment date occurring in the Post-Delivery Period, the Secondary Usage Period and the Tertiary Usage Period, each monthly Services Element of the Usage Payments specified in Parts B, C and D of Schedule 9 that is due to accrue in the year following the relevant adjustment date shall be adjusted by multiplying such amount by the Multiplication Factor.

6.3.1 ***Indexation Factor*** means:

$$a \left[ \frac{MV}{MT} \right] + b \left[ \frac{WV}{WT} \right] + c \left[ \frac{RV}{RT} \right]$$

where:

MT = index of material costs for September 1994;

MV = index of material costs for the month which is 2 months prior to the relevant adjustment date;

WT = index of labour costs for September 1994;

WV = index of labour costs for the month which is 2 months prior to the relevant adjustment date;

RT = General Index of Retail Prices (all items except food) for September 1994;

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RV = General Index of Retail Prices (all items except food) for the month which is 2 months prior to the relevant adjustment date;

a = 0.15;

b = 0.55; and

c = 0.3.

6.3.2 ***Multiplication Factor*** means  $1 + [(Indexation\ Factor - 1) \times 0.95]$ .

6.4.1 For the purposes of paragraph 6.3.1:

(a) the index of material costs shall be the BEAMA Producer Price Index for Basic Electrical Engineering Equipment Materials; and

(b) the index of labour costs shall be the BEAMA Labour Costs Index for Electrical Engineering.

6.4.2 Where any index figure is stated to be provisional or is subsequently amended, the figure shall apply as ultimately confirmed or amended by BEAMA or the Central Statistical Office (as the case may be) with retrospective effect.

6.4.3 If the basis on which any index used for the purposes of calculating the Indexation Factor changes, that index shall nonetheless continue to apply, adjusted by the officially recommended method of reconciliation and, if there is no such official method of reconciliation, adjustments shall be applied to the index for the relevant month to make it as comparable with the figure which is its denominator in the formula set out in paragraph 6.3.1 as is practicable.

6.4.4 If any index used for the purposes of calculating the Indexation Factor is suspended or is no longer published, it shall automatically be replaced by the index officially substituted for it, adjusted by any officially recommended method of

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reconciliation or, if there is no such official substitution, by the most nearly equivalent index which is then published.

### **Changes in Timetable**

7.1 An adjustment to the Services Element of the Usage Payments (upwards or downwards) shall be made following the implementation of any change in the Timetable that does not result in the scheduled annual fleet kilometreage (as defined in Clause 5.2.1(a)(iii)) exceeding 12,250,000 km (in which event, Clause 5.2.1(a) shall apply). Such adjustment shall be calculated in accordance with paragraph 7.2 and shall apply with effect from (and including) the date of such implementation in the case of any change made in the Delivery Period and from (and including) the month following the month in which any change is implemented in the Post-Delivery Period, the Secondary Usage Period or the Tertiary Usage Period.

7.2.1 An adjustment to be made in accordance with paragraph 7.1 shall be calculated, subject to paragraph 7.2.2, as follows:

$$X = A \times (B - C)$$

where:

X = the adjustment (upwards or downwards) in pounds sterling to the monthly Services Element of the Usage Payments applicable at the date of implementation of the relevant change in Timetable (as determined in accordance with paragraphs 1 to 5);

A = £0.19 per km;

B = the scheduled annual fleet kilometreage immediately after implementation of the Timetable change; and

C = 9,136,000 km.

7.2.2 In the case of any change in Timetable in the Post-Delivery Period, the Secondary Usage Period or the Tertiary Usage Period which is not implemented on the first day of a month, the adjustment in respect of the month in which the implementation occurred (the *relevant month*), shall be:

$$Y = \frac{X}{30} \times N$$

where:

Y = the adjustment (upwards or downwards) in pounds sterling to the monthly Services Element of the Usage Payment for the relevant month;

X = the adjustment calculated in accordance with paragraph 7.2.1;

N = the number of days remaining in the relevant month following such implementation, and (including the date on which the implementation occurred).

7.3 The parties agree that all calculations shall be made prior to the date of implementation of the relevant change in Timetable.

7.4 All calculations shall be rounded to 3 decimal places.

7.5 This paragraph 7 shall not apply to Existing Train Service Payments.

### **Changes in Staff Levels**

8.1 An adjustment to the Services Element of the Usage Payments (upwards or downwards) shall be made as the result of any change in the total number of staff who will transfer into the employment of the Contractor on the Transfer Date (subject to TUPE) from the total number of staff that would have transferred had the Transfer

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Date occurred on 24 November 1994. The adjustment shall be calculated on the Transfer Date and shall be calculated as follows:

$$\frac{\pounds (A - B) 23,566}{12}$$

where:

A = the total number of staff who transfer into the employment of the Contractor on the Transfer Date as contemplated by paragraph 1 of Part A of Schedule 12; and

B = 180.

8.2 The one-off adjustment (upwards or downwards) calculated pursuant to paragraph 8.1 shall be made to the Services Element specified in Part A of Schedule 9, the amount specified in paragraphs 1(a) and (b) of Part A of Schedule 10 and to each and every monthly Services Element of the Usage Payments specified in Parts B, C and D of Schedule 9.

8.3 This paragraph 8 shall not apply to Existing Train Service Payments.

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