

SCHEDULE 11

Compensation for Delay, Train Performance and Station or Platform Closure

Delay

1.1 If the Contractor fails to comply with Clause 8.5, then the Company shall be entitled to recover from the Contractor, by way of an abatement of the Usage Payments or (as the case may be) Existing Train Service Payments, compensation for the delay in the delivery into service of Trains in accordance with this paragraph 1.

1.2 Compensation shall accrue:

- (a) subject to Clause 8.16, from (but excluding) each Train Milestone Date on which the Contractor shall not have obtained the issue of a Take Over Certificate or a Qualified Take Over Certificate, or shall not have become entitled to obtain, pursuant to Clause 8.12, the issue of a Take Over Certificate, or, pursuant to Clause 8.11.3(a), a Qualified Take Over Certificate, in respect of the aggregate number of Trains in Column 1 of the table set out in paragraph 1.2 of Schedule 5 on or before the relative Train Milestone Date (as the same may be extended pursuant to Clause 12 or the variation procedure set out in paragraph 8 of Schedule 4) to (and including) the next Train Milestone Date or, if earlier, the date on which the Contractor has obtained, or become entitled to obtain, Take Over Certificates or Qualified Take Over Certificates in respect of such number of Trains;
- (b) in respect of the number of Trains less than the aggregate specified for the relative Train Milestone Date in respect of which the Contractor has not obtained, or become entitled to obtain, a Take Over Certificate or Qualified Take Over Certificate; and

(c) at the rate of £1,543 for each day in the period specified in paragraph 1.2(a) for each Train specified in paragraph 1.2(b), provided that no compensation shall accrue in respect of any Train from (and excluding) the date on which a Take Over Certificate or Qualified Take Over Certificate is issued, or the Contractor becomes entitled to obtain a Take Over Certificate or Qualified Take Over Certificate, in respect of such Train.

1.3 In calculating the compensation payable under this paragraph 1, no account shall be taken of Trains that prior to the relevant Train Milestone Date held a Qualified Take Over Certificate but on the relevant Train Milestone Date hold a Rejection Notice.

1.4 Any compensation to which the Company is entitled under this paragraph 1 shall fall due for payment on the first day of each month and may at the Company's option and without prejudice to other means of recovery available to it be deducted from any Usage Payment or Existing Train Service Payment payable to the Contractor under this Contract.

1.5 The amount recoverable by the Company under this paragraph 1 shall not in any event exceed a maximum aggregate amount in respect of all Trains of £15,750,000 and, together with amounts recoverable from the Contractor by the Company pursuant to paragraph 5 of Part C-1 of Schedule 10, paragraph 6.3 of Part C-2 of Schedule 10 and paragraphs 2 and 3 of this Schedule, shall not exceed £47,250,000 in aggregate.

Train Performance

2.1 If the stage 2 simulated run-time (as defined in paragraph 3.1 of Part C-2 of Schedule 10) exceeds the contractual run-time (as defined in paragraph 2.1 of Part C-2 of Schedule 10), the Contractor shall propose and undertake modifications to the Trains, by issuing a Notice of Contractor Proposed Variation in accordance with the variation procedure set out in paragraph 8 of Schedule 4, so as to achieve the contractual run-time.

2.2 Any modifications authorised by the Project Manager in accordance with such procedure shall be the responsibility of the Contractor and shall not entitle the Contractor to claim an increase in cost or an extension of time in respect of performance of the Contractor's obligations under this Contract. Any modifications shall be subject to the design scrutiny procedures set out in Schedule 4, shall be made to all Trains and shall be carried out prior to the carrying out of the stage 3 simulations pursuant to paragraph 4.1 of Part C-2 of Schedule 10.

2.3 If the Stage 3 simulated run-time (as defined in paragraph 4.1 of Part C-2 of Schedule 10) exceeds the contractual run-time by more than 10 seconds, then the Company shall be entitled to recover from the Contractor, by an abatement of Usage Payments, compensation at the rate of £710,000 per second and pro rata per part of a second (rounded to one decimal place) in respect of the length of time by which the Stage 3 as-built simulated run-time for the round trip on the Northern Line (as described in Section 2, sub-section 2.2 of Part A of Schedule 6) exceeds the contractual run time for the same return journey by 10 seconds. Calculation of the amount recoverable by the Company under this paragraph 2.3 shall be made on the Final Train Milestone Date (as such date may be extended in accordance with Clause 12 or the variation procedure set out in paragraph 8 of Schedule 4). The amount recoverable by the Company pursuant to this paragraph 2.3 shall be deducted by the Company from Usage Payments due or to become due under this Contract. The amount recoverable by the Company under this paragraph 2.3 shall not in any event exceed a maximum aggregate amount of £15,750,000 and, together with amounts recoverable from the Contractor by the Company pursuant to paragraph 5 of Part C-1 of Schedule 10, paragraph 6.3 of Part C-2 of Schedule 10 and paragraphs 1 and 3 of this Schedule, shall not exceed £47,250,000 in aggregate.

Station or Platform Closure

3.1.1 For the Contract Duration the Company shall be entitled to recover from the Contractor by an abatement of Usage Payments an amount determined in accordance with paragraph 3.1.2 in respect of loss of revenue incurred by the Company if the Company deems it necessary to delay the opening for Passenger Service, or suspend from Passenger Service, any platform or platforms during Traffic Hours as a result of any act or omission by the Contractor in its performance of its obligations under this Contract.

3.1.2 Per platform per minute of closure: £5.

3.1.3 This paragraph 3.1 applies when the disruption is limited to the closure or partial closure of a single station.

3.2.1 In the event that an act or omission of the Contractor causes the Company to suspend the movement of Trains or Existing Trains or delay the commencement of movement of Trains or Existing Trains over any section of the Company's Railway the Company shall be entitled to recover from the Contractor by an abatement of Usage Payments or Existing Train Service Payments an amount determined in accordance with this paragraph 3.2 in respect of loss of revenue incurred by the Company.

3.2.2 Per platform per minute of disruption: £17.50.

3.2.3 The amounts referred to in paragraphs 3.1.2 and 3.2.2 shall be adjusted on 31 March in each year by multiplying such amount (as adjusted in accordance with this paragraph 3.2.3) by the Indexation Factor for the relevant year.

3.3 The amount recoverable by the Company under this paragraph 3 shall not in any event exceed, together with amounts recoverable from the Contractor pursuant to paragraph 5 of Part C-1 of Schedule 10, paragraph 6.3 of Part C-2 of Schedule 10 and paragraphs 1 and 2 of this Schedule, £47,250,000 in aggregate.