

SCHEDULE 12

Part E

Existing Train Service Payments

Existing Train Service Payments

1.1 In the event that the Company exercises its option pursuant to Clause 24, the Contractor shall be entitled to receive payment in respect of the provision of the Existing Train Services in accordance with this paragraph 1.

1.2 The Existing Train Service Payments:

- (a) shall be £146,600 per week (or pro rata per part of a week) from (and including) the Transfer Date to (and excluding) the date of issue of the first Take Over Certificate or Qualified Take Over Certificate in respect of a Train;
- (b) shall be subject to any deductions or withholdings the Company may be entitled to make under this Contract;
- (c) accrued owing in any month shall be payable, at the option of the Company, in accordance with paragraph 4.1(a) or 4.1(b) of Schedule 9.

1.3 The figure referred to in paragraph 1.2(a) excludes:

- (a) the purchasing and supply of materials for maintenance of Existing Trains, payment for which shall be made in accordance with paragraph 1.4; and
- (b) the provision of cleaning of Existing Trains, payment for which shall be made in accordance with paragraph 1.5.

1.4.1 The Company shall free issue to the Contractor its existing stocks of spares, consumables and repairable items related to the Existing Trains which exist at the

Transfer Date. In the event that the Contractor during the period of the provision of the Existing Train Services determines that it is unable to comply with its obligations under this Contract in respect of the Existing Train Services by utilising such stocks through cannibalisation by agreement with the Project Manager (if economic) or otherwise, it shall be permitted to purchase additional stocks of such spares, consumables or reparable items. In such event, the Contractor shall advise the Company of the scope of its requirements, having regard to the extant fleet size of Existing Trains, the ordering and delivery lead time and the remaining period prior to disposal of the last Existing Train and the Company and the Contractor shall agree the quantities to be purchased by the Contractor. In the event that the Company and the Contractor cannot agree on the quantity to be purchased, the Contractor shall purchase the quantity advised by the Company but in such circumstances any Service Performance Failure of an Existing Train that the Contractor is able to demonstrate to the Project Manager was attributable to the non-availability of spares as a consequence of the Company not agreeing to the Contractor purchasing the quantity of spares requested by the Contractor shall not be counted as a Service Performance Failure attributable to the Contractor.

1.4.2 In addition to the Existing Train Service Payments payable in accordance with paragraph 1.2, the Company shall reimburse the Contractor the actual cost of spares purchased by the Contractor in accordance with paragraph 1.4.1 plus 2.5 per cent. of such cost.

1.5 The Contractor agrees that it has an obligation to provide cleaning services in respect of Existing Trains in accordance with the relevant requirements set out in paragraph 3.9 of Part G of Schedule 6. The price for the provision of such cleaning services shall be agreed between the Company and the Contractor following any exercise by the Company of its option pursuant to Clause 24 to bring forward the Transfer Date prior to the issue of the first Take Over Certificate or Qualified Take

Over Certificate in respect of a Train. The Company agrees to provide to the Contractor details of the Existing Train cleaning contract referred to in paragraph 3.9.1 of Part G of Schedule 6. In the event that the Company and the Contractor cannot agree the price of the cleaning of the Existing Trains, the Contractor shall undertake a competitive tender on an open book basis with potential tenderers who have prequalified for train cleaning with the Company and have the appropriately trained staff. Prior to the return of tenders the Contractor shall produce a weighted scoring schedule for tender evaluation. Following receipt of tenders the Contractor shall submit a report to the Company which covers inter alia:

- (a) safety;
- (b) quality assurance;
- (c) the tenderers' experience of the Company's operational sites in relation to train cleaning;
- (d) the tenderers' current ability and capacity;
- (e) the tenderers' current financial status;
- (f) the tenderers' proposed method statements and resource histograms;
- (g) compliance by the tenderer with the specification set out in the invitation to tender;
- (h) compliance by the tenderer with the terms and conditions of the sub-contract set out in the invitation to tender;
- (i) rates comparison covering potential variation events;
- (j) price for each tenderer;

(k) risks associated with each tender; and

(l) contract award recommendation.

The Contractor in making its recommendation shall utilise the weighted scoring criteria for selection of the sub-contractor. The Company shall pay the Contractor the monthly price quoted by the selected tenderer as amended by any post tender clarifications or corrections plus ten per cent. of such price (as adjusted) as a supplemental Existing Train Service Payment.

Adjustments

2. The Existing Train Service Payments shall, during the period in which they are payable, be adjusted in accordance with paragraphs 3 and 4 of this Part E of this Schedule. In addition, the Usage Payments shall be adjusted in accordance with paragraph 3 of this Part E of Schedule 12 pursuant to paragraph 6 of Schedule 10.

Service Performance Payment Adjustments

3.1 Without limiting the Company's obligations under paragraph 3 of Part C-3 of Schedule 10, the Company shall, for the thirteen four week periods prior to the Transfer Date maintain a record of Service Performance Failures in respect of Existing Trains (for the purposes of this paragraph 3, *Existing Train Service Performance Failures*). For the avoidance of doubt, paragraphs 1 to 10 of Part C-3 of Schedule 10 shall apply to Service Performance Failures in respect of Existing Trains.

3.2 The record of Existing Train Failures in such period shall be maintained on the basis of the total number of Existing Train Failures in each four week period and the average number of Existing Train Failures for a four week period (calculated by reference to the total number of Existing Train Failures in the said thirteen four week periods).

3.2.2 The Company shall, during the thirteen four week periods prior to the Transfer Date, provide information to the Contractor on the service performance of the Existing Trains for such periods. The Company and the Contractor shall evaluate the trends in service performance of the Existing Trains for the four four week periods prior to the Transfer Date and shall make good faith proposals to each other of the level of service performance to be attained by the Contractor after the Transfer Date in respect of the Existing Trains. The parties shall negotiate in good faith to agree such level which shall, for the purposes of this paragraph 3, be the **Base Performance Figure**. In the event that the Company and the Contractor cannot reach agreement on the Base Performance Figure, the Base Performance Figure shall be set at a constant value which shall be the average number of Existing Train Service Performance Failures in the four four week periods prior to the Transfer Date and a projection of the service performance level utilising a curve of best fit calculation for the period twelve months after the Transfer Date. Such calculation shall be based on the full fleet of Existing Trains extant at the Transfer Date and the scheduled annual fleet kilometreage (as defined in Clause 5.2.1(a)(iii)) extant at the Transfer Date.

3.3 At each four weekly service performance meeting held in accordance with paragraph 1.6.7.3 of Schedule 4 from the Transfer Date until the date on which the Company disposes of the final Existing Train, having determined any dispute as to Existing Train Service Performance Failures attributable to the Contractor, the Project Manager shall record the number of Existing Train Service Performance Failures attributable to the Contractor for the relevant four week period and compare such number with the Base Performance Figure (as adjusted in accordance with paragraph 3.7.1).

3.4 If the actual number of Existing Train Service Performance Failures attributable to the Contractor during any four week period from the Transfer Date until the date on which the Company disposes of the final Existing Train is not greater

than 102½ per cent., nor less than 97½ per cent., of the Base Performance Figure (as adjusted in accordance with paragraph 3.7.1), there shall be no adjustment to the Existing Train Service Payments or Usage Payments (as the case may be).

3.5 To the extent that the Existing Train Service Payments or Usage Payments (as the case may be) are required to be adjusted in accordance with the following provisions of this paragraph 3, the relevant amount shall be added to, or deducted from, the Existing Train Service Payments or Usage Payments (as the case may be) payable after the date of the calculation. Wherever there are two or more calculations in any one month the results of the adjustments shall be aggregated and payable or recoverable (as the case may be) by the Company.

3.6.1 If the actual number of Existing Train Service Performance Failures attributable to the Contractor during any four week period from the Transfer Date until the date on which the Company disposes of the final Existing Train exceeds 102½ per cent. of the Base Performance Figure (as adjusted in accordance with paragraph 3.7.1), an amount equal to £1,000 per one per cent. (or a proportionate amount of £1,000 per part of one per cent.) that such number exceeds the Base Performance Figure (as adjusted in accordance with paragraph 3.7.1) shall be recoverable from the Contractor by the Company, such recovery being effected by an abatement of the Existing Train Service Payments or Usage Payments, as the case may be, payable after the date of calculation.

3.6.2 If the actual number of Existing Train Service Performance Failures attributable to the Contractor during any four week period from the Transfer Date until the date on which the Company disposes of the final Existing Train is less than 97½ per cent. of the Base Performance Figure (as adjusted in accordance with paragraph 3.7.1), an amount equal to £1,000 per one per cent. (or a proportionate amount of £1,000 per part of one per cent.) that such number is less than the Base

Performance Figure (as adjusted in accordance with paragraph 3.7.1) shall be payable by the Company to the Contractor as a supplemental Existing Train Service Payment or Usage Payment, as the case may be, to the next such payment invoiced after the date of calculation.

3.6.3 For the avoidance of doubt, the calculation of the adjustment amounts under paragraphs 3.6.1 and 3.6.2 shall be based upon the entire difference between the actual number of Existing Train Service Performance Failures attributable to the Contractor and the Base Performance Figure (as adjusted in accordance with paragraph 3.7.1). All calculations made pursuant to this paragraph 3 shall be made to two decimal places.

3.6.4. Adjustments to Existing Train Service Payments or Usage Payments in accordance with this paragraph 3 (whether payable by the Contractor or the Company) shall be subject to a maximum limit of £10,000 per four week period (as adjusted in accordance with paragraph 3.7.3).

3.7.1. For the purposes of calculating the adjustments to Existing Train Service Payments or Usage Payments in accordance with this paragraph 3, the Base Performance Figure shall be adjusted for each four week period from (and including) the last such period to commence prior to the date of issue of the first Take Over Certificate or Qualified Take Over Certificate in respect of a Train, to take account of the number of Existing Trains operating in the Timetable in the relevant four week period, by multiplying the Base Performance Figure by X where:

$$X = \frac{A}{B};$$

A = the total number of timetabled Existing Train train days for the four week period that is the subject of the calculation;

B = the total number of timetabled Existing Train train days for the final four week period to end prior to the date of issue of the first Take Over Certificate or Qualified Take Over Certificate in respect of a Train; and

the total number of timetabled Existing Train train days for a four week period = the sum of the number of days in the relevant period on which each Existing Train is scheduled to be in service in accordance with the Timetable.

3.7.2 For the avoidance of doubt, adjustments shall then be calculated by comparing the actual number of Existing Train Service Performance Failures attributable to the Contractor in the relevant four week period to the adjusted Base Performance Figure by reference to whether such number exceeds 102½ per cent., or is less than 97½ per cent., of the adjusted Base Performance Figure.

3.7.3 The maximum limit to payment adjustments in any four week period (as specified in paragraph 3.6.4) shall, for each period in which the Base Performance Figure is adjusted in accordance with paragraph 3.7.1, be adjusted by the same percentage as the Base Performance Figure is adjusted in respect of that period.

Indexation

4.1 Adjustments to the Existing Train Service Payments shall be made annually on 31 March in each year during the period referred to in Clause 11.1.2 (the adjustment date) and shall have effect from (and including) 1 April in such year to (and including) 31 March in the following year.

4.2 On each adjustment date, the Existing Train Service Payment referred to in paragraph 1.2(a) shall be adjusted by multiplying such amount by the Indexation Factor.