

# The Railtrack Track Access Conditions 1995

## Issue 3

*(with Explanatory Notes)*

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## Preface

- A. *The Access Conditions are a set of rules which are incorporated by reference into, and therefore form part of, each bilateral access contract between Railtrack and a holder of access rights. They do not create any contractual relationship between operators of trains.*
- B. *The purpose of the Access Conditions is:-*
- (i) to regulate change, including change to the working timetable, change to railway vehicles specified in an access contract, change to the network, change to computer systems and change to the Access Conditions themselves;*
  - (ii) to establish procedures relating to environmental damage;*
  - (iii) to establish a performance monitoring system; and*
  - (iv) to establish procedures in the event of operational disruption.*
- C. *This Preface does not form part of the Access Conditions.*

# THE RAILTRACK TRACK ACCESS CONDITIONS 1995

## Part A - Organisation of the Access Conditions and Definitions

### Explanatory Note

- A. *Part A sets out certain definitions and rules of interpretation which apply generally to the Access Conditions. Definitions which are specific to individual parts of the Access Conditions are contained in the relevant part.*
- B. *This Explanatory Note does not form part of the Access Conditions.*

### CONDITION A1 - GENERAL

#### 1.1 *General Interpretation*

The paramount objective in the railway industry is to operate a safe and secure railway on which the elements of risk to safety and security are reduced to a level as low as reasonably practicable. Nothing in these Access Conditions shall be interpreted or construed as compromising that objective.

In these Access Conditions, unless the context otherwise requires:

- (a) *These Access Conditions*

References to these Access Conditions means these Access Conditions as modified from time to time.

- (b) *Parts, Conditions and paragraphs*

References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of these Access Conditions.

- (c) *Definitions in the Act*

Terms and expressions defined in the Act shall, unless the contrary intention appears, have the same meaning in these Access Conditions.

(d) *Statutory Provisions*

References to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re-enactments (whether with or without modification).

(e) *Interpretation Act*

Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in these Access Conditions.

(f) *Include*

The words "include" and "including" are to be construed without limitation.

(g) *Other documents etc.*

Any agreement, instrument, licence, standard, timetable, code or other document referred to in these Access Conditions or entered into, approved, authorised, accepted or issued by a person pursuant to these Access Conditions shall be construed, at the particular time, as a reference to that agreement, instrument, licence, standard, timetable, code or other document, as it may then have been amended, varied, supplemented or novated.

(h) *Conflict*

In the event of any conflict of interpretation between these Access Conditions and an Access Agreement (not including these Access Conditions) the following order of precedence shall apply:

- (1) these Access Conditions; and
- (2) the Access Agreement.

(i) *Time limits*

Where in these Access Conditions any obligation of an Access Party is required to be performed within a specified time limit that obligation shall continue after that time limit if the Access Party fails to comply with that obligation within the time limit.

(j) *Headings*

The headings and references to headings shall be disregarded in construing these Access Conditions.

(k) *Ruling Language*

All notices served under these Access Conditions shall be in the English language.

## 1.2 ***Definitions***

In these Access Conditions, unless the context otherwise requires:

"Act"	means the Railways Act 1993;
"Access Agreement"	means any particular access contract, whether or not entered into pursuant to any directions of the Regulator under the Act, incorporating these Access Conditions;
"Access Dispute Resolution Rules"	means the set of rules regulating the resolution of disputes between Access Parties, entitled "Access Dispute Resolution Rules" and annexed to these Access Conditions; in Condition C8, "Dispute Resolution Rules" means the Access Dispute Resolution Rules;
"Access Option Holder"	means any person who may exercise an access option (as defined in section 17(6) of the Act);
"Access Parties"	means, in respect of an Access Agreement, the parties to that agreement;
"Change of Law"	means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to: <ul style="list-style-type: none"><li>(a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or</li><li>(b) Value Added Tax;</li></ul>

"Class Member"	has the meaning given to that term in Part C of these Access Conditions;
"Competent Authority"	means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the Regulator and the Franchising Director) whether of the United Kingdom or of the European Union, which has, in respect of an Access Agreement, jurisdiction over either or both of the Access Parties to, or the subject matter of, that agreement provided that "Competent Authority" shall not include Her Majesty's Government (or any department, minister, official or nominee thereof) where acting as shareholder of the Access Party in question or other than pursuant to the Crown prerogative or a statutory function or power;
"Direction"	means, in respect of an Access Agreement, any direction, requirement, instruction or rule binding on either or both of the Access Parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force;
"Engineering Strategy"	means, in respect of an Access Agreement, a statement of the maximum extent of track closures and temporary speed restrictions permitted in any Rules of the Route or Rules of the Plan to accommodate any engineering requirements anticipated during the period of that agreement;
"HSE"	means the Health and Safety Executive as referred to in the Health and Safety at Work etc. Act 1974;
"Industry Committee"	means the Committee, as defined in the Access Dispute Resolution Rules;
"Legal Requirement"	means (for the purpose of the definition of Change of Law), in relation to any person, any of the following: <ul style="list-style-type: none"> <li>(a) any enactment to the extent that it applies to that person;</li> </ul>

- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that person or a decision taken by the said Commission which is binding on that person to the extent that it is so binding; and
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

"Network"	means the network of which Railtrack is the owner and which is situated in England, Wales and Scotland;
"Network and Vehicle Change Committee"	means the sub-committee of the Industry Committee referred to in paragraph A4.1(c) of the Access Dispute Resolution Rules;
"Network Change"	has the meaning ascribed to it in Part G of these Access Conditions;
"Passenger Transport Executive"	has the meaning ascribed to it in section 9 of the Transport Act 1968;
"Railtrack"	means Railtrack PLC, incorporated in England and Wales under registered number 2904587;
"Railway Group Standards"	<p>means:</p> <ul style="list-style-type: none"> <li>(i) technical standards with which railway assets or equipment used on or as part of railway assets must conform; and</li> <li>(ii) operating procedures with which the operators of railway assets must comply</li> </ul> <p>in each case as authorised pursuant to the Railway Group Standards Code prepared pursuant to Railtrack's network licence;</p>
"Routes"	means, in respect of an Access Agreement, those parts of the Network which a Train Operator has permission to use pursuant to that agreement;



“Rules of the Plan”

means rules regulating, for any part of the Network, the standard timings and other matters necessary to enable trains to be scheduled into the Working Timetable applicable to that part of the Network, being rules which specify (amongst other matters):

- (a) the timings (including specified allowances) allowed for travel between specified points on the Network for each type of train and for each type of traction used, taking into account any particular constraints imposed by railway vehicles which may form part of the train;
- (b) timing margins or allowances for stopping at junctions and other specified points;
- (c) minimum timing margins or headways between successive trains travelling on the same section of track;
- (d) minimum and maximum time periods for stopping at stations and other specified points;
- (e) restrictions as to the speed of railway vehicles on any section of track; and
- (f) any Priority Dates referred to in Part D of these Access Conditions;

“Rules of the Route”

means rules regulating, for any part of the Network, each of the following matters:

- (a) the location, number, timing and duration of any possessions of any track or section of track, which enable inspection, maintenance, renewal and repair thereof or of any other railway asset or any other works in relation thereto, and any restrictions regarding those possessions;
- (b) any temporary speed and other restrictions on the operation of trains on any section of track, which may be necessary to carry out any inspection, maintenance, renewal or repair referred to in paragraph (a) above; and
- (c) any alternative train routes or stopping patterns which may apply during any possessions referred to in paragraph (a) above;

and, for the purpose of this definition, track shall be regarded as subject to a possession if it has been temporarily taken out of service for the purposes stated in paragraph (a) above;

“Services”

means, in respect of an Access Agreement:

- (a) the services for the carriage of passengers by railway;
- (b) the services for the carriage of goods by railway; and
- (c) any other train movement for the purpose of testing the physical or operational characteristics or capabilities of any railway asset,

in each case as provided for in that agreement;

“Train Crew”

means those persons on a train responsible for the operation of that train;

“Train Operator”

means (without prejudice to Condition A1.3), in respect of an Access Agreement, a person (whether or not an operator of trains) who has permission to use track pursuant to that agreement; and

“Working Timetable”

*[in respect of Train Slots scheduled to operate on or before 22<sup>nd</sup> May 2004]* means the timetable which Railtrack is obliged to draw up pursuant to Condition D1.5.1;

*[in respect of Train Slots scheduled to operate on or after 23<sup>rd</sup> May 2004]* means the timetable which Railtrack is obliged to draw up pursuant to Condition D1.6.1.

### 1.3 *References to Train Operator*

Each reference in Parts E, F, G and H to a Train Operator, or to any obligation of a Train Operator, shall, insofar as the Train Operator is not an operator of a train, be construed as a reference to the person whose operation of trains on the Network derives from that Train Operator's Access Agreement or (as the case may be) to that person's obligation and, in the latter case, the Train Operator shall procure that the person concerned performs the relevant obligation.

#### **1.4    *Notices etc.***

Wherever in these Access Conditions provision is made for the giving or issuing of any notice, consent or approval by any person that notice, consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the Access Agreement and the words "notify", "consent" or "approve" (and cognate expressions) shall be construed accordingly.

#### **1.5    *Good faith***

The Access Parties shall, in exercising their respective rights and complying with their respective obligations under these Access Conditions (including when conducting any discussions or negotiations arising out of the application of these Access Conditions or exercising any discretion under them) at all times act in good faith.

#### **1.6    *Franchised services***

References to franchised services shall include railway passenger services which the Franchising Director shall have designated as eligible for provision under franchise agreements pursuant to section 23 of the Act.

## Part B - Performance Monitoring

### Explanatory Note

- A. *Part B provides for the establishment by Railtrack of a Performance Monitoring System, designed to record whether trains pass specified monitoring points, the times at which they do so and the difference between those times and the corresponding scheduled times. The system is also designed to enable Railtrack to determine and record the cause of any delay or cancellation. Provision is made for Railtrack to notify and seek agreement from affected Train Operators as to the cause of any such delay or cancellation, and there are procedures specified for resolving cases where Railtrack and a Train Operator disagree as to cause.*
- B. *Train Operators are given the right to notify Railtrack if the Performance Monitoring System is not fit for purpose and require Railtrack to investigate the grounds for such notification and report on its findings.*
- C. *Both Railtrack and Train Operators are given the right to audit and inspect the records and monitoring equipment of the relevant Performance Monitoring System and to require tests of the Performance Monitoring System to be carried out in the presence of an independent expert.*
- D. *Condition B5.3 also makes it clear that the Access Parties can, however, agree a more onerous Performance Monitoring System than that contemplated by Part B. The model set out in Part B is therefore a minimum standard.*
- E. *Part B also incorporates the Performance Data Accuracy Code which encompasses defined standards of accuracy of performance data.*
- F. *Provision is made for the setting up of a Delay Attribution Board whose purpose, constitution and procedures are set out in Conditions B6 and B7.*
- FG. *This Explanatory Note does not form part of the Access Conditions.*

## DEFINITIONS

In this Part B, unless the context otherwise requires:

<u>"Alternate"</u>	<u>means an alternate Member appointed pursuant to Condition B6.2.6;</u>
<u>"Band"</u>	<u>has the meaning defined in Part C;</u>
<u>"Board"</u>	<u>means the Delay Attribution Board constituted in accordance with Condition B6.2;</u>
<u>"Board Meeting"</u>	<u>means a meeting of the Board;</u>
<u>"Board Secretary"</u>	<u>means the secretary of the Board;</u>
<u>"Chairman"</u>	<u>means the chairman of the Board appointed pursuant to Condition B6.3.1 and, where he is acting as Chairman, the Deputy Chairman;</u>
<u>"Class"</u>	<u>has the meaning defined in Part C;</u>
<u>"Class Member"</u>	<u>has the meaning defined in Part C;</u>
<u>"Class Representative Committee"</u>	<u>has the meaning defined in Part C;</u>
<u>"costs"</u>	<u>includes expenses;</u>
<u>"Delay Attribution Guide"</u>	<u>means, subject to Condition A1.1(g), the document which provides guidance on the attribution of delay across the Network, entitled "Delay Attribution Guide" as issued by Railtrack on 1 September 2002;</u>
<u>"Deputy Chairman"</u>	<u>means the deputy chairman of the Board appointed pursuant to Condition B6.3.1;</u>
<u>"Franchised Passenger Class"</u>	<u>has the meaning defined in Part C;</u>
<u>"Industry Party"</u>	<u>means a facility owner or a beneficiary which in either case is a party to an Access Agreement;</u>

<u>"licence fee"</u>	<u>in relation to an Industry Party, means any amount payable by that Industry Party to the Regulator in respect of a licence which it holds pursuant to section 8 of the Act, and "licensed Industry Party" shall be construed accordingly;</u>
<u>"Member"</u>	<u>means a member of the Board and "Board Member" shall be construed accordingly;</u>
<u>"Non-Franchised Passenger Class"</u>	<u>has the meaning defined in Part C;</u>
<u>"Non-Passenger Class"</u>	<u>has the meaning defined in Part C;</u>
"Performance Data Accuracy Code"	means <u>subject to Condition A1.1(g)</u> the code relating to the standards of performance data accuracy entitled "Performance Data Accuracy Code" as published by Railtrack in April 1996; <del>and</del>
"Performance Monitoring System"	means the system for monitoring train performance described in Condition B1;
<u>"Proposal for Amendment"</u>	<u>means any proposal to amend the Delay Attribution Guide; and</u>
<u>"unlicensed Industry Party"</u>	<u>means an Industry Party which does not hold a licence pursuant to section 8 of the Act by reason of it being exempt from the requirement to be a licence holder.</u>

## CONDITION B1 - PROCEDURES FOR MONITORING PERFORMANCE

### 1.1 *Performance Monitoring System*

Railtrack shall operate a system for monitoring train performance which accurately records:

- (a) the times at which trains arrive at, depart from and pass specified points;
- (b) the difference between the time at which a train arrives at, departs from or passes a specified point and the time published for such arrival, departure or passing in the Working Timetable;
- (c) all cancelled trains and trains failing to pass any specified point; and
- (d) the cause of train delays and cancellations.

### 1.2 *Performance Data Accuracy Code*

The Performance Data Accuracy Code is incorporated into these Access Conditions. Each Access Party shall observe and perform its obligations, and shall have the benefit of its rights, under the Performance Data Accuracy Code. For the purpose of Condition B1.1 "accurately" shall be construed in accordance with the Performance Data Accuracy Code.

### 1.3 *The Delay Attribution Guide*

The Delay Attribution Guide is incorporated into and shall form a part of these Access Conditions. Condition C8 shall apply, but Conditions C1, C2, C3, C4, C5, C6, C7 and C9 shall not apply, to the Delay Attribution Guide.

## CONDITION B2 - DIAGNOSIS OF DELAYS OR CANCELLATIONS

### 2.1 *Determination of causes of delays or cancellations*

Railtrack shall, in relation to any train delay or cancellation (subject to any thresholds agreed between Railtrack and each Train Operator), determine and record the persons and causes which are responsible for the delay or cancellation and where more than one, so far as practicable, the extent to which each person or cause is so responsible.

### 2.2 *Information relating to causes of delays or cancellations*

Railtrack shall, when determining and recording the persons and causes which are responsible for train delays and cancellations, have due regard to all information which is relevant in the circumstances, including the following:

- (a) information from any computerised or other recording system which Railtrack may, for the time being, be permitted to use for the purposes of a particular Access Agreement;
- (b) information supplied by signallers and other persons duly authorised to participate in the signalling of trains;
- (c) information supplied by any operator of trains, whether such information is within its knowledge or based on information supplied by other operators of railway assets;
- (d) information supplied by Railtrack, whether such information is within Railtrack's knowledge or based on information supplied by persons engaged or acting on behalf of, or otherwise in accordance with or subject to the instructions of, Railtrack or other operators of railway assets; and
- (e) information and guidance set out in the Delay Attribution Guide.

## 2.3 ***Notification and agreement of delays or cancellations***

### 2.3.1 Notification of delays or cancellations

Railtrack shall, as soon as reasonably practicable following the occurrence of any train delay or cancellation affecting a Train Operator's train, notify that operator of the occurrence of that delay or cancellation and the responsibility, if any, for that delay or cancellation attributed by Railtrack to that operator. Any such notices shall be sent to such person as that operator shall have nominated for the purposes of this Condition B2.3.1.

### 2.3.2 Consideration by a Train Operator

A Train Operator shall consider each delay or cancellation attributed by Railtrack to that operator, and if the Train Operator wishes to refer the attribution for further investigation it shall do so within two clear working days of receipt of that notice, and at the same time give its reasons for doing so. Any notification of such referral shall be sent to such person as Railtrack shall have nominated for the purposes of this Condition B2.3.2.

### 2.3.3 Agreement of delay attribution

Any attribution shall, unless referred for further investigation by that Train Operator within two clear working days of receipt of that notice in accordance with Condition B2.3.2, be deemed to be agreed by that operator.



## 2.4 Matters referred for further investigation

### 2.4.1 Procedure for conducting further investigation

The representatives nominated, pursuant to Condition B2.3, by Railtrack and the Train Operator shall, within the next two clear working days after receipt of notification pursuant to Condition B2.3.1, attempt to resolve the matter referred for further investigation. Such further investigation shall take into account all relevant circumstances of the case and the guidance set out in the Delay Attribution Guide.

### 2.4.2 Referral for review

If agreement has not been reached within the two clear working days referred to in Condition B2.4.1, the matter shall be referred for review by the designated senior manager appointed by the Train Operator and the designated senior manager appointed by Railtrack for the purposes of this Condition B2.4.2.

### 2.4.3 Referral for further guidance or resolution

If, within 20 working days, or such other period as may be agreed by Railtrack and the Train Operator, of the matter being referred for review pursuant to Condition B2.4.2, Railtrack and the Train Operator are unable to agree on the attribution, they shall seek guidance from the Board, or from any sub-committee that the Board has designated for this purpose, on the appropriate application of the Delay Attribution Guide or on any other relevant matter.

### 2.4.4 Guidance from the Board

If, within 14 days of guidance being received from the Board or any designated sub-committee pursuant to Condition B2.4.3, Railtrack and the Train Operator are unable to agree on the attribution, they shall refer the matter to the Industry Committee in accordance with the Access Dispute Resolution Rules.

### 2.4.5 Precedence

For the purposes of operating the procedures set out in this Condition B2.4, in any Access Agreement Railtrack and the Train Operator may substitute for any timescale prescribed in this Condition B2.4 a corresponding timescale in Schedule 8 or its equivalent (Performance Regime) of that Access Agreement.

## 2.5 Amendments to the Delay Attribution Guide

### 2.5.1 Entitlement to make a Proposal for Amendment to the Delay Attribution Guide

Any Industry Party shall be entitled to sponsor a Proposal for Amendment for consideration and, if thought fit, approval by the Board. Any such proposal shall be sent to the Board and shall:

- (a) be in writing;
- (b) contain reasonable particulars of the amendment proposed; and
- (c) be supported by an explanation in reasonable detail of the reasons for the proposed amendment.

### 2.5.2 Notice of Proposal for Amendment

The Board shall, within seven days following receipt of a Proposal for Amendment from any Industry Party, or, if later, within seven days following receipt of any clarification that the Board may reasonably request from the sponsor of that proposal:

- (a) give notice of that proposal to each Industry Party; and
- (b) invite the submission to the Board of written representations in respect of that proposal within such period as is reasonable in all the circumstances (the "Consultation Period"), being a period of not less than 30 days from the date of notification under paragraph (a) above.

### 2.5.3 Calling of Board Meeting to consider a Proposal for Amendment

The Board Secretary shall, within seven days following the end of the Consultation Period:

- (a) call a Board Meeting; and
- (b) supply the Proposal for Amendment to each Member together with:
  - (i) copies of all representations received pursuant to Condition B2.5.2(b); and
  - (ii) if the sponsor of the proposal consents, any modification to that proposal.

### 2.5.4 Material modification of Proposal for Amendment

If at any time a Proposal for Amendment is (with the consent of its sponsor) modified in a material way, the Board shall treat the proposal as a new Proposal for Amendment and the provisions of Conditions B2.5.2 and B2.5.3 shall apply thereto.

### 2.5.5 Clarification

The sponsor of a Proposal for Amendment shall promptly comply with all reasonable written requests of the Board for further clarification of the proposal.

## **2.6 Consideration by the Delay Attribution Board**

### **2.6.1 Voting passmark**

The Board shall consider and may approve each Proposal for Amendment. A Proposal for Amendment shall have been approved only if seven or more Members (including at least two Members representing Railtrack and at least two Members representing the other Classes) present, and entitled to vote, at a meeting of the Board shall have voted in favour of that proposal, provided that the failure of a Member timeously to cast its vote or to intimate its abstention shall be treated as a vote in favour of the proposal.

### **2.6.2 Rights of attendance**

A sponsor of a Proposal for Amendment shall be entitled to attend the relevant part of any Board Meeting at which the Proposal for Amendment is to be considered.

## **2.7 Consequences of a Board decision**

### **2.7.1 Decision to Approve**

Any decision by the Board to approve a Proposal for Amendment shall state the date from which it is proposed that such approved amendment is to take effect being a date no earlier than the date on which the Board reached its decision. The Board Secretary shall, as soon as reasonably practicable following such decision, submit the Proposal for Amendment to the Regulator, together with a written memorandum:

- (a) explaining in reasonable detail the reasons for the proposed amendment;
- (b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition B2.5.2(b) which shall have been neither accepted nor withdrawn); and
- (c) stating the reasons for any dissent from that decision by any Board Member.

### **2.7.2 Requirement for Regulator's approval**

No Proposal for Amendment shall have effect unless the Regulator gives notice to the Board in writing that he approves the proposal and confirms the date of introduction.

### **2.7.3 Notification of approval**

If the Regulator gives his approval of the Proposal for Amendment, the Board Secretary shall, as soon as reasonably practicable:

- (a) notify details of the approved amendment and when it will take effect to all Industry Parties;
- (b) arrange for the approved amendment to be incorporated into a revised version of the Delay Attribution Guide; and
- (c) publish and circulate the revised version of the Delay Attribution Guide to all Industry Parties and to the Regulator.

#### 2.7.4 Decision to Reject

The Board Secretary shall, as soon as reasonably practicable following a decision of the Board, or following receipt of notification of a decision of the Regulator, to reject a Proposal for Amendment, notify the sponsor of that decision.

## **CONDITION B3 - SYSTEM INVESTIGATION**

### **3.1 *Notification of unsatisfactory system***

A Train Operator may, when it has reasonable grounds for considering that the Performance Monitoring System is not satisfying the requirements set out in Condition B1, notify Railtrack of the manner in which the Performance Monitoring System is alleged not to satisfy such requirements.

### **3.2 *Investigation of system***

As soon as practicable following receipt of a notice from a Train Operator under Condition B3.1, Railtrack shall investigate the matters complained of and shall, within the period of 28 days following the date of receipt of that notice, prepare and deliver to that operator a report of its investigations which shall include:

- (a) details of all relevant tests and checks carried out by Railtrack;
- (b) the results of Railtrack's investigations;
- (c) Railtrack's conclusion as to whether the Performance Monitoring System failed to satisfy the requirements set out in Condition B1 in the manner alleged by that operator or in any other respect;
- (d) Railtrack's reasons for its conclusions and copies of all relevant data and documentation in respect thereof; and
- (e) any steps which Railtrack is taking or proposes to take in respect of any failure to satisfy the said requirements.

### **3.3 *Adjustment to prior results***

If it is established in accordance with Condition B3.2 or Condition B4.2 that the Performance Monitoring System is not satisfying the requirements set out in Condition B1, the results obtained from the Performance Monitoring System for the period of two months preceding the date of the investigation or, if later, since the date of the last investigation under Condition B3.1 (but not in respect of earlier periods), shall be adjusted in a manner which is fair and reasonable to correct the results.

## **CONDITION B4 - RECORDS, AUDIT AND TESTING**

### **4.1 *Obligation to keep information***

The Access Parties shall, for a period of not less than six years, keep summaries of all material information relating to the monitoring of train performance.

### **4.2 *Right to audit and inspect***

Either Access Party may, without prejudice to Condition B3.2 and on giving at least five days' prior notice to the other Access Party:

- (a) audit and inspect at any reasonable time all processes, systems and records of the Performance Monitoring System for any particular period and in relation to the Train Operator's Services;
- (b) inspect at any reasonable time all such premises and equipment as are used in connection with the Performance Monitoring System to monitor train performance in respect of the Train Operator's Services; and
- (c) require the other Access Party to carry out analysis, investigations and tests of the Performance Monitoring System including the processes, systems and equipment used in connection with the Performance Monitoring System in the presence of an independent expert nominated by the first Access Party, such tests to be as reasonably required by the first Access Party to determine its accuracy and suitability to monitor train performance in respect of the Train Operator's Services.

### **4.3 *Costs to be borne by investigating party***

Subject to Condition B4.4, any audit, inspection, analysis, investigation or testing carried out at the request of an Access Party in accordance with Condition B4.2 shall be at such Access Party's own cost.

#### **4.4 *Costs to be borne by party subject to investigation***

Where the overall results of the Performance Monitoring System for that period are shown as a result of any audit, inspection, analysis, investigation or testing to be inaccurate in any material respect due to any act or omission by the Access Party which is the subject of the audit, inspection, analysis, investigation or testing, that Access Party shall bear the reasonable cost to both Access Parties of that audit, inspection, analysis, investigation or testing.

### **CONDITION B5 - CO-OPERATION**

#### **5.1 *Review of operations***

The Access Parties shall, not less than once every six months, meet, review performance and discuss alterations to their operations which will improve train performance and reduce train delays and cancellations.

#### **5.2 *Implementation of alterations***

The Access Parties agree to use all reasonable endeavours to implement any alterations agreed under Condition B5.1.

#### **5.3 *Obligations in Access Agreement***

Nothing in this Part B shall restrict the Access Parties from agreeing, in an Access Agreement, obligations in relation to performance monitoring which are more onerous than those contained in this Part B.

### **CONDITION B6 - DELAY ATTRIBUTION BOARD**

#### **6.1 *Purpose of the Board***

##### **6.1.1 *Delay Attribution Guide***

The purpose of the Board is to manage and oversee the effectiveness and accuracy of the delay attribution process and use of the Delay Attribution Guide.

##### **6.1.2 *Proposal for Amendment***

The Board may receive Proposals for Amendment, and has responsibility for considering whether or not the Delay Attribution Guide should be amended in accordance with any such proposal.

### 6.1.3 Guidance

The Board will also provide guidance to Industry Parties on request to assist in the resolution of disagreements concerning delay attribution.

## 6.2 Establishment and composition of the Board

### 6.2.1 General

The Board is hereby established and shall consist of the Chairman, the Board Secretary and 12 Members of whom one shall be appointed Deputy Chairman pursuant to Condition B6.3.1(b). The Members shall be appointed by the following Bands and Classes:

- (a) six Members by Railtrack;
- (b) one Member by each of the three Bands of the Franchised Passenger Class;
- (c) one Member by each of the two Bands of the Non-Passenger Class; and
- (d) one Member by the Non-Franchised Passenger Class.

Neither the Chairman nor the Board Secretary shall be a Member.

### 6.2.2 Appointment of Members

Members shall be appointed by election. Elections shall be carried out in the same way as elections of members of the Class Representative Committee are carried out pursuant to Part C.

The Board Secretary shall, as soon as reasonably practicable following the election of a new Member, notify the Chairman, all Members and Class Members of that election.

### 6.2.3 Duration of appointment

Subject to Conditions B6.2.4 and B6.2.5, unless he shall have been re-elected, a Member shall be treated as having ceased to hold office on the 1 April which is nearest to the date which is two years after the date of his appointment.

### 6.2.4 Loss of office

A Member:

- (a) may be removed from office and a replacement Member elected in his place by a majority in number of members of the relevant Class or Band (as the case may be) present (whether in person or by proxy) and voting at the relevant meeting called for the purpose of such removal and substitute appointment;

- (b) shall be treated as having resigned from office if he dies or becomes of unsound mind;
- (c) shall, if he ceases to be an employee of a company which is a member of the Class or Band which elected him but continues to be an employee of an Industry Party, as soon as is reasonably practicable notify the Board Secretary, and may continue as a Member until such time as that Class or Band has elected his successor pursuant to Condition B6.2.4(a); and
- (d) shall, if he cease to be an employee of an Industry Party, resign from office; or, if he fails to resign, shall be treated as having resigned.

#### 6.2.5 Retirement by rotation

Notwithstanding Condition B6.2.3, Members shall retire in rotation on 1 April in each year in the following order:

- (a) on 1 April 2004:
  - (i) the Member appointed by the Band of the Franchised Passenger Class which is highest by value of relevant annual Track Charges payable by the Bands of that Class at the relevant time;
  - (ii) the Member appointed by the Band of the Non-Passenger Class which is the higher of the two by value of relevant annual Track Charges payable by them at the relevant time;
  - (iii) the Member appointed by the Non-Franchised Passenger Class; and
  - (iv) whichever three of Railtrack's six Members as Railtrack shall elect;
- (b) on 1 April 2005, the Board Members who shall not have retired pursuant to sub-paragraph (a) above.

#### 6.2.6 Alternates

Each Member (other than an Alternate) may:

- (a) appoint any other Member or any other person who is willing to act to be his Alternate; and
- (b) remove that Alternate from office as his Alternate.

The appointment or removal of an Alternate shall be by notice given to the Chairman and the Board Secretary not later than two days before a Board Meeting and signed by the Member making or revoking the appointment.



### 6.2.7 Rights of Alternates

- (a) An Alternate shall be entitled:
  - (i) to receive notice of all Board Meetings which his appointor is entitled to attend;
  - (ii) to attend and vote at any such Board Meeting at which the Member which appointed him is not personally present; and
  - (iii) generally to perform all the functions of the Member which appointed him to act in his absence.
- (b) Save as otherwise provided in Conditions B6.2.6 and B6.2.7, an Alternate shall be deemed for all purposes to be a Member.
- (c) An Alternate shall cease to be an Alternate if the Member which appointed him ceases to be a Member or revokes his appointment pursuant to Condition B6.2.6.

## 6.3 The Chairman, Deputy Chairman and Board Secretary

### 6.3.1 Appointment of Chairman and Deputy Chairman

The Board shall appoint:

- (a) its Chairman, who shall:
  - (i) not be a Member;
  - (ii) have suitable experience of the railway industry; and
  - (iii) not, during his term of office, be employed by or otherwise connected with any Industry Party or receive any benefit from any Industry Party in return for services provided to it, in either case in a way which may compromise his impartiality; and
- (b) one of its Members to act as Deputy Chairman.

Each such appointment and any re-appointment shall be made by unanimous resolution.

### 6.3.2 Declaration of connections

The Chairman shall on appointment declare to the Board Secretary any relevant connection which he has or has had with the railway industry, and shall during his term of office promptly disclose any new connection of that kind. The Board Secretary shall provide a copy of any disclosure made under this Condition B6.3.2 to each Member and to every Industry Party which requests it.

### 6.3.3 Fees, expenses and allowances of Chairman

Subject to Condition B6.3.4, the Chairman shall hold office on such terms as the Board shall determine. Where the terms on which the Chairman holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Board.

The terms on which the Chairman holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Board.

### 6.3.4 Duration of appointment of Chairman

The Chairman shall be appointed for a term of two years, and may be reappointed. The Board may remove him from office on the motion of any Member, provided that at least two weeks' written notice of the intention to table such a motion has been given to all Members and the Chairman. A motion to remove the Chairman shall:

- (a) in the case of removal on the ground of the incapacity or misbehaviour of the Chairman, be passed on the positive resolution of at least seven Members (including at least two Members representing Railtrack and at least two Members representing the other Classes); and
- (b) in any other case, be passed only by unanimous resolution.

### 6.3.5 Appointment of successor Chairman

If, within 45 days of the termination (for whatever reason) of the period of office of a Chairman, the Board shall have failed to appoint a new Chairman pursuant to Condition B6.3.1, the Board shall:

- (a) by unanimous resolution, determine a list of three candidates for the office of Chairman;
- (b) send the list to the Regulator, together with such information in relation to the candidates and the preferences of the Board Members as the Regulator may request; and
- (c) be deemed to have appointed as Chairman the candidate selected by the Regulator.

#### 6.3.6 Deputy Chairman - appointment and removal

The Deputy Chairman shall be appointed by the Board for a term of one year, and may be reappointed. The Board may remove him from office on the motion of any Member, provided that at least two weeks' written notice of the intention to table such a motion has been given to all Members and the Chairman and, unless the Chairman and all Members otherwise consent, a Board Meeting shall have been held at which the motion shall have been debated and, if thought fit, passed.

#### 6.3.7 Voting by Deputy Chairman

The Deputy Chairman shall be entitled to cast his vote as a Member notwithstanding that, at the relevant time, he may be acting as Chairman of the Board or the sub-committee in question.

#### 6.3.8 Standing of the Deputy Chairman pending appointment of the first Chairman

Notwithstanding Conditions B6.3.1 to B6.3.4 inclusive, pending the appointment of the first Chairman, the Deputy Chairman elected pursuant to Condition B6.3.1 shall be treated as Chairman, and may be permitted to act in fulfilling all functions as Chairman, including those procedures prescribed in Condition B7.

#### 6.3.9 Railtrack as secretariat

Railtrack shall be the secretariat of, and shall provide all administrative and other services reasonably necessary for, Board Meetings, including in relation to the convening of meetings, the service of notices of meetings and preparing and circulating minutes of all meetings. Railtrack shall appoint the Board Secretary and immediately notify all Members of the appointment.

#### 6.3.10 Terms of appointment of Deputy Chairman, Board Secretary etc.

The Deputy Chairman (subject to Condition B6.3.6) and the Board Secretary shall hold office on such terms as the Board shall determine. Where the terms on which each of them holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Board.

The terms on which each of the Deputy Chairman and the Board Secretary holds office may include provision for his remuneration, the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Board.

6.3.11 Chairman etc. not employees

None of the Chairman, the Deputy Chairman or the Board Secretary shall by virtue of his office be an employee of the Board or any person.

6.4 Funding of the Board etc.

6.4.1 Payments by Industry Parties

Each Industry Party shall, within 30 days of being requested to do so by the Board Secretary, pay to the Board Secretary an amount of the estimated costs and expenses of the Board equal to the proportion which its licence fee bears to the aggregate licence fees of all Industry Parties. The amount payable by any unlicensed Industry Party and by any licensed Industry Party which is not required to pay a licence fee shall be assessed by the Board and shall be fair and reasonable. The Board Secretary shall receive and hold amounts paid pursuant to this Condition B6.4.1 on behalf of the Board.

6.4.2 Board to estimate costs

The estimated costs and expenses of the Board referred to in Condition B6.4.1 shall be the amount which the Board reasonably expects will be its costs of operation in the year beginning with the next following 1 April, taking into account any sums which it reasonably expects to be paid to it by any person in that period (including any amounts payable by any unlicensed Industry Party and any licensed Industry Party which is not required to pay a licence fee).

6.4.3 Adjustments of estimates

To the extent that the actual costs and expenses of the Board shall have been underestimated or overestimated by the Board in respect of any period, the amount of the difference shall be carried over to the following year and shall be added to or deducted from the amounts payable by Industry Parties in that following year.

Any credit due to an Industry Party may be withheld, in whole or in part, at the sole discretion of the Board if that Industry Party has failed in the previous year to pay the required amount for that year within 30 days of being requested to do so by the Board Secretary pursuant to Condition B6.4.1.

#### 6.4.4 Accountants' certificate

Any Industry Party shall be entitled to require the Board Secretary to provide him with a certificate from a firm of chartered accountants of national standing in relation to the costs and expenses of the Board in respect of any year. The Board Secretary shall promptly comply with any such request.

#### 6.5 Capacity of Board to enter into Contracts with Officers

In making any appointment or otherwise exercising its powers under this Condition B6, the Board is authorised to act on behalf of the Industry Parties.

#### 6.6 Indemnities by new, and to retiring, Industry Parties

##### 6.6.1 New Industry Parties

An Industry Party, on becoming such, shall indemnify those who are already Industry Parties (the "existing Industry Parties") against its share of any liability which arises:

- (a) while it is an Industry Party; and
- (b) under a contract of appointment entered into by the Board on behalf of the existing Industry Parties (or some of them, and whether or not with others) before it became an Industry Party.

Its share shall be the appropriate proportion of the liability calculated in accordance with Condition B6.4.1, applied to the Industry Parties at the time the liability arises.

##### 6.6.2 Retiring Industry Parties

An Industry Party which ceases to be such shall be indemnified by the Industry Parties which remain as such against any liability which arises:

- (a) after it ceases to be an Industry Party; and
- (b) under a contract of appointment entered into by the Board on behalf of it (with other Industry Parties) while it was an Industry Party,

such that the Industry Parties as at the date the liability arises shall bear it in the proportion set out in Condition B6.4.1, applied to them.

## **6.7 Sub-committees**

### **6.7.1 Setting up sub-committees**

The Board shall be entitled to set up sub-committees to consider particular topics related to the activities of the Board. The Board shall have the power, by unanimous vote, to determine the constitution of any sub-committee. If it shall fail to reach such a decision, the Chairman shall make a ruling determining the matter which shall be binding on the Board.

### **6.7.2 Membership**

The Board shall have the power, by unanimous vote, to determine the membership of each sub-committee. If it shall fail to reach such a decision, the Chairman shall make a ruling determining the matter which shall be binding on the Board. The same person may be a Board Member and a member of any sub-committee.

### **6.7.3 Chairmanship of sub-committees**

The chairman of any sub-committee shall be either the Chairman or any other person elected by the sub-committee in question and approved by the Chairman.

### **6.7.4 Procedural rules**

Condition B7.3 shall apply in relation to the rules of procedure of sub-committees, except that the Board shall have the power to modify the timescales specified in Condition B7.1.1 in their application to a meeting of a sub-committee.

## **CONDITION B7 - PROCEEDINGS OF THE BOARD**

### **7.1 Board Meetings**

The Board shall meet at least three times per calendar year.

#### **7.1.1 Board Secretary to call meetings**

The Board Secretary shall:

- (i) within 14 days following receipt of notice in writing from any Member requisitioning a Board Meeting and specifying the business to be carried out at that meeting; and
- (ii) in respect of any Proposal for Amendment, within the period of seven days following the end of the Consultation Period relating to that proposal

call a Board Meeting by giving not less than 14 days, and not more than 60 days, notice specifying:

- (a) the date, venue and time of that meeting; and
- (b) the business of the meeting (which, where it concerns a Proposal for Amendment, shall include any such Proposal for Amendment).

#### 7.1.2 Meetings previously arranged

Business specified in Condition B7.1.1 may be placed on the agenda of a Board Meeting that has already been arranged in accordance with Condition B7.2.1.

#### 7.1.3 Waiver of notice periods

The period of notice for calling a Board Meeting notified in accordance with Condition B7.1.1 may be waived prospectively or retrospectively by the consent in writing of all Members.

### 7.2 Conduct of Delay Attribution Board Meetings

#### 7.2.1 Regulation of business

Save as otherwise provided in this Part B, Members may meet together for the despatch of business, adjourn and otherwise regulate their Board Meetings as they think fit provided that:

- (a) any resolution in respect of such business, adjournment or regulation shall only be approved if at least seven Members (including at least two Members representing Railtrack and at least two Members representing the other Classes) present, and entitled to vote, at a Board Meeting shall have voted in favour of that resolution; and
- (b) the failure of a Member timeously to cast its vote or to intimate its abstention in respect of a resolution shall be treated as a vote in favour of that resolution.

#### 7.2.2 Quorum

No business shall be transacted at any Board Meeting unless a quorum of Members is present at that Board Meeting.

The quorum for each meeting of the Board shall be the Chairman and seven Members, of which three shall be Members representing Railtrack and three shall be Members representing the other Classes.

With the consent of the Chairman, or in accordance with such directions as the Chairman shall have given, the Deputy Chairman may attend in the place of the Chairman and shall be counted both as Chairman and as a Board Member for the purposes of assessing the quorum.

### 7.2.3 Adjournment without a quorum

If, within half an hour from the time appointed for a Board Meeting, a quorum is not present, the Board Meeting shall be adjourned to the same day in the next week at the same time and place (or such other time and place as the chairman of the meeting may determine) and if, at the adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, the Members present shall constitute a quorum.

### 7.2.4 Written resolutions

A unanimous resolution in writing, executed by or on behalf of every Board Member, shall be as valid and effective as if it had been passed at a Board Meeting and may consist of several versions in the same form.

## 7.3 Rules of procedure of the Board and sub-committees

### 7.3.1 Board to make rules

Subject as provided in this Condition B7.3, the Board shall be entitled to make and from time to time revise the rules of procedure to be followed by the Board and any sub-committee. If no rules of procedure shall have been made for any sub-committee, the rules of procedure of the Board shall apply *mutatis mutandis* to the proceedings of the sub-committee as if it were the Board.

### 7.3.2 Power to delegate power to make rules

The Board may delegate the power to make and revise rules of procedure for any sub-committee to the sub-committee in question, subject to such (if any) conditions as the Board shall specify in the delegation. Any such delegation may be revoked at any time by notice in writing given by the Board to the chairman of the sub-committee in question. Notice of any such delegation or revocation shall be promptly given to each member of the sub-committee in question. This Condition B7.3 shall apply *mutatis mutandis* to rules made pursuant to a delegation, except that Condition B7.3.3 shall apply as if references in that Condition to "the Chairman" were references to both the Chairman of the Board and the chairman of the sub-committee in question.

### 7.3.3 Consultation with Chairman

No rules of procedure may be made or revised pursuant to this Condition B7.3 unless the Board shall have:

- (a) consulted the Chairman as to the proposed rules or revisions; and



(b) taken into account any representations or objections he shall have made within such time as the Board shall have specified for the purpose.

In so consulting, the Board shall provide a copy of the proposed rules or revisions to the Chairman.

#### 7.3.4 Part B to prevail

Where Part B provides for the procedure to be followed in the determination of any matter referred to the Board or any sub-committee, those provisions shall prevail and the Board shall have no power to make inconsistent rules of procedure.

### 7.4 Minutes

The Board Secretary shall prepare full and accurate minutes of every Board Meeting. The minutes shall be considered and approved (with or without modification) at the next meeting of the Board, or, in the circumstances in which the next meeting of the Board is not anticipated to take place within three months, the minutes may be circulated and approved by the assent in writing of all Members who were present at the meeting concerned.

Copies of the approved minutes shall be provided to every Industry Party not later than seven days after their approval.

### 7.5 Liability of Officers

None of the Chairman, the Deputy Chairman or the Board Secretary shall be liable to any Industry Party for any act or omission (including negligence) in connection with any Board proceedings under this Part B unless the act or omission is established to have been in bad faith.

## Part C - Modifications to the Access Conditions

### Explanatory Note

- A. *Part C provides for a democratic process by which the Access Conditions and the Access Dispute Resolution Rules may be changed. Class protection is provided for each of four interest groups (or Classes), namely Railtrack, franchised passenger Train Operators, non-franchised passenger Train Operators and non-passenger Train Operators (collectively referred to as "Train Operators"). The second and last of these groups are subdivided into Bands reflecting the relative size and nature of those groups and their respective members.*
- B. *A Train Operator can only be a member of one class, which is determined by the type of railway services in respect of which it pays the greatest part of its Track Charges.*
- C. *Each of the Classes (and, where appropriate, Bands) is given the right, annually, to elect Class Representatives to a Class Representative Committee. The Committee is charged with responsibility for considering and, if it thinks fit, approving proposals for changing the Access Conditions.*
- D. *Any Class Member, Access Option Holder or the Regulator is entitled to make a Proposal for Change for consideration by the Class Representative Committee. Proposals must be made in writing to Railtrack.*
- E. *There are eight members of the Committee. Each of these may, as part of the democratic process, vote on proposals for changing the Access Conditions. Normally six must vote in favour for a Proposal for Change to the Access Conditions to be carried.*
- F. *On the satisfaction of certain criteria, Railtrack and any two of the Class Representatives of the Franchised Passenger Class have an ability to veto a proposal to change the Access Conditions. This right of veto is subject to an additional appeal procedure.*
- G. *Railtrack is to provide the secretariat function for the convening and holding of Class Meetings, election of Class Representatives, the convening and holding of Committee Meetings and the consideration of proposals to change the Access Conditions.*
- H. *In addition to the democratic process described above, the Regulator is given certain rights to require changes to the Access Conditions. Any such changes are to be made only after due consultation with all affected parties and with other relevant statutory bodies such as the Franchising Director.*
- I. *The Access Dispute Resolution Rules may be changed in accordance with the same procedures.*
- J. *This Explanatory Note does not form part of the Access Conditions.*

## DEFINITIONS

In this Part C, except where the context otherwise requires:

- “affiliate” in relation to a company, means:
- (a) a company which is either a holding company or a subsidiary of such a company; or
  - (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary;
- and for these purposes:
- (i) "holding company" and "subsidiary" shall have the meanings given to them in section 736 of the Companies Act 1985; and
  - (ii) the British Railways Board shall be treated as if it were a company;
- “Alternate Representative” means an alternate of a Class Representative as described in Condition C3.2.5;
- “Annual Class Meeting” means, in respect of any Class, an annual meeting of members of that Class called by Railtrack at any time during the final quarter of each calendar year;
- “Band” means:
- (a) in relation to the Non-Passenger Class, either one of the two bands of members of that Class consisting respectively of those members whose annual Track Charges relating to the provision of services for the carriage of goods by railway amount as nearly as practicable to the first 75% and the final 25% of the aggregate relevant annual Track Charges payable by all of the members, listed at the relevant time on the basis of descending value of the relevant annual Track Charges payable by them at that time; and
  - (b) in relation to the Franchised Passenger Class, any one of the three bands of members of that Class consisting respectively of those members whose annual Track Charges relating to the provision of franchised services amount as nearly as practicable to the first 40%, the next 40% and the final 20% of the aggregate relevant annual Track Charges payable by all of the members, listed at the relevant time on the basis of descending value of the relevant annual Track Charges payable by them at that time;

“Band Meeting”	means, in respect of any Band, a meeting of members of that Band called in accordance with Condition C1.4.1;
“Class”	means any one of Railtrack, the Franchised Passenger Class, the Non-Franchised Passenger Class and the Non-Passenger Class;
“Class Meeting”	means an Annual Class Meeting or an Extraordinary Class Meeting;
“Class Member”	means a member of a Class;
“Class Representative”	means a person who is appointed by a Class or Band to serve on the Class Representative Committee;
“Class Representative Committee”	means the committee of Class Representatives constituted in accordance with Condition C2;
“Committee Meeting”	means a meeting of the Class Representative Committee;
“Consultation Period”	means the period for consultation described in Condition C5.2(b);
“Extraordinary Class Meeting”	means, in respect of any Class, a meeting of that Class other than an Annual Class Meeting;
“Franchised Passenger Class”	means all Train Operators whose Access Agreements are, at least in part, in respect of the provision of franchised services (or in respect of railway passenger services which the Franchising Director shall have designated as eligible for provision under franchise agreements pursuant to section 23 of the Act), as a class;
“Non-Franchised Passenger Class”	means all Train Operators whose Access Agreements are, at least in part, in respect of the provision of railway passenger services (other than franchised services), as a class;
“Non-Passenger Class”	means all Train Operators whose Access Agreements are, at least in part, in respect of the provision of services for the carriage of goods by railway, as a class;
“Proposal for Change”	means any proposal (other than a notice issued by the Regulator under Condition C8) to change these Access Conditions (including this Part C) or the Access Dispute Resolution Rules, together with any modification of that proposal as referred to in Condition C5.3;

- “Representation Period” means, in respect of any Class Representative, the period for which that representative has been or is to be appointed, being the period commencing on the date on which the appointment is made and ending on the date of the next following Annual Class Meeting of that Class; and
- “Track Charges” means, in respect of an Access Agreement, the charges which it is reasonably foreseeable will be levied by Railtrack for and in connection with the permission to use the Network pursuant to that agreement for the period in question.

## **CONDITION C1 - CLASS MEETINGS**

### **I.1 *Annual Class Meetings***

#### **I.1.1 *Timing***

Members of a particular Class may, at any Class Meeting, fix the date, time or venue of the next succeeding Annual Class Meeting of that Class. If the members fail so to fix such date, time or venue, Railtrack shall do so having consulted with each member prior to convening that Annual Class Meeting as to its date, time and venue and having had due regard to its views.

#### **I.1.2 *Notices of meetings***

Railtrack shall, in respect of each Class (other than Railtrack), call an Annual Class Meeting by giving to all members of that Class not less than 42 days' notice:

- (a) specifying the date, venue and time of the meeting (which shall be those, if any, which have been fixed pursuant to Condition C1.1.1);
- (b) setting out the names and addresses of all members of the Class and the Bands within which they fall, as determined at the date of the notice; and
- (c) calling for nominations for the posts of Class Representatives of that Class, such nominations to be notified to Railtrack no later than 35 days prior to the meeting.

#### **I.1.3 *Notification of business of meeting***

Railtrack shall, in respect of an Annual Class Meeting called in accordance with Condition C1.1.2, notify to each Class Member at least 28 days before the date fixed for that meeting, the details of:

- (a) all nominations received by it for the posts of Class Representative of that Class specifying, if relevant, the Band to which each nomination relates; and

- (b) the business of the meeting, being:
  - (i) the appointment of Class Representatives; and
  - (ii) any matters notified to Railtrack by any member of that Class for discussion at that meeting.

## **1.2 *Extraordinary Class Meetings of Franchised Passenger Class and Non-Passenger Class***

### **1.2.1 *Notices of requisitioned meetings***

Railtrack shall, in respect of any Class (other than Railtrack and the Non-Franchised Passenger Class), within a period of 14 days following receipt of notice in writing from:

- (a) members of that Class (the identity of such members being determined as at the date of the notice) representing more than 10% in number of members of that Class;
- (b) members of a Band of that Class (the identity of such members being determined as at the date of the notice) representing more than 20% in number of members of that Band; or
- (c) a Class Representative of that Class

requisitioning an Extraordinary Class Meeting and specifying the matters to be discussed at that meeting, call an Extraordinary Class Meeting by giving not less than 28 days, and not more than 42 days, notice:

- (d) specifying the date, venue and time of the meeting (Railtrack having first consulted with each Class Member as to such date, venue and time);
- (e) specifying the matters notified to Railtrack by any member of that Class or Class Representative for discussion at that meeting; and
- (f) giving the names and addresses of the members of that Class.

### **1.2.2 *Waiver of notice periods***

The periods of notice referred to in Condition C1.2.1 may be waived either prospectively or retrospectively with the consent in writing of all members of the Class for which the Extraordinary Class Meeting has been called.

### **I.3    *Extraordinary Class Meetings of Non-Franchised Passenger Class***

#### **I.3.1    *Notices of requisitioned meetings***

Railtrack shall, in respect of the Non-Franchised Passenger Class, within the period of 14 days following receipt of notice in writing from:

- (a)    members of that Class (the identity of such members being determined as at the date of the notice) representing more than 10% in number of members of that Class; or
- (b)    the Class Representative appointed by that Class

requisitioning a Class Meeting, for the purpose of either:

- (i)    appointing a Class Representative of that Class to fill a casual vacancy or of removing the Class Representative and appointing a replacement; or
- (ii)   discussing such other matters as shall be specified in the notice

call a Class Meeting by giving notice of not less than 28 days, and not more than 42 days,

- (c)    specifying the date, venue and time of the meeting (Railtrack having first consulted with each Class Member as to such date, venue and time);
- (d)    specifying the business of the meeting being:
  - (i)    the proposed appointment of the Class Representative of that Class to fill a casual vacancy or the proposed removal of that Class Representative and the proposed appointment of a replacement; and
  - (ii)   any matters notified to Railtrack by any member of that Class or Class Representative for discussion at that meeting;
- (e)    in the case of the business specified in Condition C1.3.1(d)(i), calling for nominations for the post of Class Representative of that Class no later than 21 days prior to the meeting; and
- (f)    giving the names and addresses of the members of that Class.

#### **I.3.2    *Notification of nominations***

Railtrack shall, in respect of a Class Meeting called in accordance with Condition C1.3.1 for the purpose of the business specified in Condition C1.3.1(d)(i), on giving a further notice at least 14 days before the date fixed for that meeting, notify to each member details of all nominations received by it for the post of Class Representative of that Class.

### **I.3.3** *Waiver of notice periods*

The periods of notice referred to in Conditions C1.3.1 and C1.3.2 may be waived either prospectively or retrospectively with the consent in writing of all members of the Class for which the Class Meeting has been called.

## **I.4** *Band Meetings*

### **I.4.1** *Notices of requisitioned meetings*

Railtrack shall, in respect of any Band of any Class, within the period of 14 days following receipt of notice in writing from:

- (a) members of that Band (the identity of such members being determined as at the date of the notice) representing more than 20% in number of members of that Band; or
- (b) the Class Representative appointed by that Band

requisitioning a Band Meeting for the purpose either of appointing a Class Representative of that Band to fill a casual vacancy or of removing that Class Representative and appointing a replacement, call a Band Meeting by giving notice of not less than 28 days, and not more than 42 days:

- (c) specifying the date, venue and time of the meeting;
- (d) specifying the business of the meeting (being the proposed appointment of the Class Representative of that Band to fill a casual vacancy or the proposed removal of that Class Representative and the proposed appointment of a replacement);
- (e) calling for nominations for the post of Class Representative of that Band no later than 21 days prior to the meeting; and
- (f) giving the names and addresses of the members of that Band.

### **I.4.2** *Notification of nominations*

Railtrack shall, in respect of a Band Meeting called in accordance with Condition C1.4.1, on giving a further notice at least 14 days before the date fixed for that meeting, notify each member of the Band of details of all nominations received by it for the post of Class Representative of that Band.

### **I.4.3** *Waiver of notice periods*

The periods of notice referred to in Conditions C1.4.1 and C1.4.2 may be waived either prospectively or retrospectively with the consent in writing of all members of the relevant Band.



## **I.5    *Conduct of Class and Band Meetings***

### **I.5.1    *Business***

No Class Meeting shall take a vote on any matters other than the appointment or removal of a Class Representative.

### **I.5.2    *Quorum***

No business shall be transacted at any Class Meeting unless a quorum of members of that Class is present (whether in person or by proxy) at the Class Meeting. The quorum for any Class Meeting shall be one third in number of the members of that Class present (whether in person or by proxy).

### **I.5.3    *Adjournment without a quorum***

If, within half an hour from the time appointed for the beginning of a Class Meeting, a quorum is not present, that meeting shall be adjourned to the same day in the next week at the same time and place (or such other time and place as the chairman of the meeting may determine) and if, at the adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, the members of the Class present (whether in person or by proxy) shall constitute a quorum.

### **I.5.4    *Chairman***

Those members of the Class present at the Class Meeting shall elect the chairman of that meeting. The chairman shall have no casting vote.

### **I.5.5    *Proxies***

A Class Member, where it is entitled to attend and vote at a Class Meeting, shall be entitled to appoint another person (whether a member of that Class or not) as its proxy to attend, speak and vote in its place. The instrument appointing the proxy shall be in writing, executed by or on behalf of the Class Member and shall be available for inspection at the relevant meeting.

### **I.5.6    *Votes***

Each Class Member shall have one vote at any Class Meeting at which it is entitled to vote.

### **I.5.7    *Secretariat and minutes***

Railtrack shall attend each Class Meeting, take accurate minutes of each meeting and distribute such minutes to members of the relevant Class within the period of 14 days following that Class Meeting. Such minutes shall be discussed and, if thought fit, approved (with or without modification) at the next Class Meeting.

#### **1.5.8 Application**

The provisions of this Condition C1.5 shall apply mutatis mutandis to Bands and Band Meetings as they apply to Classes and Class Meetings.

#### **1.5.9 Affiliates**

Affiliates of one another (other than affiliates of the British Railways Board) within a single Band (and, if there is only one Band in a Class, within a single Class) shall be treated as the same person for the purpose of any election.

#### **1.6 Membership of a Class where eligible to be a member of more than one**

1.6.1 If any Train Operator shall be eligible to be a member of more than one Class, it shall be a member of the Class corresponding to the type of railway services in respect of which the greatest part of its Track Charges will be payable for the period in question.

1.6.2 Condition C1.6.1 shall not apply to the British Railways Board until 31 December 1995 or such later date as the Regulator shall approve after consultation with the Class Representative Committee and the Franchising Director.

#### **1.7 Election of Class/Band Representatives**

1.7.1 Nominations in accordance with Condition C1.1.2(c), C1.3.1(e) or C1.4.1(e) for each Class, or each Band of a Class, may be made only by members of that Class, or that Band, respectively.

1.7.2 Nominees for election as a representative of a Class or Band shall, at the time of the election, be employees or officers of a company that is a member of that Class or Band respectively.

1.7.3 A Class Member may vote only in the election for a representative of a Class, or of a Band, of which he is a member.

1.7.4 If no nominations are received in accordance with the timescales specified in Condition C1.1.2(c), C1.3.1(e) or C1.4.1(e), a written nomination signed by an officer or employee of a Class Member may be presented in writing to the chairman of the relevant Class Meeting or Band Meeting.

1.7.5 If no nominations are received in accordance with Condition C1.1.2(c), C1.3.1(e), C1.4.1(e) or C1.7.4, the Managing Director of the company which pays the highest annual Track Charges in the Class or the relevant Band shall be deemed to be elected.

1.7.6 If an elected representative ceases to be an employee of the Class Member which employed him at the time of his election, he may, providing he is an employee of an Industry Party, continue as representative.

## **CONDITION C2 - CLASS REPRESENTATIVE COMMITTEE**

### **2.1 *Composition of Committee***

The Class Representative Committee shall comprise two Class Representatives appointed by Railtrack, one Class Representative appointed by the members of the Non-Franchised Passenger Class and one Class Representative appointed by the members of each of the Bands of both the Franchised Passenger Class and the Non-Passenger Class.

### **2.2 *Elections of Class Representatives***

Class Representatives shall be elected by a majority in number of members of the relevant Class or Band (as the case may be) present (whether in person or by proxy) and voting at the relevant Class Meeting.

### **2.3 *Voting etc.***

Each Class Member shall:

- (a) in respect of the Class and (if relevant) Band of which it is a member, be entitled to participate in each election conducted pursuant to Condition C2.2; and
- (b) at each Annual Class Meeting, use its reasonable endeavours to procure that each Class and (if relevant) Band of which it is a member shall elect its Class Representative or Representatives for the Representation Period commencing on the date of that meeting.

### **2.4 *Duration of appointment***

A Class Representative shall, subject to earlier termination of office in accordance with Condition C2.5, be treated as having ceased to hold office (unless re-elected) with effect from the end of its Representation Period.

### **2.5 *Loss of office***

A Class Representative:

- (a) may be removed from office prior to expiry of his Representation Period and a replacement Class Representative elected in his place by a majority in number of members of the relevant Class or Band (as the case may be) present (whether in person or by proxy) and voting at the relevant meeting called for the express purpose of such removal and substitute appointment; and
- (b) shall be treated as having resigned from office if he dies or becomes of unsound mind.

## **2.6 Notification of elections**

Railtrack shall, as soon as reasonably practicable following the election of a new Class Representative, notify all Class Members of that election.

## **2.7 Undertakings**

Each Class Representative shall, as a condition of his being a Class Representative, be required to undertake, in favour of Railtrack, to comply with the provisions of this Part C insofar as they relate to the conduct of Class Representatives. Each Class Member shall, if a Class Representative is its employee or officer, use all reasonable endeavours to procure that that Class Representative abides by any such undertaking.

## **2.8 Obligation to remove Class Representatives**

Each Class Member shall, in conjunction with other members of the Class and (if relevant) Band of which it is a member, use all reasonable endeavours to procure the removal of any Class Representative who fails materially to comply with the undertaking entered into pursuant to Condition C2.7.

# **CONDITION C3 - COMMITTEE MEETINGS**

## **3.1 Committee Meetings**

### **3.1.1 Railtrack to call meetings**

Railtrack shall:

- (i) within 14 days following receipt of notice in writing from any Class Representative requisitioning a Committee Meeting and specifying the business to be carried out at that meeting; and
- (ii) in respect of any Proposal for Change, within the period of 7 days following the end of the Consultation Period relating to that proposal, as referred to in Condition C5.3

call a Committee Meeting by giving not less than 14 days, and not more than 28 days, notice specifying:

- (a) the date, venue and time of that meeting; and
- (b) the business of the meeting (which, in a case within paragraph (ii) above, shall include the relevant Proposal for Change).

### 3.1.2 *Waiver of notice periods*

The period of notice for calling a Committee Meeting notified in accordance with Condition C3.1.1 may be waived prospectively or retrospectively with the consent in writing of all Class Representatives.

## 3.2 ***Conduct of Class Representative Committee Meetings***

### 3.2.1 *Regulation of business*

Save as otherwise provided in this Part C, Class Representatives may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit provided that:

- (a) any resolution in respect of such business, adjournment or regulation shall only be approved if at least 5 Class Representatives present, and entitled to vote, at a Committee Meeting shall have voted in favour of that resolution; and
- (b) the failure of a Class Representative timeously to cast its vote or intimate its abstention in respect of a resolution shall be treated as a vote in favour of that resolution.

### 3.2.2 *Quorum*

No business shall be transacted at any Committee Meeting:

- (a) for so long as there is a vacancy in the post of Class Representative following an event of the kind described in Condition C2.5(b); and
- (b) unless a quorum of Class Representatives is present at that Committee Meeting.

The quorum shall be 5 Class Representatives present of which at least one shall be a Class Representative of the Franchised Passenger Class, at least one shall be a Class Representative of the Non-Passenger Class and at least one shall be a Class Representative of Railtrack. If any Class shall fail to be represented by its Class Representative at more than one successive Committee Meeting, the quorum for that meeting shall be adjusted so as to exclude the Class Representative of that Class.

### 3.2.3 *Adjournment without a quorum*

If, within half an hour from the time appointed for a Committee Meeting, a quorum is not present, the Committee Meeting shall be adjourned to the same day in the next week at the same time and place (or such other time and place as the chairman of the meeting may determine) and if, at the adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, the Class Representatives present shall constitute a quorum.

#### 3.2.4 *Chairman*

The Class Representatives present at the Committee Meeting next following the election of Class Representatives pursuant to Condition C2.2 shall elect the chairman of the Class Representative Committee who, unless he dies, resigns or is removed from office for any reason, shall hold office until the first Committee Meeting following the next election of Class Representatives next following the expiry of 12 months from his election as chairman. The chairman may be removed from office, and a vacancy in the office of chairman filled, upon a positive resolution of the Class Representative Committee passed by at least 6 Class Representatives. Any chairman elected to fill a vacancy arising from the termination of the term of office of an incumbent chairman for a reason other than the passage of time shall hold office until the first Committee Meeting following the next election of Class Representatives. The chairman shall have no casting vote.

#### 3.2.5 *Rights to appoint and remove Alternates*

Each Class Representative (other than an Alternate Representative) may:

- (a) appoint any other Class Representative or any other person who is willing to act to be an Alternate Representative; and
- (b) remove that Alternate Representative from office.

#### 3.2.6 *Notice of appointment or removal*

The appointment or removal of an Alternate Representative shall be by notice given to Railtrack as the secretary of the Class Representative Committee, not later than 2 days before a Committee Meeting and signed by the Class Representative making or revoking the appointment.

#### 3.2.7 *Rights of Alternates*

An Alternate Representative shall be entitled:

- (a) to receive notice of all Committee Meetings which his appointer is entitled to attend;
- (b) to attend and vote at any such Committee Meeting at which the Class Representative which appointed him is not personally present; and
- (c) generally to perform all the functions of the Class Representative which appointed him as a Class Representative in his absence.

Save as otherwise provided in Conditions C3.2.5-C3.2.8, an Alternate Representative shall be deemed for all purposes to be a Class Representative.

#### 3.2.8 *Loss of office of Alternates*

An Alternate Representative shall cease to be an Alternate Representative if the Class Representative which appointed him ceases to be a Class Representative.

#### 3.2.9 *Written decisions*

A unanimous decision in writing, executed by or on behalf of every Class Representative, shall be as valid and effective as if it had been passed at a Committee Meeting and may consist of several versions in the same form.

### **CONDITION C4 - ADMINISTRATION OF CHANGE PROCEDURE**

#### **4.1 *Railtrack as secretariat***

Railtrack shall be the secretariat of, and shall provide all administrative and other services reasonably necessary for, Committee Meetings, Class Meetings and Band Meetings, including in relation to the convening of meetings, the service of notices of meetings and preparing and circulating minutes of all meetings.

#### **4.2 *Notification of Class Representatives and constituents***

Railtrack shall provide a list of the names and addresses of the members of any Class or Band and the names and addresses of all Class Representatives promptly to any Class Member who requests it.

#### **4.3 *Information in relation to Proposals for Change***

Railtrack shall keep each sponsor of a Proposal for Change advised at reasonable and regular intervals of the progress being made by the Class Representative Committee in its consideration of that proposal.

#### **4.4 *Costs***

Railtrack shall bear all the costs of administering the procedures referred to in Condition C4.1 and supplying information in accordance with Condition C4.2 and providing advice in accordance with Condition C4.3.

## **CONDITION C5 - RECEIPT AND NOTIFICATION OF PROPOSALS FOR CHANGE**

### **5.1 *Entitlement to make Proposal for Change***

Any Class Member, Access Option Holder or the Regulator shall be entitled to make a Proposal for Change for consideration and, if thought fit, approval by the Class Representative Committee. Any such proposal shall be sent to Railtrack and shall:

- (a) be in writing;
- (b) contain reasonable particulars of the change proposed; and
- (c) be supported by an explanation in reasonable detail of the reasons for the proposed change.

### **5.2 *Notice of Proposal for Change***

Railtrack shall, within 7 days following receipt of a Proposal for Change from any Class Member, Access Option Holder or the Regulator or, if later, within 7 days following receipt of any clarification that Railtrack may reasonably request from the sponsor of that proposal:

- (a) give notice of that proposal to each Class Member, each Access Option Holder, the HSE, the Regulator and the Franchising Director; and
- (b) invite the submission to Railtrack of written representations in respect of that proposal within such period as is reasonable in all the circumstances (the "Consultation Period"), being a period of not less than 30 days from the date of notification under paragraph (a) above.

### **5.3 *Calling of meeting to consider Proposal for Change***

Railtrack shall, within the period of 7 days following the end of the Consultation Period:

- (a) call a Committee Meeting in accordance with Condition C3.1.1(ii); and
- (b) supply the Proposal for Change to each Class Representative together with:
  - (i) copies of all representations received pursuant to Condition C5.2(b); and
  - (ii) if the sponsor of the proposal consents, any modification of that proposal.



#### **5.4 *Material modification of Proposal for Change***

If at any time a Proposal for Change is (with the consent of its sponsor) modified in a material way, Railtrack shall treat the proposal as a new Proposal for Change.

#### **5.5 *Clarification***

The sponsor of a Proposal for Change shall promptly comply with all reasonable written requests of Railtrack for further clarification of the proposal.

#### **5.6 *Relationship with Condition C8***

This Condition C5 shall not require that any modification to which Condition C8 applies shall first have been proposed by the Regulator under this Condition C5.

### **CONDITION C6 - CONSIDERATION BY CLASS REPRESENTATIVE COMMITTEE**

#### **6.1 *Voting passmark***

The Class Representative Committee shall consider and, if thought fit, approve each Proposal for Change. A Proposal for Change shall have been approved only if:

- (a) 6 or more Class Representatives present, and entitled to vote, at a Committee Meeting shall have voted in favour of that proposal or that proposal shall have been approved in accordance with Condition C3.2.9, provided that the failure of a Class Representative timeously to cast its vote or intimate its abstention shall be treated as a vote in favour of the proposal; and
- (b) where the implementation of the Proposal for Change is likely to have a material and adverse effect on the interests of Railtrack or the members of the Franchised Passenger Class or a significant proportion of them, no relevant group shall have notified the Class Representative Committee of its objection to the proposal within 30 days after the vote referred to in paragraph (a) of this Condition C6.1. In this Condition C6, "relevant group" has the meaning ascribed to it in Condition C6.5.8.

#### **6.2 *Rights of attendance***

A sponsor of a Proposal for Change shall be entitled to attend any Committee Meeting at which the Proposal for Change is to be considered.

### **6.3 Attendance by Regulator**

The Regulator shall be entitled to attend or be represented at any Committee Meeting.

### **6.4 Further consultation**

Railtrack shall, as soon as reasonably practicable following a request by the Class Representative Committee to carry out further consultation in respect of any Proposal for Change, carry out that further consultation.

### **6.5 Appeal procedure**

6.5.1 If a relevant group shall have exercised its veto, any Class Representative shall be entitled to give a notice of appeal against it.

6.5.2 A notice of appeal shall:

- (a) be given to the Regulator, the relevant group and every other Class Representative not later than 35 days after the exercise of the veto;
- (b) contain the reasons why the Class Representative in question considers that the veto should not have effect; and
- (c) request the Regulator to determine the matter.

6.5.3 No notice of appeal may be given unless:

- (a) the Class Representative shall be satisfied that the relevant group is entitled to exercise its veto; or
- (b) the entitlement of the relevant group to exercise its veto shall have been established pursuant to the Access Dispute Resolution Rules,

and evidence satisfactory to the Regulator shall have been provided to him to that effect.

6.5.4 Without prejudice to Condition C6.5.5, the relevant group and the other Class Representatives shall use their respective reasonable endeavours to procure that the Regulator is furnished with sufficient information to dispose of the appeal as soon as reasonably practicable after the date of the notice of appeal.

6.5.5 In relation to any such appeal, the Regulator shall, in determining it, have the power:

- (a) to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other;
- (b) to make any interim order as to the conduct or the positions of the parties pending final determination of the appeal;
- (c) to determine whether the veto shall have effect; and
- (d) to make such orders as he shall think fit in relation to the proportions of the costs of the appeal which shall be borne by any of the parties.

6.5.6 Where any party shall have given a notice of appeal, the Regulator shall:

- (a) be entitled to decline to determine the appeal if, having consulted the parties concerned, he shall determine that the appeal should not proceed, including on the grounds that:
  - (i) the matter in question is not of sufficient importance to the industry;
  - (ii) the reference to him is frivolous or vexatious; or
  - (iii) the conduct of the party making the reference ought properly to preclude its being proceeded with; and
- (b) not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the appeal.

6.5.7 The determination of the Regulator shall be final and binding on all parties to Access Agreements.

6.5.8 In this Condition C6.5:

- |                          |  |
|--------------------------|--|
| “the exercise of a veto” | means the giving by a relevant group of a notice of objection as provided for in Condition C6.1(b), and cognate terms and expressions shall be construed accordingly;  |
| “notice of appeal”       | means a notice given pursuant to Condition C6.5.2; and   |
| “relevant group”         | means either of: <ul style="list-style-type: none"><li>(a) Railtrack; or</li><li>(b) any two of the Class Representatives of the Franchised Passenger Class.</li></ul> |

## **CONDITION C7 - CONSEQUENCES OF CLASS REPRESENTATIVE COMMITTEE RECOMMENDATION**

### **7.1 *Decision to Approve***

- 7.1.1 Railtrack shall, as soon as reasonably practicable following a decision by the Class Representative Committee to approve a Proposal for Change (or following a determination of the Regulator that a veto should not have effect following an appeal pursuant to Condition C6.5), submit the proposal to the Regulator, together with a written memorandum:
- (a) explaining the reasons for the proposed change;
  - (b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition C5.2(b) which shall have been neither accepted nor withdrawn); and
  - (c) stating the reasons for any dissent from that decision by any Class Representative.
- 7.1.2 Class Members shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Proposal for Change by the Regulator.
- 7.1.3 No Proposal for Change shall have effect unless the Regulator gives notice to Railtrack in writing that he approves the proposal.
- 7.1.4 Railtrack shall, if the Regulator gives his approval of the Proposal for Change, publish details of the approved change within the period of 14 days following that notification in accordance with Condition C9.

### **7.2 *Decision to Reject***

Railtrack shall, as soon as reasonably practicable following a decision of the Class Representative Committee to reject a Proposal for Change, notify the sponsor of that proposal of that decision.

## **CONDITION C8 - MODIFICATION BY THE REGULATOR**

- 8.1 These Access Conditions and the Dispute Resolution Rules shall have effect with the modifications specified in any notice given by the Regulator for the purposes of this Condition C8, provided that the Regulator shall be satisfied as to the need for the modification as provided in Condition C8.2, the procedural requirements of Condition C8.3 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition C8.4.

8.2 A notice given by the Regulator under Condition C8.1 shall have effect:

- (a) in the case of a notice issued on or before 30th January 1995, if he is satisfied on reasonable grounds that it is necessary or expedient that the modifications specified in the notice in question be made; and
- (b) in the case of a notice issued after 30th January 1995, if he is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:
  - (i) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and
  - (ii) the interests of any relevant person or persons would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.

8.3.1 A modification specified in a modification notice shall not have effect if its effect would, if made, be:

- (a) to prevent to a material extent the Train Operator or Access Option Holder exercising, or receiving the benefit of, a protected right; or
- (b) materially to increase any protected obligation of the Train Operator or Access Option Holder

provided that no person shall be entitled to challenge or otherwise call into question the effectiveness of any such modification unless he shall have given notice to the Regulator not more than 45 days after the date of the modification notice stating that the modification in question would, if made, have on him any such effect and such notice shall be accompanied by such relevant information in support of such statement as it shall be reasonable to expect him to be able to provide.

8.3.2 Any challenge or other procedure of the kind referred to in Condition C8.3.1 shall, unless the affected operator and the Regulator shall otherwise agree, be determined by an arbitrator in accordance with the Dispute Resolution Rules within 180 days of the date upon which the affected operator shall have given notice to the Regulator as provided for in that Condition.

8.3.3 In this Condition C8.3:

“affected operator”	means a person who shall have given to the Regulator a notice of the kind referred to in Condition C8.3.1;
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“modification notice”	means a notice given by the Regulator pursuant to Condition C8.1 after 30th January 1995;
“protected obligation”	means any obligation specified as such in a relevant agreement;
“protected right”	means any right specified as such in a relevant agreement; and
“relevant agreement”	means an Access Agreement to which the Train Operator or Access Option Holder (as the case may be) is a party and which Railtrack shall have been directed to enter into by the Regulator in the exercise of his power under section 17 or 18 of the Act.

8.4 The procedural requirements which require to have been followed for the purposes of Condition C8.1 are:

- (a) in his consideration of the matters referred to in Condition C8.2, the Regulator shall have consulted the Franchising Director, the HSE, the Secretary of State, Railtrack and the Class Representative Committee, together with all Class Members and any other persons which the Regulator shall consider ought properly to be consulted, in relation to the modification which he proposes to make;
- (b) in the consultations referred to in paragraph (a) above, the Regulator shall have made available to each person so consulted such drafts of the proposed modification as he shall consider are necessary so as properly to inform such persons of the detail of the proposed modification;
- (c) the Regulator shall have given each person so consulted the opportunity to make representations in relation to the proposed modification and shall have taken into account all such representations (other than those which are frivolous or trivial) in making his decision on the modification to be made;
- (d) the Regulator shall have notified each person consulted pursuant to paragraph (a) above as to his conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and his reasons for those conclusions; and
- (e) in effecting the notifications required by paragraph (d) above, the Regulator shall have treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation shall, by notice in writing to the Regulator or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.

- 8.5 A notice under Condition C8.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances have effect:
- (a) in the case of a notice given on or before 30th January 1995:-
    - (i) earlier than 60 days after the date upon which it shall have been given; or
    - (ii) later than 31st March 1995; and
  - (b) in respect of a notice given later than 30th January 1995, earlier than 180 days after the date upon which it shall have been given.
- 8.6 In Condition C8.2, “relevant person” means a Class Member, an Access Option Holder and any other person who, in the opinion of the Regulator, shall be likely to be a Class Member or Access Option Holder.
- 8.7 As soon as reasonably practicable after Railtrack shall have received any written material from the Regulator pursuant to Condition C8.4, Railtrack shall send a copy thereof to each Class Member.
- 8.8 A notice under Condition C8.1 shall not have effect in relation to any proposed modification of Conditions C8.1 to C8.7 (inclusive) or this Condition C8.8.

## **CONDITION C9 - NOTIFICATION OF CHANGE**

### **9.1 Notification and effective date**

#### **9.1.1 Notification to parties**

Railtrack shall notify any change made in accordance with this Part C other than Condition C8 to all Class Members and Access Option Holders as well as to the HSE, the Regulator and the Franchising Director.

#### **9.1.2 Arrangements for implementation of a Change**

The Committee may determine whether a change made in accordance with this Part C other than Condition C8 shall have effect on a single date or series of dates and Railtrack shall give notice of such determination to all relevant parties at the same time as it provides notification pursuant to Condition C9.1.1.

### 9.1.3 Effective date of Change

The Committee shall determine the applicable effective date or series of dates provided that, save as provided in Condition C8, such date or series of dates commences after the expiry of 21 days from the date of notification made pursuant to Condition C9.1.1

### 9.1.4 Approval of the Regulator

Any determination made pursuant to Condition C9.1.2 or C9.1.3 shall be subject to the approval of the Regulator.

## **9.2 Provision of revised texts**

Railtrack shall, as soon as reasonably practicable following issue of a notice under Condition C8.1 and following approval of a Proposal for Change by the Regulator, supply to all Class Members and all Access Option Holders a revised version of these Access Conditions or the Access Dispute Resolution Rules (whichever is appropriate) incorporating the change.

## **9.3 Maintenance of records**

Railtrack shall keep and retain, for a period of 6 years following receipt, records of all:

- (a) representations made in respect of any Proposal for Change; and
- (b) written material prepared by or on behalf of Railtrack and submitted to the Class Representative Committee.

## **9.4 Access to records**

The records referred to in Condition C9.3 shall be open for inspection by Class Members and Access Option Holders during reasonable office hours and without charge. Any person inspecting any such records shall be entitled upon request to be provided with copies of the whole or any part of them at a cost not exceeding £0.20 per sheet.



## Part D - Timetable Change

[applicable to the Summer 2003 Timetable and the Winter 2003 Timetable]

[For procedures applicable to the Summer 2004 Timetable and subsequent timetables refer to the Part D printed on pink paper.]

### Explanatory Note

- A. This Part D printed on white paper sets out the procedures by which the Working Timetable, Rules of the Route and Rules of the Plan may be changed in respect of the timetables that will operate until 23.59 on 22 May 2004. Although changes may be made to the Working Timetable at any time, significant changes in the Passenger Timetable may be made only three times a year, namely at the dates when the summer and the two winter Passenger Timetables come into effect.
- B. The development of a robust timetable demands dialogue between Railtrack and Bidders (i.e. Train Operators and others entitled to take part in the process), between the Bidders themselves, and also between Bidders and their customers or customers' representative bodies.
- C. Significant timetable change may require initial discussion between Bidders and Railtrack at least two years in advance; provision is therefore made for this in Condition D2.2 headed 'Major Changes to the Timetable'.
- D. Railtrack has the role of managing the Working Timetable. It is responsible for accommodating within the timetable the contractual service specification of each Train Operator. Such specification will normally allow a degree of flexibility to both Railtrack and the Train Operator, both in terms of the timing and other characteristics of the services. A passenger Train Operator's Train Slots are fully protected insofar as they are based on Firm Contractual Rights which are not inconsistent with the applicable Rules of the Route and/or applicable Rules of the Plan, provided that the Firm Contractual Rights have been declared no later than the Priority Date. Any such flexibility will operate within the confines of the applicable Rules of the Route and applicable Rules of the Plan which, like the service specification, will constrain Railtrack's ability to flex the timetable.
- E. Each year, at the start of the process for development of the summer timetable, Railtrack is obliged to review the applicable Rules of the Route and applicable Rules of the Plan and decide if any amendments should be made in respect of the period of the summer timetable and the ensuing two winter timetables. In addition each year, at the start of the process for development of each winter timetable, Railtrack is obliged to undertake a more limited review of the applicable Rules of the Route and the applicable Rules of the Plan. Bidders are consulted on each review, and there is a right to refer disputes to the Timetabling Committee in accordance with the procedure described in paragraph N below.

- F. Each year at or before the start of the detailed process for development of the summer timetable there will be preliminary dialogue between Railtrack and Bidders regarding the train services which the Bidder aspires to run in that summer timetable or [ensuing two winter timetables](#). Each Bidder will make a formal declaration of those Contractual Rights (as set out in the Bidder's Access Agreement with Railtrack) that the Bidder will wish to exercise in support of these services and give an indication of the Train Slots which will be sought. This may be expressed in the form of variation to the services currently running. The declaration must be made on or before the Priority Date.
- G. To facilitate the proper processes of dialogue and consultation Railtrack will convene an annual Timetabling Conference just before the Priority Date and invite all Bidders to attend to discuss openly the services which they seek to run in the following [summer and ensuing two winter timetables](#), and to discuss any concerns they may have regarding the preliminary Rules of the Route/Plan (as described in paragraph E above). Following the Timetabling Conference, which will include bi-lateral and multi-lateral dialogue between Industry Parties, Railtrack will lead a joint industry process with Bidders to prepare and issue a Draft Timetable, taking account of the consultation held before, during and after the Timetabling Conference. Railtrack will also issue its final proposals for the Rules of the Route/Plan. All Railtrack's decisions must take account of the Decision Criteria in Access Condition D4.
- H. On receipt of the Draft Timetable, Bidders will prepare their formal Bids for Train Slots; these may confirm, amend, or delete the slots shown in the Draft Timetable. It is not intended that the formal Bidding stage should be used to effect significant service changes; however, to ensure appropriate discipline, it should be noted that rights which have not been declared by the Priority Date are protected only in respect of service quantum. Railtrack in considering the relative claims of conflicting Bids will give precedence to those Bids supported by rights which have been declared by no later than the Priority Date, followed by Bids supported by other rights where the existing quantum of services is not exceeded, and thereafter will consider any other Bids.
- I. In respect of each Timetable Development Period, where Railtrack is required to undertake major engineering work on the Network, Railtrack is required to notify Bidders and Qualified Persons of the dates by which Railtrack will require Train Operators to submit revised bids to enable Railtrack to carry out relevant possessions for the work. Train Operators can thereby consider the options for amendments which become necessary to their services. A process for revising Bids is prescribed to enable a revised train plan to be prepared and published.
- J. Spot Bids may be made during the period of operation of a Working Timetable or during the preceding Supplemental Period. As a general rule, Spot Bids are given priority on a first in time basis; however, Railtrack may exercise its Flexing Right to resolve conflicts between Spot Bids.

- K. *If a Spot Bid is received by Railtrack in relation to a sporting or other public event which, if accepted, would conflict with any Train Slot in the Working Timetable, Railtrack must consult with the Train Operator entitled to the Train Slot with a view to obtaining its consent to Railtrack exercising its Flexing Right to accommodate the Spot Bid. A Train Operator may not unreasonably withhold or delay its consent to a request from Railtrack in such circumstances if the Spot Bid relates to a Train Slot for the carriage of passengers in numbers which are materially greater than are usually carried on trains on the route and on the days and times of day in question. If as a result of accommodating a Spot Bid Railtrack is obliged to make payment to a Train Operator whose Train Slot is flexed by Railtrack, the Train Operator whose Spot Bid was accommodated must reimburse Railtrack the amount of such payment.*
- L. *In its capacity as manager of the Working Timetable, Railtrack is required to make a number of decisions, including whether to accept Bids for new or different timetable slots, how to reconcile competing or conflicting Bids and how to exercise any right it may have to flex a particular Train Operator's Bids (to the extent that the Train Operator's service specification allows it). Railtrack must have due regard to specified Decision Criteria when making decisions regarding proposed changes to the Working Timetable and to any applicable Rules of the Route and applicable Rules of the Plan. These criteria are to be weighed and balanced by Railtrack in the light of the particular circumstances surrounding each decision. A new criterion will enable Railtrack to preserve paths for subsequent Spot Bids where there is reasonable expectation that these will be required and utilised.*
- M. *In the event of a major engineering, maintenance or renewal project requiring a possession or series of possessions of one or more sections of track extending over a period of more than one year or a period containing [a Summer Change Date and a Winter One Change Date](#), Railtrack is obliged to give notice to Train Operators affected by the major project and to consult, and if possible agree, with the relevant Train Operator the method for its implementation. Railtrack is obliged to have due regard to the Decision Criteria in deciding its proposed method of implementation and its decision is subject to appeal in accordance with the procedure referred to in paragraph N below.*
- N. *It is expected that the normal means of resolving timetable disputes between Railtrack and each Train Operator will be by negotiation and agreement. However, to deal with those cases where agreement cannot be reached, provision is made for Train Operators to appeal against any relevant Railtrack decision. An appeal is, in the first instance, made to the Timetabling Sub-Committee of the Access Dispute Resolution Committee (established under the Access Dispute Resolution Rules). If either Railtrack or the Train Operator is dissatisfied with the decision of that Committee, it may appeal to the Regulator. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.*
- O. *This Explanatory Note does not form part of the Access Conditions.*

## DEFINITIONS

In this Part D, unless the context otherwise requires and subject as provided below:

"Ancillary Movements"	means train movements which are not an express part of any Services but which are necessary or reasonably required for giving full effect to the train movements which are an express part of the Services and shall include any such train movement as is referred to in paragraph (c) of the definition of "Services" to the extent that it is not expressly provided for in the relevant Access Agreement;
"Bid"	means a bid made to Railtrack for one or more Train Slots;
"Bidder"	means each Train Operator, each Access Option Holder and each other person who has been allowed to participate in the procedure set out in this Part D pursuant to Condition D1.2;
"Bidding Cycle"	means, in respect of any Timetable Development Period, a period of 8 weeks comprising, in chronological order, a Bidding Period and a Decision Period;
"Bidding Information"	means the applicable Rules of the Route and the applicable Rules of the Plan and the Draft Timetable to be issued by Railtrack pursuant to Condition D3.1;
"Bidding Period"	means a period of 3 weeks commencing on the first day of a Bidding Cycle;
"Decision Criteria"	means those decision criteria set out in Condition D4;
"Decision Period"	means a period of 5 weeks commencing on the expiry of the last day of the Bidding Period;
"Development Commencement Date"	means the first day of a Timetable Development Period;
"Draft Timetable"	means the most recent draft of the Working Timetable, which Railtrack has drawn up in accordance with Condition D2.1;

"European Timetable Change Date"	means any of the dates upon which significant timetable changes for international trains may be made, being those dates specified by the European Passenger Timetable Conference;
"Firm Contractual Right"	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in the case of a Bidder, a right under its Access Agreement in respect of the quantum, timing or any other characteristic of a train movement; and</li> <li>(b) in the case of Railtrack, a right under the applicable Rules of the Plan or the applicable Rules of the Route</li> </ul> <p>which is not expressed to be subject to any contingency outside the control of the holder of the right, except, in a case within paragraph (a) above, the applicable Rules of the Plan or the applicable Rules of the Route;</p>
"Flexing Right"	<p>means a right, exercisable by Railtrack, either</p> <ul style="list-style-type: none"> <li>(a) pursuant to Condition D3.6.1, to vary a Bid in any way within and consistent with the Firm Contractual Rights (if any) of the Bidder; or</li> <li>(b) pursuant to Condition D3.6.2, to vary a Train Slot or a Bid as the case may be;</li> </ul>
"Initial Development Period"	means a period of up to 18 weeks commencing on the Development Commencement Date and ending on the day immediately prior to the first day of the Bidding Period;
"Last Appeal Period"	means, in respect of any Timetable Development Period, a period of 6 weeks commencing on the expiry of the Bidding Cycle;
"Major Project"	<p>means any engineering, maintenance or renewal project which requires a possession or series of possessions of one or more sections of track extending over:</p> <ul style="list-style-type: none"> <li>(a) a period of more than one year; or</li> <li>(b) a period which contains two or more Passenger Change Dates <u>but excluding, for the purpose of counting, any Winter Two Change Date;</u></li> </ul>

"Non-Compliant Bid"	means any Bid which either: (a) is not within or is inconsistent with the rights of the Bidder under an Access Agreement; or (b) conflicts with either of the applicable Rules of the Route or the applicable Rules of the Plan;
"Passenger Change Date"	means any of the dates upon which significant changes may be made to a Passenger Timetable, being those dates decided by Railtrack after consultation with each Bidder pursuant to Condition D1.4 and taking due cognisance of the dates specified by the European Passenger Timetable Conference;
"Passenger Timetable"	means any timetable of railway passenger services published or procured to be published to the public by Railtrack;
"Preliminary Rules of the Route/ Plan Proposal"	means a proposal made by Railtrack pursuant to Condition D2.4.2;
"Priority Date"	means the date, occurring not more than 4 weeks after the Development Commencement Date relating to a Timetable Development Period ending on a Summer Change Date, by which Bidders, in accordance with Condition D2.1.2, must notify their rights to Railtrack;
"Qualified Person"	means a person whose business comprises or includes the provision, to operators of trains, Access Option Holders and persons who intend to apply for a licence under section 8 of the Act, of services in relation to the acquisition of permission to use the Network;
"Revised Bid"	means any Spot Bid seeking to revise a previously accepted Bid, as submitted to Railtrack by a Train Operator in accordance with Condition D3.8.3;
"Revision Bid Date"	means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Railtrack in accordance with Condition D3.8.1 and occurring no less than 4 weeks and no more than 8 weeks prior, in each case, to the relevant Revision Period End Date;

"Revision Notification Date"	means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Railtrack in accordance with Condition D3.8.1 and occurring no less than 8 weeks and no more than 12 weeks prior, in each case, to the relevant Revision Period End Date;
"Revision Offer Date"	means, in respect of any Supplemental Timetable Revision Period, the date occurring 2 weeks prior to the relevant Revision Period End Date; or, when Christmas Day falls no more than 14 days prior to the relevant Revision Period End Date, the date occurring 3 weeks prior to the relevant Revision Period End Date;
"Revision Period End Date"	means, in respect of any Supplemental Timetable Revision Period, the date occurring 12 weeks prior to the commencement of the Timetable Week to which that period relates;
"Revision Response Date"	means, in respect of any Supplemental Timetable Revision Period, the date occurring one week after the relevant Revision Offer Date;
"Rules of the Route/Plan Proposal"	means the proposals made by Railtrack in respect of the applicable Rules of the Route or the applicable Rules of the Plan referred to in Condition D2.4.4;
"Short Notice Spot Bid"	means a Spot Bid for a Train Slot made to Railtrack by 1000 hours on day A which would, if the Spot Bid were accepted, be planned to operate between 1000 hours on day A and 0001 hours on day C, where day A is the first day, day B is the second day (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) and day C is the third day of any 3 consecutive days from (and including) the day on which the Spot Bid is made;
"Spot Bid"	means any Bid made during the period of operation of a Working Timetable to which that Bid relates or during the Supplemental Period immediately prior to that period;
"Summer Change Date"	means the first Passenger Change Date falling <a href="#">after the first day of April</a> in any calendar year;

"Supplemental Period"	means the period, of up to 24 weeks, commencing on the expiry of the Bidding Cycle and ending on the relevant Passenger Change Date;
"Supplemental Timetable Revision Period"	means, in respect of any Timetable Week, the period commencing on the relevant Revision Notification Date and ending on the relevant Revision Period End Date;
"Timetable Development Period"	means, in respect of any Passenger Change Date, the period of development of the Working Timetable to be implemented on that date, being a period of up to 50 weeks ending on that date and comprising, in chronological order: <ul style="list-style-type: none"> <li>(a) an Initial Development Period;</li> <li>(b) a Bidding Cycle; and</li> <li>(c) a Supplemental Period;</li> </ul>
"Timetable Week"	means, in respect of the period of operation of a Working Timetable, any week (or, in the case of the first and last such week of such period, part thereof) occurring during that period and commencing at 0001 hours on any Saturday and ending at 2400 hours on the next following Friday;
"Timetable Week Slot"	means, in respect of any Timetable Week, any Train Slot that is scheduled in the Working Timetable to leave its point of origin during that week;
"Timetabling Committee"	means the sub-committee of the Industry Committee referred to in paragraph A4.1(b) of the Access Dispute Resolution Rules;
"Train Slot"	means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement;
"User Representative"	means one of the Rail Users' Consultative Committees established under Section 2 of the Act, or, where appropriate, the London Regional Passengers' Committee;
<u>"Weekday Train Slot"</u>	<u>means any Train Slot which is scheduled to commence operation on any day other than a Saturday or Sunday;</u>



<u>"Weekend Train Slot"</u>	<u>means any Train Slot which is scheduled to commence operation on any Saturday or Sunday;</u>
"Winter Change Date"	means <u>a Winter One Change Date or a Winter Two Change Date, as the context may require;</u>
<u>"Winter One Change Date"</u>	<u>means the Passenger Change Date next following the Summer Change Date;</u>
"Winter Rules Revision"	<p>means, in respect of any Timetable Development Period ending on a Winter Change Date, any revision to the applicable Rules of the Route or the applicable Rules of the Plan that is either:</p> <ul style="list-style-type: none"> <li>a) not material in nature and makes no material adjustment to or correction of detail set out in the applicable Rules of the Route or applicable Rules of the Plan; or</li> <li>b) is material in nature but the need for which was not reasonably foreseeable when the applicable Rules of the Route or applicable Rules of the Plan were previously revised; <u>and</u></li> </ul>
<u>"Winter Two Change Date"</u>	<u>means the Passenger Change Date next following the Winter One Change Date.</u>

Note:

When Christmas Day or public holidays relating to Christmas Day or Boxing Day occur during any Timetable Development Period and/or in any of the following periods: Bidding Cycle; Bidding Period; Decision Period; Initial Development Period; or Supplemental Period, Railtrack shall extend the duration of the relevant period by one week and shall notify such extension to each Bidder at the same time as details of the dates of each of the cycles and periods comprised in the relevant Timetable Development Period are notified to Bidders pursuant to Condition D1.4.

## CONDITION D1 - GENERAL

### 1.1 *Establishment of systems*

Railtrack shall establish and manage the systems necessary to implement the procedures described in this Part D.

### 1.2 *Rights of potential Access Parties*

Any person who proposes in good faith to enter into an Access Agreement, or become the holder of an access option, shall be entitled to participate in the procedure set out in this Part D, provided that such person has first undertaken to Railtrack to be bound (as a Bidder) by the provisions of this Part D.

### 1.3 *Confidentiality*

Railtrack shall not, in relation to the operation of any part of the procedures set out in this Part D, be obliged to keep confidential

- (a) the identity of any Bidder; or
- (b) any information provided to Railtrack by a Bidder.

### 1.4 *Notification of relevant dates*

Railtrack shall, at least 4 weeks prior to the Development Commencement Date relating to a Summer Change Date and having consulted with each Bidder, give notice to each Bidder of the dates of each of the cycles and periods comprised in the Timetable Development Periods commencing on that Development Commencement Date and the next [two](#) following Development Commencement Dates, including all Bidding Periods, [Passenger Change Dates and the Priority Date](#).

### 1.5 *Working Timetable*

1.5.1 Railtrack shall draw up a timetable showing, so far as reasonably practicable, every train movement on the Network, including:

- (a) every service for the carriage of passengers by railway, every service for the carriage of goods by railway, every Ancillary Movement and every other Service;
- (b) the times of arrival and departure of trains at origin and destination, at every intermediate stopping point and at appropriate passing points; and
- (c) all relevant timing allowances,

as they shall have been amended pursuant to Part H and including goods train planning publications and documents detailing platforming arrangements.

- 1.5.2 Movements of trains operated by a Train Operator which are not made in the exercise of access rights shall not be entered in the Working Timetable. In this Condition D1.5.2, "access rights" means permission, under an Access Agreement, to use track for the purpose of or in connection with the operation of railway assets by a Train Operator.
- 1.5.3 Railtrack shall, as soon as possible after the expiry of the Last Appeal Period, give notice to each Bidder of the version of the Working Timetable which is to apply from the relevant Passenger Change Date.
- 1.5.4 Railtrack shall not be obliged to publish details of any Spot Bid which it accepts in any Passenger Timetable.

## **CONDITION D2 - PRE-BIDDING CONSULTATION PROCESS TO ESTABLISH THE DRAFT TIMETABLE**

### **2.1 *Process for preparation of the Draft Timetable***

#### **2.1.1 *Consultation***

- 2.1.1.0 Bidders should hold appropriate consultation with Passenger Transport Executives, User Representatives and other parties with rights of representation regarding proposals for development of services.
- 2.1.1.1 Railtrack shall consult with Bidders before the Priority Date to establish their aspirations for development of their services in the relevant Timetable Development Period.
- 2.1.1.2 Railtrack shall facilitate and co-ordinate dialogue with all Bidders in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections and complementary service patterns.
- 2.1.1.3 Railtrack shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to development of its services.

#### **2.1.2 *Declaration of rights to be exercised***

Bidders shall, on or before the Priority Date, notify Railtrack in respect of the Timetable Development Periods ending on the next following Summer Change Date and the [next two following](#) Winter Change Dates:

- (a) those Firm Contractual Rights that they intend to exercise;
- (b) those Firm Contractual Rights that they do not intend to exercise;

- (c) any other rights which they intend to exercise or wish to negotiate; and
- (i) in the case of paragraphs (a) and (c) above, shall give an indication of the Train Slots that will be bid for in exercising those rights; and
- (ii) in the case of paragraph (c) above, shall distinguish between
  - (A) Train Slots for which they would be seeking priority in the Draft Timetable in accordance with Condition D2.1.4(b); and
  - (B) other Train Slots.

#### 2.1.3 *Draft Timetable*

Railtrack after consultation with Bidders will compile a Draft Timetable which is in accordance with Condition D2.1.4 and which:

- (a) in Railtrack's opinion is capable of being brought into operation; and
- (b) takes account of the need to achieve optimal balance between the declared aspirations of each Bidder and the aspirations of Railtrack as expressed in the applicable Rules of the Route and the applicable Rules of the Plan.

#### 2.1.4 *Priorities in compiling the Draft Timetable*

Without prejudice to the operation of Condition D3.4 or D3.6, Railtrack shall, in determining the order of priority for inclusion of Train Slots in the Draft Timetable, accord priority:

- (a) first, to the satisfaction of any Firm Contractual Rights which
  - (i) are declared by the Bidder on or prior to the Priority Date in accordance with Condition D2.1.2(a) and which constitute Firm Contractual Rights on the intended dates of the operation of those Train Slots; or
  - (ii) Railtrack may have taking into account any changes to either or both of the applicable Rules of the Route and the applicable Rules of the Plan under Condition D2.4;
 each of paragraphs (i) and (ii) above having equal priority;
- (b) second, to the satisfaction of any rights or expectations of rights which:
  - (i) are declared by a Bidder on or prior to the Priority Date in accordance with Condition D2.1.2(c); and
  - (ii) correspond to Firm Contractual Rights held by that Bidder at the Priority Date under an Access Agreement in force on that date but which at the Priority Date are prevented from

constituting Firm Contractual Rights only because any or all of the intended dates of operation of those Train Slots fall after the expiry of the Access Agreement, or fall after the expiry of the Firm Contractual Rights from which those Train Slots are derived, and provided that Railtrack reasonably expects that an Access Agreement containing corresponding Firm Contractual Rights will be in force on the intended dates of operation of those Train Slots; and

- (c) thereafter, having due regard to the Decision Criteria, to the satisfaction of any other rights or expectations of rights which:
  - (i) a Bidder:
    - (A) may have under an Access Agreement which is in force at the Priority Date; or
    - (B) may seek pursuant to Condition D1.2 but which are not, at the Priority Date, under an Access Agreement which is in force on that date; or
  - (ii) Railtrack may have under either or both of the applicable Rules of the Route and the applicable Rules of the Plan and which do not fall within Condition D2.1.4(a)(ii);

each of paragraphs (i) and (ii) above having equal priority.

## **2.2 *Major changes to the timetable***

- (a) In order to facilitate effective development of the Draft Timetable where Railtrack considers that major timetable changes may be required, for example to accommodate growth in demand for railway services or to deal with Major Projects, Railtrack may decide to invoke a pre-bidding consultation process at an earlier stage than would otherwise be the case with a view to increasing the period for consultation and ensuring that the timetable changes are implemented in a co-ordinated fashion.
- (b) In such circumstances, Railtrack shall notify each Bidder in writing of all relevant information about any such major changes and of the Timetable Development Periods likely to be affected by such changes, and shall give notice to all Bidders of the date it proposes to commence the pre-bidding consultation process in respect of the affected Timetable Development Periods.
- (c) Any Train Operator wishing to propose significant alterations to its services or any Bidder wishing to introduce significant new services shall consult with Railtrack at the earliest opportunity to assist Railtrack in deciding whether or not to invoke an early start to a pre-bidding consultation process and, if so, in deciding when that process should begin.

## 2.3 *Major Projects*

### 2.3.1 *Notice of proposed Major Project*

Railtrack shall, if it wishes to implement a Major Project, give notice of its proposal to each Bidder that may be affected by the project together with such particulars of the proposed method of implementation of the project as are reasonably necessary to enable each such Bidder to evaluate the effect of the proposed project on its Services or the operation of its trains. In this Condition D2.3 the expression "method of implementation" means a statement containing a programme of possessions or other restrictions on the use of the track which would be required in order to carry out the proposed project in question.

### 2.3.2 *Consultation on proposed method of implementation*

Railtrack shall invite the submission of comments from each Bidder to which it has given notice under Condition D2.3.1 within such period as is reasonable in the circumstances having due regard to the likely effect of the proposed project on those Bidders and shall consult with them concerning the method of implementation for the proposed project.

### 2.3.3 *Notice of proposed method of implementation*

Subject to having complied with the foregoing provisions of this Condition D2.3, Railtrack may notify each Bidder to which it gave notice under Condition D2.3.1 of its proposed method of implementation for the proposed project, provided that:

- (a) in deciding such proposed method of implementation, Railtrack shall have had due regard to the Decision Criteria; and
- (b) it shall have taken into account any comments submitted to it pursuant to Condition D2.3.2.

### 2.3.4 *Right of appeal*

If any Bidder is dissatisfied as to:

- (a) any matter concerning the operation of the procedure in this Condition D2.3; or
- (b) the method of implementation of the proposed Major Project as notified by Railtrack pursuant to Condition D2.3.3 and, in particular, the application by Railtrack of the Decision Criteria

it may, at any time prior to the date 30 days after the date on which it was notified pursuant to Condition D2.3.3 of the proposed method of implementation, refer the matter to the Industry Committee for determination.

### 2.3.5 *Applicability of appeal procedure*

Any matter referred to the Industry Committee for determination under Condition D2.3.4 shall be treated as a matter referred to that Committee under Condition G6.1 and the provisions of Conditions G6.2 to G6.7 (inclusive) shall apply to it mutatis mutandis save that:

- (a) the reference in Condition G6.5.3(a)(ii) to "Network Change" shall be treated as a reference to "Major Project"; and
- (b) the provisions of Condition G6.5.3(b) shall be treated as a reference to the Regulator having power to specify any matter which Railtrack should have decided in proposing a method of implementation for the relevant Major Project pursuant to Condition D2.3.3.

### 2.3.6 *Relationship with Part G and Condition D2.4*

The provisions of this Condition D2.3 shall be without prejudice to:

- (a) the provisions of Part G, if the proposed Major Project, once completed, would constitute a Network Change within the meaning of that Part; and
- (b) the requirement to comply with Condition D2.4, to the extent that the implementation of the proposed Major Project in accordance with the method of implementation would require an amendment to the applicable Rules of the Route and/or the applicable Rules of the Plan.

## 2.4 ***Review of the Rules of Route/Rules of Plan***

### 2.4.1 *Review by Railtrack*

Railtrack shall, before the Development Commencement Date:

- (a) in respect of any Timetable Development Period ending on a Summer Change Date, review the applicable Rules of the Route and the applicable Rules of the Plan for that Timetable Development Period and the next [two following](#) Timetable Development Periods and decide whether any amendment is required to either or both sets of Rules including any amendment for the purposes of the implementation of any Network Change in accordance with Part G of these Access Conditions or Vehicle Change in accordance with Part F of these Access Conditions; and
- (b) in respect of any Timetable Development Period ending on a Winter Change Date, review the applicable Rules of the Route and the applicable Rules of the Plan and decide as to whether any Winter Rules Revisions should be made to either or both of them.

In conducting its review in accordance with this Condition D2.4.1 Railtrack shall consult with each Bidder which is likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan.

#### 2.4.2 Preliminary Rules of the Route/Plan Proposal

Railtrack shall, on or before each Development Commencement Date, serve a notice ("Preliminary Rules of the Route/Plan Proposal") on each Bidder including:

- (a) in the case of a Development Commencement Date relating to a Summer Change Date a notice of the changes (if any) to the applicable Rules of the Route and applicable Rules of the Plan for the Timetable Development Period ending on that Summer Change Date and the next [two following](#) Timetable Development Periods which, having due regard to the Decision Criteria, it proposes to include in the Rules of the Route/Plan Proposal and, if no changes are proposed, that fact;
- (b) in the case of a Development Commencement Date relating to a Winter Change Date a notice of the changes (if any) to the applicable Rules of the Route and applicable Rules of the Plan for that Timetable Development Period which shall be deemed to be a Winter Rules Revision and which, having due regard to the Decision Criteria, it proposes to include in the Rules of the Route/Plan Proposal and, if no changes are proposed, that fact;

and, in either case, its reasons.

[Without prejudice to the operation of any procedure agreed in accordance with Condition D2.4.8, in the case of a Development Commencement Date relating to a Winter Two Change Date, Railtrack shall not propose changes to the applicable Rules of the Route or applicable Rules of the Plan for that Timetable Development Period which would apply on any day other than a Saturday or Sunday.](#)

#### 2.4.3 Consultation with Bidders

Each Bidder shall:

- (a) consider the notice served on it by Railtrack in accordance with Condition D2.4.2 and discuss any concerns it may have in respect of the Preliminary Rules of the Route/Plan Proposal with Railtrack;
- (b) on or before the Priority Date give notice to Railtrack of any representations or objections it wishes to make in relation to the Preliminary Rules of the Route/Plan Proposal and any alternative proposals it may have for the applicable Rules of the Route or the applicable Rules of the Plan; and
- (c) in respect of any Winter Rules Revision give notice to Railtrack within 4 weeks after the Development Commencement Date relating to the relevant Winter Change Date of any representations or objections it wishes to make, and any alternative proposals it may have.



#### 2.4.4 *Rules of the Route/Plan Proposal*

- (a) Railtrack shall, following consideration of any representations, objections and alternative proposals made by affected Bidders in accordance with Condition D2.4.3, review the Preliminary Rules of the Route/Plan Proposal and, having due regard to the Decision Criteria, decide which amendments if any should be made to the applicable Rules of the Route and the applicable Rules of the Plan.
- (b) Railtrack shall, no later than eight weeks after the Development Commencement Date, notify each Bidder which is likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan of the amendments it has decided to make pursuant to Condition D2.4.4(a) or, where no amendments are proposed, that fact.

#### 2.4.5 *Optimisation of the Draft Timetable*

Notwithstanding the provisions of D2.4.3 and D2.4.4 Railtrack shall have the right having consulted with affected Bidders to make further modifications to the applicable Rules of the Route and the applicable Rules of the Plan subject to the application of the Decision Criteria to facilitate optimisation of the Draft Timetable; and Railtrack shall promptly notify the Bidders thus affected.

#### 2.4.6 *Referral to Timetabling Committee*

Following notification of Railtrack's decisions in accordance with Condition D2.4.4(b) or D2.4.5 a Bidder may refer any aspect of those decisions (including any decision of Railtrack not to make an amendment or any decision by Railtrack as to whether or not a revision is a Winter Rules Revision) for determination by the Timetabling Committee under Condition D5, provided that such referral is made within the period specified in Condition D5.1. No such reference shall be made in respect of any aspect of a Major Project which is within and consistent with its method of implementation established pursuant to Condition D2.3 and which has:

- (a) not been referred to the Industry Committee for determination prior to the date referred to in Condition D2.3.4;
- (b) been finally determined by either the Industry Committee or the Regulator pursuant to that Condition; or
- (c) been determined by the Industry Committee and is not the subject of an appeal to the Regulator pursuant to that Condition.

#### 2.4.7 *Implementation pending outcome of determination*

Notwithstanding the provisions of Condition D2.4.6, Railtrack shall be entitled to implement (in particular for the purposes of developing the Working Timetable to be implemented on the next succeeding Passenger Change Date) any aspect of the applicable Rules of the Route or the applicable Rules of the Plan which has been referred for determination pursuant to that Condition, pending the outcome of that determination.

#### 2.4.8 *Development of Rules of the Plan/Rules of the Route amendment procedure and accepted Bid revision procedure*

Railtrack shall consult with each Bidder:

- (a) which is likely to be affected by an amendment to the applicable Rules of the Plan or the applicable Rules of the Route with a view to agreeing a procedure whereby those rules may be amended other than with effect from a Passenger Change Date, as provided for in the foregoing provisions of this Condition D2.4; or
- (b) with a view to agreeing with all affected Bidders a procedure (to the extent necessary in the light of the provisions of Condition D3.8) whereby, and criteria in accordance with which, accepted Bids may be revised to permit Railtrack to take possessions for the purpose of carrying out work included in the applicable Rules of the Route.

If, after a reasonable period of consultation, either of such procedures shall not have been agreed, Railtrack shall decide upon the form of the relevant procedure and send a copy of it to each such Bidder.

#### 2.4.9 *Contents of amendment procedure*

Each of the procedures proposed by Railtrack pursuant to Condition D2.4.8:

- (a) shall provide that no amendment shall be made to the applicable Rules of the Plan or the applicable Rules of the Route or that no revision shall be made to an accepted Bid (as the case may be) unless:
  - (i) Railtrack shall have consulted, to the extent reasonably practicable, with each Bidder likely to be affected by the amendment or revision (as the case may be); and
  - (ii) due regard shall have been had to the Decision Criteria; and
- (b) shall be deemed to have been accepted by each such Bidder unless any such Bidder shall, within 7 days of the relevant procedure being sent to it, have referred any aspect of it to the Timetabling Committee for determination in accordance with Condition D5.

## CONDITION D3 - THE BID AND OFFER PROCESS

### 3.1 *Bidding Information*

3.1.1 Railtrack shall include in the Bidding Information relating to a Passenger Change Date:

- (a) the applicable Rules of the Route and the applicable Rules of the Plan; and
- (b) the relevant portion of the Draft Timetable which as a result of notifications made to Railtrack under Condition D2.1.2 and the operation of Conditions D2.1.3 and D2.1.4 shall show:
  - (i) in respect of a Summer Change Date, those Train Slots which Railtrack expects to include in the Working Timetable commencing on that Summer Change Date;
  - (ii) in respect of a Winter One Change Date,
    - A) those Weekday Train Slots which Railtrack expects to include in the Working Timetable commencing on that Winter One Change Date and those Weekday Train Slots which Railtrack expects to include in the Working Timetable commencing on the next following Winter Two Change Date; and
    - B) those Weekend Train Slots which Railtrack expects to include in the Working Timetable commencing on that Winter One Change Date and any identical Weekend Train Slots which Railtrack expects to include in the Working Timetable commencing on the next following Winter Two Change Date; and
  - (iii) in respect of a Winter Two Change Date, those Weekend Train Slots which Railtrack expects to include in the Working Timetable commencing on that Winter Two Change Date save that the Draft Timetable shall not show Weekend Train Slots which have been included in the Working Timetable commencing on the immediately preceding Winter One Change Date under paragraph (ii) above other than to the extent that changes to those Weekend Train Slots are necessary to avoid conflict with either of the applicable Rules of the Route or the applicable Rules of the Plan.

3.1.2 Railtrack shall, prior to the Bidding Period, provide the Bidding Information to:

- (a) each Bidder; and
- (b) each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of Railtrack in providing that information.

### 3.2 *Making of Bids*

- 3.2.1 Every Bidder shall have the right to make a Bid in accordance with this Part D to confirm, change, delete or add to the Train Slots shown, [in accordance with Condition D3.1.1](#), in the version of the Draft Timetable comprised within the Bidding Information.
- 3.2.2 A Bid other than a Spot Bid may be made at any time during a Bidding Period and a Spot Bid may be made at any time thereafter during the period of operation of the Working Timetable to which that Bid relates or during the Supplemental Period immediately prior to that period.
- 3.2.3 [Subject to the provisions of Condition D3.1.1\(b\)\(ii\)](#), all Bids made during a Bidding Period shall relate to the Working Timetable applicable as from the Passenger Change Date occurring at the end of the Timetable Development Period in which that Bidding Period is comprised.
- 3.2.4 Railtrack shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to a proposed Bid by that Bidder.
- 3.2.5 A Bidder may withdraw a Bid made by it during a Bidding Period at any time during that period.
- 3.2.6 A Bidder shall, whenever it makes a Non-Compliant Bid and at the same time that it makes that Bid, notify Railtrack that it is making a Non-Compliant Bid and give to Railtrack its reasons for doing so.

### 3.3 *Contents of a Bid*

A Bidder shall, in making a Bid, indicate, in respect of the Train Slots for which the Bid has been made, the extent of its requirements (if any) as to:

- (a) dates on which the Train Slots are intended to be used;
- (b) start and end points of the train movement;
- (c) intermediate calling points;
- (d) the times of arrival and departure from any point specified under paragraphs (b) and (c) above;
- (e) railway vehicles to be used;
- (f) train connections with other railway passenger services;
- (g) the route to be followed;
- (h) any Ancillary Movements; and
- (i) platforming at any points specified pursuant to paragraphs (b) and (c) above.

### 3.4 *Priorities in Considering Bids*

Without prejudice to the operation of Condition D3.6, Railtrack shall, in determining the order of priority for accepting Bids, apply the following procedure:

3.4.1 in relation to all Bids other than Spot Bids, by according priority:

- (a) first, to the satisfaction of any Firm Contractual Rights which:
  - (i) a Bidder may have, provided that
    - (A) the rights have been notified to Railtrack on or prior to the Priority Date in accordance with Condition D2.1.2(a); or
    - (B) the rights were exercised in the corresponding summer or winter timetable prior to the timetable that is being prepared but have not been notified to Railtrack on or prior to the Priority Date in accordance with Condition D2.1.2(a). In such case only those rights which relate to quantum shall have force; or
  - (ii) Railtrack may have taking into account any changes to either or both of the applicable Rules of the Route and the applicable Rules of the Plan under Condition D2.4;

each of paragraphs (i) and (ii) above having equal priority;

- (b) second, to the satisfaction of any rights or expectations of rights which fall within the description set out in Condition D2.1.4(b), and which have been notified to Railtrack on or prior to the Priority Date in accordance with Condition D2.1.2(c);
- (c) third, having due regard to the Decision Criteria, to the satisfaction of any other rights or expectations of rights which:
  - (i) a Bidder:
    - (A) may have under an Access Agreement which is in force at the time the Bid is received by Railtrack; or
    - (B) may seek pursuant to Condition D1.2 but which are not, at the time the Bid is received by Railtrack, under an Access Agreement which is in force at that time;

and in either case have been notified to Railtrack on or prior to the Priority Date in accordance with Condition D2.1.2(c); or

- (ii) Railtrack may have under either or both of the applicable Rules of the Route and the applicable Rules of the Plan and which do not fall within Condition D3.4.1(a)(ii)

each of paragraphs (i) and (ii) above having equal priority; and

- (d) thereafter, having due regard to the Decision Criteria, to the satisfaction of any other rights or expectations of rights which a Bidder:
  - (i) may have under an Access Agreement which is in force at the time the Bid is received by Railtrack; or
  - (ii) may seek pursuant to Condition D1.2 but which are not, at the time the Bid is received by Railtrack, under an Access Agreement which is in force at that time
 but which, in either case, have not been notified to Railtrack on or prior to the Priority Date in accordance with Condition D2.1.2(c).

A Bid which is made in respect of rights, or expectation of rights, falling within Condition D3.4.1(b), D3.4.1(c) or D3.4.1(d) above shall not, solely by reason of such rights or expectations of rights not falling within an Access Agreement at the relevant time, constitute a Non-Compliant Bid.

- 3.4.2 in relation to Spot Bids, by according priority, to the extent that the Spot Bid in question falls to be considered under Condition D3.8, as provided for in that Condition and, in all other cases, in the order in which they are received by Railtrack.

### **3.5 *Timing of acceptance, modification or rejection of Bids***

- 3.5.1 Without prejudice to Conditions D2.4 and D3.6, Railtrack shall in relation to any Bid:

- (a) if it is a Bid other than a Spot Bid, give notice to the Bidder of its acceptance, modification or rejection of that Bid by no later than the end of the Decision Period; or
- (b) if it is a Spot Bid, give notice (subject to Conditions D3.5.3, D3.5.4 and D3.8) to the Bidder of its acceptance, modification or rejection of it
  - (i) no later than 3 weeks after receipt of that Spot Bid, or
  - (ii) by 10.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on the day preceding day A which, if accepted, would be planned to operate on day C, or
  - (iii) by 15.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on day A which, if accepted, would be planned to operate on day C,

whichever of paragraphs (i), (ii) or (iii) is the earliest to occur, where day A, day B and day C are three consecutive days (excluding, in the case of day A, Saturdays and Sundays and, in the case of day B, Sundays) and

(iv) in respect of a Short Notice Spot Bid, as soon as practicable, provided that, in determining whether to accept, modify or reject a Spot Bid, Railtrack shall:

- (A) not accept such Bid if to do so would give rise to any conflict with any Train Slot in the Working Timetable to which the Bid relates or with the applicable Rules of the Route or applicable Rules of the Plan (as amended, if relevant, in accordance with Condition D2.4); and
- (B) otherwise have due regard to the Decision Criteria and, subject thereto and to the extent that the Spot Bid does not fall to be considered under Condition D3.8, give priority to that Spot Bid which is received first in time;

and any notice of rejection of a Bid shall include a concise explanation therefor.

3.5.2 Railtrack shall, where it fails to notify the Bidder in accordance with Condition D3.5.1(b), be deemed to have accepted the Bidder's Spot Bid.

3.5.3 If a Spot Bid for a Train Slot which is to be used for the carriage of passengers in connection with a sporting or other public event would, if accepted, conflict with any Train Slot in the Working Timetable, Railtrack shall:

- (a) consult with the Train Operator who is entitled to that Train Slot with a view to obtaining its consent to the exercise by Railtrack of its Flexing Right to accommodate the relevant Spot Bid; and
- (b) if that operator gives its consent, exercise such Flexing Right.

3.5.4 A Train Operator which is consulted by Railtrack pursuant to Condition D3.5.3 shall not unreasonably withhold or delay its consent to the exercise by Railtrack of its Flexing Right if the relevant Spot Bid is for a Train Slot to be used for the carriage of passengers in numbers which are materially greater than are usually carried on trains on the Route and on the days and times of day in question.

3.5.5 If, as a result of exercising its Flexing Right pursuant to Condition D3.5.3, Railtrack is required to make any payment to a Train Operator under that Train Operator's Access Agreement, the Train Operator whose Spot Bid was accommodated by the exercise of that Flexing Right shall reimburse to Railtrack the amount of that payment.

3.5.6 Railtrack shall accept and give effect to a Non-Compliant Bid only in accordance with directions issued or an approval given by the Regulator in the exercise of his powers under section 17, 18 or 22 of the Act.

### **3.6 *Flexing rights***

#### **3.6.1 Railtrack may:**

- (a) in relation to any Bid, other than a Spot Bid, exercise a Flexing Right at any time prior to the end of the Decision Period immediately following the end of the Bidding Period;
- (b) in relation to any Spot Bid exercise a Flexing Right at any time prior to the acceptance of that Spot Bid;

provided that

- (i) such right may be exercised in relation to the Passenger Timetable only during a Timetable Development Period except by agreement with the Bidder affected or as otherwise permitted by the applicable Rules of the Route or applicable Rules of the Plan;
- (ii) Railtrack shall have first consulted with each person materially affected by the exercise of such Flexing Right;
- (iii) Railtrack shall, in exercising that Flexing Right, have had due regard to the Decision Criteria; and
- (iv) Railtrack shall notify the Bidder of the exercise of its Flexing Right as soon as practicable thereafter.

#### **3.6.2 Railtrack shall exercise a Flexing Right at any time:**

- (a) in the circumstances referred to in Condition D3.5.3 or Condition D3.8.6; or
- (b) in order to give effect to a decision of the Timetabling Committee or the Regulator as provided for in Condition D5; or
- (c) if it is necessary to do so in order to comply with any directions issued or approval given by the Regulator in the exercise of his powers under section 17, 18 or 22 of the Act.

### **3.7 *Treatment of decision by Bidder***

#### **3.7.1 A Bidder shall:**

- (a) in respect of any Bid other than a Spot Bid, within 14 days following the date of receipt by it of notice of:
  - (i) the rejection of that Bid; or
  - (ii) the exercise of a Flexing Right by Railtracknotify Railtrack whether it accepts or disputes that decision of Railtrack;



(b) in respect of any Spot Bid, following notice given by Railtrack of the rejection of that Spot Bid, or the exercise of a Flexing Right by Railtrack notify Railtrack whether it accepts or disputes that decision of Railtrack:

- (i) no later than 7 days after receipt by the Bidder of that notice, or
- (ii) by 15.00 hours on day A in respect of any notice received by the Bidder by 10.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C, or
- (iii) by 17.00 hours on day A in respect of any notice received by the Bidder by 15.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C

whichever of paragraph (i), (ii) or (iii) is the earliest to occur, where day A, day B and day C are three consecutive days (excluding, in the case of day A, Saturdays and Sundays and, in the case of day B, Sundays) and

- (iv) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by the Bidder of that notice.

3.7.2 A Bidder shall, where it fails to notify Railtrack in accordance with Condition D3.7.1, be deemed to have accepted the decision of Railtrack and shall not, in respect of that decision, be entitled to make a reference to the Timetabling Committee or the Regulator pursuant to Condition D5.1 or D5.2.

3.7.3 Once a Bidder has accepted, or is deemed to have accepted, a decision of Railtrack under Condition D3.7.1 or D3.7.2 or Railtrack has accepted a Bidder's Bid in accordance with Condition D3.5, both the Bidder and Railtrack shall, subject to Condition D3.6.2 and Condition D3.7.5, be bound by that decision.

3.7.4 Upon acceptance or deemed acceptance of a Bid pursuant to Condition D3.7.3 or a final determination pursuant to Condition D5, Railtrack shall enter the Train Slots in question in the Working Timetable.

3.7.5 An accepted Bid may be varied by Railtrack:

- (a) in accordance with the procedures provided for in Condition D2.4.8(b), [D3.1.1\(b\)\(iii\)](#) and D3.8;
- (b) by agreement between Railtrack and the Bidder (provided that every other affected party has also agreed in writing); or
- (c) in order to give effect to a decision of the Timetabling Committee or the Regulator as provided for in Condition D5.

### 3.8 *Supplemental Timetable Revision Process*

- 3.8.1 Railtrack shall, in respect of any Timetable Development Period and at least 26 weeks prior to the Passenger Change Date to which this period relates (and having previously consulted with each affected Bidder), provide to all those persons referred to in Condition D3.1.2, its specific proposals as to the Revision Notification Dates and Revision Bid Dates applicable to the period of operation of the Working Timetable commencing on that Passenger Change Date.
- 3.8.2 Railtrack shall, where it wishes to amend any Timetable Week Slot that is the subject of an accepted Bid in order to enable it to take possessions for the purpose of carrying out work included in the Rules of the Route applicable to that Timetable Week Slot, notify, prior to the relevant Revision Notification Date, the relevant Bidder of the requirement to amend the Timetable Week Slot in question.
- 3.8.3 The Train Operator shall, following receipt of notification from Railtrack under Condition D3.8.2 in respect of a particular Timetable Week Slot, submit:
- (a) a Revised Bid in respect of that Timetable Week Slot; and
  - (b) a Revised Bid in respect of any other Timetable Week Slot, if any, which is materially affected by the revision of the Timetable Week Slot to which the notification under Condition D3.8.2 relates;
- in each case following the applicable Revision Notification Date and prior to the applicable Revision Bid Date.
- 3.8.4 Railtrack shall, in respect of any Revised Bid submitted to it by the Train Operator under Condition D3.8.3 or in respect of any other Spot Bid submitted to it by the Train Operator, in each case, in respect of a relevant Timetable Week which has been submitted to Railtrack prior to the Revised Bid Date, give notice to the Train Operator of its acceptance, modification or rejection of that Revised Bid or other Spot Bid (as the case may be) by no later than the the Revision Offer Date.
- 3.8.5 Railtrack shall, where it is in receipt of a Revised Bid submitted to it in accordance with the provisions of this Condition D3.8, in determining whether to accept, modify or reject a Revised Bid which it considers to have been properly submitted to it in accordance with Condition D3.8.3:
- (a) not accept such Revised Bid if to do so would give rise to any conflict with any Train Slot in the Working Timetable to which the Revised Bid relates or with the applicable Rules of the Route or applicable Rules of the Plan (as amended, if relevant, in accordance with Condition D2.4); and

(b) otherwise have due regard to the Decision Criteria

and any notice of modification or rejection of a Revised Bid shall include a concise explanation therefor.

- 3.8.6 Railtrack shall be entitled to exercise its Flexing Right to amend any Timetable Week Slot in relation to which no Revised Bid has been submitted to Railtrack by the Train Operator in accordance with the provisions of this Condition D3.8 in order to enable Railtrack to take possessions for the purpose of carrying out work included in the Rules of the Route applicable to that Timetable Week Slot and the Train Operator shall not, in respect of that decision, be entitled to make a reference to the Timetabling Committee or the Regulator pursuant to Condition D5.1 or D5.2.
- 3.8.7 The Train Operator shall, following the date of receipt by it of notice of the modification or rejection by Railtrack of any Revised Bid made by it, notify Railtrack whether it accepts or disputes that decision of Railtrack, in each case prior to the relevant Revision Response Date, and the provisions of Conditions D3.7.2 to D3.7.4 (inclusive) shall apply, mutatis mutandis.
- 3.8.8 Where, in respect of any Timetable Week or any day therein, Railtrack receives any Spot Bid at least 8 weeks prior to the commencement of the relevant Timetable Week, Railtrack shall not be obliged to notify to the Train Operator its decision as to whether that Spot Bid is accepted, modified or rejected until the date falling 5 weeks prior to the commencement of the relevant Timetable Week.
- 3.8.9 The Train Operator shall, following the date of receipt by it of notice of the modification or rejection of any Spot Bid referred to in Condition D3.8.8, notify Railtrack whether it accepts or disputes that decision of Railtrack no later than 7 days following the date of that decision and the provisions of Conditions D3.7.2 to D3.7.4 (inclusive) shall apply, mutatis mutandis.
- 3.8.10 Railtrack shall provide details of the revisions to the Working Timetable that will be operative in the relevant Timetable Week to all persons referred to in Condition D3.1.2 at least 3 weeks prior to the commencement of that Timetable Week.

## CONDITION D4 - DECISION CRITERIA

The Decision Criteria consist of the necessity or desirability of the following (none of which necessarily has priority over any other):

- (a) sharing the capacity, and securing the development, of the Network for the carriage of passengers and goods in the most efficient and economical manner in the interests of all users of railway services having regard, in particular, to safety, the effect on the environment of the provision of railway services and the proper maintenance, improvement and enlargement of the Network;
- (b) enabling a Bidder to comply with any contract to which it is party (including any contracts with their customers and, in the case of a Bidder who is a franchisee or franchise operator, including the franchise agreement to which it is a party), in each case to the extent that Railtrack is aware or has been informed of such contracts;
- (c) maintaining and improving the levels of service reliability;
- (d) maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (e) maintaining and improving connections between railway passenger services;
- (f) avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria;
- (g) ensuring that, where the demand of passengers to travel between two points is evenly spread over a given period, the overall pattern of rail services should be similarly spread over that period;
- (h) ensuring that where practicable appropriate provision is made for reservation of capacity to meet the needs of Bidders whose businesses require short term flexibility where there is a reasonable likelihood that this capacity will be utilised during the currency of the timetable in question, or where Train Slots may require amendment following a European Timetable Change Date;
- (i) enabling operators of trains to utilise their railway assets efficiently and avoiding having to increase the numbers of railway assets which the operators require to maintain their service patterns;
- (j) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;
- (k) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services; and
- (l) taking into account the commercial interests of Railtrack and existing and potential operators of trains in a manner compatible with the foregoing.

In its consideration of paragraph (d) of this Condition D4, Railtrack shall not be entitled to determine that its possessions of any part of the Network shall be as contemplated by any relevant maintenance contract by reason only of the terms and conditions of that contract. In this paragraph, "relevant maintenance contract" is a contract which Railtrack shall have entered into, or shall intend to enter into, with any person for the maintenance, renewal or the carrying out of any other work on or in relation to the Network.

## CONDITION D5 -TIMETABLE APPEAL PROCEDURE

### 5.1 *Right of appeal to the Timetabling Committee or Industry Committee*

#### 5.1.1 *Grounds for making an appeal*

Without prejudice to Conditions D3.7.2 and D3.7.3, if any Bidder is dissatisfied with any decision of Railtrack made pursuant to Condition D1.4, D2 or D3, other than in the circumstances prescribed in Condition D2.3.4, including:

- (a) the application by Railtrack of the Decision Criteria;
- (b) the acceptance or rejection by Railtrack of any Bid;
- (c) the exercise by Railtrack of a Flexing Right; and
- (d) any decision of Railtrack which may be referred to the Timetabling Committee pursuant to Condition D2.4.6 or D2.4.9

it may refer the matter to the Timetabling Committee for determination.

#### 5.1.2 *Timescales for making an appeal*

- (a) A reference to the Timetabling Committee under Condition D5.1.1 shall, save as shown in paragraphs (b) and (c) below, be made within 7 days of receipt of the relevant decision from Railtrack. If Christmas Day occurs within such period of 7 days then the period shall be lengthened to 14 days.
- (b) A reference to the Timetabling Committee in respect of a decision by Railtrack in response to a Bid, other than a Spot Bid, submitted during the Bidding Period shall be made within 14 days of receipt of the relevant decision.
- (c) A reference to the Industry Committee in accordance with Condition D2.3.4 shall be made within the timescale prescribed in Condition D2.3.4.

### 5.2 *Right of appeal to the Regulator*

If Railtrack or any Bidder is dissatisfied with any decision of the Timetabling Committee in relation to any matter referred to it under Condition D5.1, that person may, within 7 days of receipt of the Timetabling Committee's decision and reasons (pursuant to paragraph A5.11.6 of the Access Dispute Resolution Rules), refer the matter to the Regulator for determination.

If Christmas Day occurs within such period of 7 days then the period shall be lengthened to 14 days.

### **5.3 *Information to be sent in relation to the appeal***

Without prejudice to Condition D5.5, where Railtrack or a Bidder refers a matter to the Timetabling Committee or the Regulator pursuant to Condition D5.1 or D5.2, the person making the reference shall:

- 5.3.1 include with it a statement in reasonable detail as to the matter in dispute and his reasons for making the reference; and
- 5.3.2 at the same time, send a copy of the reference and the statement referred to in Condition D5.3.1 to the other party or parties to the dispute.

### **5.4 *Obligation to provide evidence***

Without prejudice to Condition D5.5, the Access Parties shall:

- (a) in the case of a reference to the Timetabling Committee pursuant to Condition D5.1 as soon as reasonably practicable after the relevant date of reference, and in any event no later than the last day of the Last Appeal Period, use their respective reasonable endeavours to procure that the Timetabling Committee is furnished with sufficient evidence so as properly to consider any matters referred to it under Condition D5.1; and
- (b) in the case of a reference to the Regulator pursuant to Condition D5.2 as soon as reasonably practicable after the relevant date of reference use their respective reasonable endeavours to procure that the Regulator is furnished with sufficient evidence so as properly to consider any matters referred to him under Condition D5.2.

### **5.5 *Power of appeal bodies***

In relation to a reference to it or him made pursuant to Condition D5.1 or D5.2, the Timetabling Committee or the Regulator (as the case may be) (each an "appeal body") shall, in determining the matter in question, have the power:

- 5.5.1 to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other; except to the extent specified in subparagraphs (a) and (b) of paragraph A5.3.5 of the Access Dispute Resolution Rules, directions given by the Timetabling Committee pursuant to this Condition D5.5.1 shall not be inconsistent with paragraphs A3.6.2, A5.1, A5.2 or A5.4 to A5.11 inclusive of those Rules;
- 5.5.2 in the case of the Regulator, to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by the Regulator;

5.5.3 in determining the matter in question:

- (a) in the case of either appeal body:
  - (i) to direct Railtrack to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions"); or
  - (ii) to direct the parties to accept any submissions made by Railtrack as to any Train Slots; and
- (b) in the case of the Regulator, to specify the Train Slots and other matters which Railtrack should have determined in its decision made pursuant to Condition D3,

any such directions under paragraph (a) or (b) being, in the case of the Timetabling Committee, only by final determination, but in the case of the Regulator, either by interim order or final determination;

5.5.4 having given general directions, on the application of Railtrack within 7 days (or 14 days if Christmas Day falls within such period of 7 days) of the determination of the matter in question (or such longer period as the appeal body shall allow), to make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions; and

5.5.5 to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the relevant appeal body shall determine) which shall be borne by either or both of the parties.

## **5.6 *Obligation to comply with determination of appeal***

The Access Parties shall, subject to and pending any reference to the Regulator, comply with any determination of the Timetabling Committee in relation to any dispute referred to it under this Condition D5, and shall comply with any interim order or final determination of the Regulator in relation to any such dispute referred to it.

## **5.7 *Effective date of Regulator's decision***

If, in relation to any particular dispute, any interim order or final determination of the Regulator is made during any period of operation of the Working Timetable to which the dispute relates, the Regulator may, if he is of the opinion that in the circumstances of the case the balance of material convenience to all affected persons (taking into account any material prejudice that may thereby result) favours such a course, stipulate that such order or determination shall take effect at a specified time during such period of operation.

## **5.8 *Additional powers and immunities of the Regulator***

Where any Access Party shall have made a reference to the Regulator under Condition D5.2, the Regulator shall:

- 5.8.1 be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the Timetabling Committee, he shall determine that the reference should not proceed, including on the grounds that:
  - (a) the matter in question is not of sufficient importance to the industry;
  - (b) the reference to him is frivolous or vexatious; or
  - (c) the conduct of the party making the reference ought properly to preclude its being proceeded with; and
- 5.8.2 not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.

## **5.9 *Liability of Railtrack***

Railtrack shall not be liable for the consequences of any decision made by it which is implemented in a Working Timetable where, as a result of a reference under this Condition D5 in respect of that decision, that decision is subsequently overturned unless that decision is unreasonable or has been made in bad faith, in which case the making of that decision shall be deemed to have been a breach of Railtrack's obligations under this Part D.



## Part D - Timetable Change

[Applicable to preparation of the timetable commencing on 23 May 2004 and of subsequent timetables]

### Explanatory Note

[A Proposal for Change to amend the term "Railtrack" throughout these Access Conditions will shortly be the subject of consultation; in the meantime the term "Railtrack" will continue to be used including, for consistency, in these Explanatory Notes]

- A. *Part D sets out the procedures by which the Working Timetable, Rules of the Route and Rules of the Plan may be changed. Although changes may be made to the Working Timetable at any time, significant changes in the Passenger Timetable may be made only twice a year, namely at the dates referred to as the Principal Change Date (in December) and the Subsidiary Change Date (in June).*
- B. *The development of a robust timetable demands dialogue between Railtrack and Bidders (i.e. Train Operators and others entitled to take part in the process), between the Bidders themselves, and also between Bidders and their customers or customers' representative bodies.*
- C. *Significant timetable change may require initial discussion between Bidders and Railtrack at least two years in advance; provision is therefore made for this in Condition D1.5 headed 'Major Changes to the Timetable'.*
- D. *Railtrack has the role of managing the Working Timetable. It is responsible for accommodating within the timetable the contractual service specification of each Train Operator. Such specification will normally allow a degree of flexibility to both Railtrack and the Train Operator, both in terms of the timing and other characteristics of the services. A Train Operator's Train Slots are protected insofar as they are based on Firm Rights which are not inconsistent with the applicable Rules of the Route and/or applicable Rules of the Plan, provided that the Firm Rights have been asserted no later than the Priority Date. Any such flexibility will operate within the confines of the applicable Rules of the Route and applicable Rules of the Plan which, like the service specification, will constrain Railtrack's ability to flex the timetable.*
- E. *Each year, at the start of the timetable development process, Railtrack is obliged to review the applicable Rules of the Route and applicable Rules of the Plan and decide if any amendments should be made in respect of the period of the annual timetable commencing on the next Principal Change Date. In addition each year, at the start of the process for development of the timetable changes applying from the Subsidiary Change Date, Railtrack is obliged to undertake a more limited review of the applicable Rules of the Route and the applicable Rules of the Plan. Bidders are consulted on each review, and there is a right to refer disputes to the Timetabling Committee in accordance with the procedure described in paragraph N below.*

- F. Each year at or before the start of the timetable development process there will be preliminary dialogue between Railtrack and Bidders regarding the train services which the Bidder aspires to run in that timetable year. Each Bidder will notify Railtrack of those contractual rights (as set out in the Bidder's Access Agreement with Railtrack) that the Bidder will wish to exercise in support of these services and give an indication of the Train Slots which will be sought. This may be expressed in the form of variation to the services currently running. The notification must be made on or before the Priority Date.
- G. To facilitate the proper processes of dialogue and consultation Railtrack will convene an annual Timetabling Conference just before the Priority Date and invite all Bidders to attend to discuss openly the services which they seek to run in the following timetable year. Following the Timetabling Conference, which will include bi-lateral and multi-lateral dialogue between Industry Parties, Railtrack will lead a joint industry process with Bidders to prepare and issue a Draft Timetable, taking account of the consultation held before, during and after the Timetabling Conference. Railtrack's decisions must take account of the Decision Criteria, where applicable, in Access Condition D6.
- H. Following issue of the Draft Timetable, Railtrack will continue to work with Bidders to further refine the timetable plan to correct any errors and omissions. It is not intended that significant service changes should be introduced at this stage but changes may be introduced to the extent that it is reasonably practicable to do so in the available time. Railtrack will make a formal offer of its proposed First Working Timetable and Bidders will have a right of appeal against Railtrack's decisions reflected in that Timetable.
- I. In respect of each Timetable Development Period, where Railtrack is required to undertake major engineering work on the Network, Railtrack is required to notify Bidders and Qualified Persons of the dates by which Railtrack will require Train Operators to submit Revised Bids to enable Railtrack to carry out relevant possessions for the work. Train Operators can thereby consider the options for amendments which become necessary to their services.
- J. Spot Bids may be made during the period of operation of a Working Timetable or during the preceding Supplemental Period. As a general rule, Spot Bids are given priority on a first in time basis; however, Railtrack may exercise its Flexing Right to resolve conflicts between Spot Bids.
- K. If a Spot Bid is received by Railtrack in relation to a sporting or other public event which, if accepted, would conflict with any Train Slot in the Working Timetable, Railtrack must consult with the Train Operator entitled to the Train Slot with a view to obtaining its consent to Railtrack exercising its Flexing Right to accommodate the Spot Bid. A Train Operator may not unreasonably withhold or delay its consent to a request from Railtrack in such circumstances if the Spot Bid relates to a Train Slot for the carriage of passengers in numbers which are materially greater than are usually carried on trains on the route and on the days and times of day in question. If as a result of accommodating a Spot Bid Railtrack is obliged to make payment to a Train Operator whose Train Slot is flexed by Railtrack, the Train Operator whose Spot Bid was accommodated must reimburse Railtrack the amount of such payment.

- L. In its capacity as manager of the Working Timetable, Railtrack is required to make a number of decisions, including whether to accept Bids for new or different timetable slots, how to reconcile competing or conflicting Bids and how to exercise any right it may have to flex a particular Train Operator's Bids (to the extent that the Train Operator's service specification allows it). Railtrack must have due regard to specified Decision Criteria when making decisions regarding proposed changes to the Working Timetable and to any applicable Rules of the Route and applicable Rules of the Plan. These criteria are to be weighed and balanced by Railtrack in the light of the particular circumstances surrounding each decision. There is a criterion that will enable Railtrack to preserve paths for subsequent Spot Bids where there is reasonable expectation that these will be required and utilised.
- M. In the event of a major engineering, maintenance or renewal project requiring a possession or series of possessions of one or more sections of track extending over a period of more than one year or a period containing a Principal Change Date and a Subsidiary Change Date, Railtrack is obliged to give notice to Train Operators affected by the major project and to consult, and if possible agree, with the relevant Train Operator the method for its implementation. Railtrack is obliged to have due regard to the Decision Criteria in deciding its proposed method of implementation and its decision is subject to appeal in accordance with the procedure referred to in paragraph N below.
- N. It is expected that the normal means of resolving timetable disputes between Railtrack and each Bidder will be by negotiation and agreement. However, to deal with those cases where agreement cannot be reached, provision is made for Bidders to appeal against any relevant Railtrack decision. An appeal is, in the first instance, made to the Timetabling Sub-Committee of the Access Dispute Resolution Committee (established under the Access Dispute Resolution Rules). If either Railtrack or the Bidder is dissatisfied with the decision of that Committee, it may appeal to the Regulator. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.
- O. Changes to the text are indicated where practicable by underlining, and are highlighted by a vertical line at the side of the page. This practice is also used where possible to indicate sections that have been renumbered.

[Pages to be supplied shortly:

A more comprehensive guide in chart form may be found on the following pages in Annex 1: this shows from where text has been derived and to where it has been relocated. More detailed clarification may be obtained upon request from the Secretary of the Class Representative Committee. (tel: 0207 922 9037)

Also on the following pages in Annex 2 is a flow chart of procedures.]

- P. This Explanatory Note does not form part of the Access Conditions.

## DEFINITIONS

In this Part D, unless the context otherwise requires and subject as provided below:

"Ancillary Movements"	means train movements which are not an express part of any Services but which are necessary or reasonably required for giving full effect to the train movements which are an express part of the Services and shall include any such train movement as is referred to in paragraph (c) of the definition of "Services" to the extent that it is not expressly provided for in the relevant Access Agreement;
<u>"Appeal Period"</u>	means a period, <u>to be notified by Railtrack in accordance with Condition D1.4, normally</u> of 6 weeks commencing on the <u>first day following the end</u> of the <u>Finalisation Period and forming part of the Supplemental Period;</u>
"Bid"	means a bid made to Railtrack for one or more Train Slots <u>comprising, as the case may be, the notifications (if any) made in accordance with Conditions D3.2.1, D3.2.4 and D3.2.6, any Spot Bid or any Revised Bid;</u>
"Bidder"	means each Train Operator, each Access Option Holder and each other person who has been allowed to participate in the procedure set out in this Part D pursuant to Condition D1.2;
<u>"Capacity Request Deadline"</u>	<u>means the last day on which a Bidder may propose changes to the content of the Draft Timetable and which shall be no more than 4 weeks before the end of the Drafting Period;</u>
"Decision Criteria"	means those decision criteria set out in Condition D <u>6</u> ;
"Development Commencement Date"	means the first day of a Timetable Development Period;
"Draft Timetable"	means the most recent draft of the Working Timetable, which Railtrack has drawn up in accordance with Condition D <u>3.2</u> ;

<u>"Drafting Period"</u>	<u>means a period, to be notified by Railtrack in accordance with Condition D1.4, normally of 16 weeks and commencing on the first day following the end of the Preliminary Period;</u>
<u>"Finalisation Period"</u>	<u>means a period, to be notified by Railtrack in accordance with Condition D1.4, normally of 6 weeks and commencing on the first day following the end of the Drafting Period;</u>
"Firm Right"	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in the case of a Bidder, a right under its Access Agreement in respect of the quantum, timing or any other characteristic of a train movement; and</li> <li>(b) in the case of Railtrack, a right under the applicable Rules of the <u>Route</u> or the applicable Rules of the <u>Plan</u></li> </ul> <p>which is not expressed to be subject to any contingency outside the control of the holder of the right, except, in a case within paragraph (a) above, the applicable Rules of the <u>Route</u> or the applicable Rules of the <u>Plan, and any reference in an Access Agreement to "Firm Contractual Right" shall be deemed to be a reference to "Firm Right"</u>;</p>
<u>"First Working Timetable"</u>	<u>means the version of the Working Timetable in respect of which Railtrack gives notice pursuant to Condition D1.6.3(a), as that version may be amended in accordance with Condition D1.6.3(b);</u>
"Flexing Right"	<p>means a right, exercisable by Railtrack, either</p> <ul style="list-style-type: none"> <li>(a) pursuant to Condition <u>D3.4.1 or D4.4.1</u>, to vary a Bid <u>or to define in detail the content of a Train Slot or series of Train Slots</u> in any way within and consistent with the Firm Rights (if any) of the Bidder; or</li> <li>(b) pursuant to Condition <u>D3.4.2 or D4.4.2</u>, to vary a Train Slot <u>previously scheduled in the relevant Working Timetable</u> or a Bid as the case may be;</li> </ul>
<u>"International Operator"</u>	<u>means each Bidder who has rights to train movements through the Channel Tunnel;</u>

<u>"International Path"</u>	means any Train Slot which is contiguous with a train movement through the Channel Tunnel or any combination of Train Slots which are contiguous with each other and of which at least one is contiguous with a planned train movement through the Channel Tunnel;
"Major Project"	means any engineering, maintenance or renewal project which requires a possession or series of possessions of one or more sections of track extending over: <ul style="list-style-type: none"> <li>(a) a period of more than one year; or</li> <li>(b) a period which contains two or more Passenger Change Dates;</li> </ul>
"Passenger Change Date"	means <u>the Principal Change Date or, as the case may be, the Subsidiary Change Date;</u>
"Passenger Timetable"	means any timetable of railway passenger services published or procured to be published to the public by Railtrack;
<u>"Preliminary Period"</u>	means a period, to be notified by Railtrack in accordance with Condition D1.4, normally of 10 weeks and commencing on the first day of the <u>Timetable Development Period;</u>
"Preliminary Rules of the Route/ Plan Proposal"	means an <u>initial</u> proposal made by Railtrack <u>in respect of the applicable Rules of the Route or the applicable Rules of the Plan</u> pursuant to Condition D2.1.2;
<u>"Principal Change Date"</u>	means the date, to be notified by Railtrack in accordance with Condition D1.4 and normally falling on the Sunday next following the second Saturday in December in any calendar year, or such alternative dates as may be notified by Railtrack in accordance with the provisions of Directive 2001/14/EC;
"Priority Date"	means the date, <u>notified under Condition D1.4 and in any event</u> occurring not more than <u>7 days</u> after the <u>commencement of the Drafting Period</u> relating to a Timetable Development Period ending on a <u>Principal Change Date</u> , by which Bidders, in accordance with Condition D3.2.1, must notify to Railtrack <u>those rights which they intend or, as the case may be, do not</u>

intend to exercise in either or both of the Timetable Period commencing on that Principal Change Date and the Timetable Period commencing on the next following Subsidiary Change Date;

“Qualified Person”

means a person whose business comprises or includes the provision, to operators of trains, Access Option Holders and persons who intend to apply for a licence under section 8 of the Act, of services in relation to the acquisition of permission to use the Network;

“Revised Bid”

means any Spot Bid seeking to revise a Train Slot scheduled in the relevant Working Timetable, as submitted to Railtrack by a Train Operator in accordance with Condition D4.8.3;

“Revision Bid Date”

means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Railtrack in accordance with Condition D4.8.1, being the last date for submission by a Bidder of its Revised Bids for the Timetable Week to which that Revision Bid Date relates;

“Revision Notification Date”

means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Railtrack in accordance with Condition D4.8.1, being the last date for notification by Railtrack of the scheduled Train Slots to be amended in the Timetable Week to which that Revision Notification Date relates;

“Revision Offer Date”

means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Railtrack in accordance with Condition D4.8.1, occurring 2 weeks prior to the relevant Revision Period End Date, or, when Christmas Day falls no more than 14 days prior to the relevant Revision Period End Date, the date occurring 3 weeks prior to the relevant Revision Period End Date, being the last date for notification by Railtrack of its decisions to accept, modify or reject Revised Bids for the Timetable Week to which that Revision Offer Date relates;

“Revision Period End Date”

means, in respect of any Supplemental Timetable Revision Period, the date occurring 12 weeks prior to the commencement of the Timetable Week to which that period relates;



"Revision Response Date"	means, in respect of any Supplemental Timetable Revision Period, the date occurring one week after the relevant Revision Offer Date;
"Short Notice Spot Bid"	means a Spot Bid for a Train Slot made to Railtrack by 1000 hours on day A which would, if the Spot Bid were accepted, be planned to operate between 1000 hours on day A and 0001 hours on day C, where day A is the first day, day B is the second day (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) and day C is the third day of any 3 consecutive days from (and including) the day on which the Spot Bid is made;
"Spot Bid"	means any Bid made during the Timetable <u>Period</u> to which that Bid relates or during the Supplemental Period immediately prior to that <u>Timetable Period</u> ;
<u>"Subsidiary Change Date"</u>	<u>means the date to be notified by Railtrack in accordance with Condition D1.4 and normally falling on the Sunday next following the second Saturday in June in any calendar year, or such alternative dates as may be notified by Railtrack in accordance with the provisions of Directive 2001/14/EC;</u>
<u>"Subsidiary</u> Rules Revision"	means, in respect of any Timetable Period <u>commencing</u> on a <u>Subsidiary</u> Change Date, any revision to the applicable Rules of the Route or the applicable Rules of the Plan that either: <ul style="list-style-type: none"> <li>a) <u>is</u> not material in nature and makes no material adjustment to or correction of detail set out in the applicable Rules of the Route or applicable Rules of the Plan; or</li> <li>b) is material in nature but the need for which was not reasonably foreseeable when the applicable Rules of the Route or applicable Rules of the Plan were previously revised;</li> </ul>
"Supplemental Period"	means the period, <u>to be notified by Railtrack in accordance with Condition D1.4, normally</u> of <u>22</u> weeks, commencing on the <u>first day following the end of the Finalisation Period</u> and ending on the <u>day before the</u> relevant Passenger Change Date;



"Supplemental Timetable Revision Period"	means, in respect of any Timetable Week, the period commencing on the relevant Revision Notification Date and ending on the relevant Revision Period End Date;
"Timetable Development Period"	means, in respect of any Passenger Change Date, the period of development of the Working Timetable to be implemented on that date, being a period, <u>to be notified by Railtrack in accordance with Condition D1.4, normally of 55 weeks, ending on the day before</u> that date and comprising, in chronological order: <ul style="list-style-type: none"> <li>(a) <u>a Preliminary</u> Period;</li> <li>(b) <u>a Drafting</u> Period;</li> <li>(c) <u>a Finalisation Period; and</u></li> <li>(d) <u>a Supplemental</u> Period;</li> </ul>
<u>"Timetable Period"</u>	<u>means the period of operation of a Working Timetable;</u>
"Timetable Week"	means, in respect of a Timetable <u>Period</u> , any week (or, in the case of the first and last such week of such period, part thereof) occurring during that period and commencing at 0001 hours on any Saturday and ending at 2400 hours on the next following Friday;
"Timetable Week Slot"	means, in respect of any Timetable Week, any Train Slot that is scheduled in the Working Timetable to leave its point of origin during that week;
"Timetabling Committee"	means the sub-committee of the Industry Committee referred to in paragraph A4.1(b) of the Access Dispute Resolution Rules;
"Train Slot"	means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement;
"User Representative"	means <u>any</u> of the Rail <u>Passengers'</u> Committees established under Section 2 of the Act, or, where appropriate, the London <u>Transport Users'</u> Committee; <u>and</u>
<u>"Working Day"</u>	<u>means each of Monday to Friday (inclusive) excluding common law and statutory public holidays.</u>

Note 1:

When Christmas Day or, where Christmas Day falls on a Saturday or a Sunday, the public holiday which is established in lieu of Christmas Day occurs in any of the Appeal Period, Drafting Period, Finalisation Period, Preliminary Period, or Supplemental Period, Railtrack shall be entitled to extend the duration of the relevant period by one week and shall notify such extension to each Bidder at the same time as details of the dates of each of the periods comprised in the relevant Timetable Development Period are notified to Bidders pursuant to Condition D1.4.

Note 2:

In relation to the preparation of the Working Timetables to operate during the period between 23<sup>rd</sup> May and 11<sup>th</sup> December 2004, the definitions of "Principal Change Date" and "Subsidiary Change Date" and Conditions D2.1.3 and D2.1.4 shall have effect as if for the dates or numbers therein specified there were substituted such dates or numbers as shall be specified in a notice given for the purposes of this Part D to Railtrack by the Regulator after consultation with Railtrack, the Bidders, the Strategic Rail Authority and such other persons as the Regulator considers appropriate.

Note 3:

With effect from 5<sup>th</sup> July 2003 references to certain defined terms in the access agreements shall be interpreted as follows:

"Bidding Cycle" shall mean that part of any period or period set out in the defined term "Timetable Development Period" as most closely corresponds with the definition of Bidding Cycle set out in the version of Part D of the Access Conditions in effect immediately prior to 5<sup>th</sup> July 2003;

"Bidding Information" shall be read as a reference to the applicable Rules of the Route and applicable Rules of the Plan served pursuant to D2.1.4;

"Bidding Period" shall mean that part of any period or period set out in the defined term "Timetable Development Period" as most closely corresponds with the definition of Bidding Period set out in the version of Part D of the Access Conditions in effect immediately prior to 5<sup>th</sup> July 2003;

"Decision Period" shall mean that part of any period or period set out in the defined term "Timetable Development Period" as most closely corresponds with the definition of Decision Period set out in the version of Part D of the Access Conditions in effect immediately prior to 5<sup>th</sup> July 2003;

"European Timetable Change Date" means the Principal Change Date or, as the case may be, the Subsidiary Change Date;

"Initial Development Period" shall mean that part of any period or period set out in the defined term "Timetable Development Period" as most closely corresponds with the definition of Initial Development Period set out in the version of Part D of the Access Conditions in effect immediately prior to 5<sup>th</sup> July 2003;

"Non-Compliant Bid" shall mean any Bid which either:

- (a) is not within or is inconsistent with the rights of the Bidder under an Access Agreement; or
- (b) conflicts with either of the applicable Rules of the Route or the applicable Rules of the Plan;

"Rules of the Route/Plan Proposal" shall mean any proposal made by Railtrack in respect of the applicable Rules of the Route or the applicable Rules of the Plan served pursuant to D2.1.4;

"Summer Change Date" shall mean the first Passenger Change Date falling after the first day of April in any calendar year;

"Weekday Train Slot" shall mean any Train Slot which is scheduled to commence operation on any day other than a Saturday or Sunday;

"Weekend Train Slot" shall mean any Train Slot which is scheduled to commence operation on any Saturday or Sunday;

"Winter Change Date" shall mean a Winter One Change Date or a Winter Two Change Date, as the context may require;

"Winter One Change Date" shall mean the Passenger Change Date next following the Summer Change Date;

"Winter Rules Revision" shall mean the "Subsidiary Rules Revision"; and

"Winter Two Change Date" shall mean the Passenger Change Date next following the Winter One Change Date.

This Note 3 shall cease to have effect and will no longer form a part of this Part D in respect of any timetable commencing on or after 12<sup>th</sup> December 2004 or such other date as the Regulator shall direct.

## CONDITION D1 - GENERAL

### 1.1 *Establishment of systems*

Railtrack shall establish and manage the systems necessary to implement the procedures described in this Part D.

### 1.2 *Rights of potential Access Parties*

Any person who proposes in good faith to enter into an Access Agreement, or become the holder of an access option, shall be entitled to participate in the procedure set out in this Part D, provided that such person has first undertaken to Railtrack to be bound (as a Bidder) by the provisions of this Part D.

### 1.3 *Confidentiality*

Railtrack shall not, in relation to the operation of any part of the procedures set out in this Part D, be obliged to keep confidential

- (a) the identity of any Bidder; or
- (b) any information provided to Railtrack by a Bidder.

### 1.4 *Notification of relevant dates*

Railtrack shall, at least 4 weeks prior to the Development Commencement Date relating to a Principal Change Date and having consulted with each Bidder, give notice to each Bidder of the dates of each of the periods comprised in the Timetable Development Periods commencing on that Development Commencement Date and the next following Development Commencement Date. The dates in such notice shall include each Passenger Change Date and the Priority Date applicable to those change dates.

### 1.5 *Major changes to the timetable*

- (a) In order to facilitate effective development of the Draft Timetable where Railtrack considers that major timetable changes may be required, for example to accommodate growth in demand for railway services or to deal with Major Projects, Railtrack may decide to invoke a consultation process at an earlier stage than would otherwise be the case with a view to increasing the period for consultation and ensuring that the timetable changes are implemented in a co-ordinated fashion.
- (b) Any Train Operator wishing to propose significant alterations to its services or any Bidder wishing to introduce significant new services shall consult with Railtrack at the earliest opportunity to assist Railtrack in deciding whether or not to invoke an early start to such a consultation process and, if so, in deciding when that process should begin.

- (c) Railtrack shall notify each Bidder in writing of all relevant information about any such major changes and of the Timetable Development Periods likely to be affected by such changes, and shall give notice to all Bidders of the date it proposes to commence the consultation process in respect of the affected Timetable Development Periods.

## **1.6 Working Timetable**

- 1.6.1 Railtrack shall draw up a timetable showing, so far as reasonably practicable, every train movement on the Network, including:
- (a) every service for the carriage of passengers by railway, every service for the carriage of goods by railway, every Ancillary Movement and every other Service;
  - (b) the times of arrival and departure of trains at origin and destination, at every intermediate stopping point and at appropriate passing points; and
  - (c) all relevant timing allowances,
- as they shall have been amended pursuant to Part H and including goods train planning publications and documents detailing platforming arrangements.
- 1.6.2 Movements of trains operated by a Train Operator which are not made in the exercise of access rights shall not be entered in the Working Timetable. In this Condition D1.6.2, "access rights" means permission, under an Access Agreement, to use track for the purpose of or in connection with the operation of railway assets by a Train Operator.
- 1.6.3 Railtrack shall:
- (a) on or before the last day of the Finalisation Period and in accordance with Condition D3.2.7, give notice to each Bidder of the version of the Working Timetable which is to apply from the relevant Passenger Change Date; and
  - (b) as soon as possible after the expiry of the Appeal Period, give notice to each Bidder of the changes (if any) to that version of the Working Timetable which it has made as a result of appeals determined pursuant to Condition D5.
- 1.6.4 Railtrack shall not be obliged to publish details of any Spot Bid which it accepts in any Passenger Timetable.

## CONDITION D2 - CONSULTATION PROCESS TO ESTABLISH THE RULES of the ROUTE/PLAN and MAJOR PROJECTS

### 2.1 *Review of the Rules of Route/Rules of Plan*

#### 2.1.1 *Review by Railtrack*

Railtrack shall, before the Development Commencement Date:

- (a) in respect of any Timetable Period commencing on a Principal Change Date, review the applicable Rules of the Route and the applicable Rules of the Plan for that Timetable Period and the next following Timetable Period and decide whether any amendment is required to either or both sets of Rules (including any amendment for the purposes of the implementation of any Network Change in accordance with Part G of these Access Conditions, Vehicle Change in accordance with Part F of these Access Conditions or of the implementation of any Major Project which is the subject of a notice issued in accordance with Condition D2.2); and
- (b) in respect of any Timetable Period commencing on a Subsidiary Change Date, review the applicable Rules of the Route and the applicable Rules of the Plan and decide as to whether any Subsidiary Rules Revisions should be made to either or both sets of Rules.

In conducting its review in accordance with this Condition D2.1.1 Railtrack shall consult with:

- (i) each Bidder which is likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan; and
- (ii) each International Operator to ascertain the provisional International Paths that it wishes to have scheduled in the relevant Working Timetable and Railtrack shall incorporate that information in the Preliminary Rules of the Route/Plan Proposal.

#### 2.1.2 *Preliminary Rules of the Route/Plan Proposal*

Railtrack shall, on or before each Development Commencement Date, serve a notice ("Preliminary Rules of the Route/Plan Proposal") on each Bidder specifying:

- (a) in the case of a Development Commencement Date relating to a Principal Change Date the changes (if any) to the applicable Rules of the Route and applicable Rules of the Plan for the Timetable Period commencing on that Principal Change Date and for the Timetable Period commencing on the next following Subsidiary Change Date which, having due regard to the Decision Criteria, it proposes to make or, if no changes are proposed, that fact;

- (b) in the case of a Development Commencement Date relating to a Subsidiary Change Date the changes (if any) to the applicable Rules of the Route and applicable Rules of the Plan for the Timetable Period commencing on that Subsidiary Change Date which shall be deemed to be a Subsidiary Rules Revision and which, having due regard to the Decision Criteria, it proposes to make or, if no changes are proposed, that fact;

and, in either case, its reasons.

### 2.1.3 *Consultation with Bidders*

Each Bidder shall:

- (a) consider the notice served on it by Railtrack in accordance with Condition D2.1.2 and discuss with Railtrack any concerns it may have in respect of the Preliminary Rules of the Route/Plan Proposal;
- (b) within 3 weeks of receipt of the Preliminary Rules of the Route/Plan Proposal give notice to Railtrack of any representations or objections it wishes to make in relation to that Preliminary Rules of the Route/Plan Proposal and any alternative proposals it may have; and
- (c) in respect of any Subsidiary Rules Revision, within 3 weeks of receipt of the Subsidiary Rules Revision, give notice to Railtrack of any representations or objections it wishes to make in relation to that Subsidiary Rules Revision and any alternative proposals it may have.

### 2.1.4 *Rules of the Route/Plan Decision*

- (a) Railtrack shall, following consideration of any representations, objections and alternative proposals made by affected Bidders in accordance with Condition D2.1.3, review the Preliminary Rules of the Route/Plan Proposal or, as appropriate, the Subsidiary Rules Revision and, having due regard to the Decision Criteria, decide what amendments if any should be made to the applicable Rules of the Route and the applicable Rules of the Plan.
- (b) Railtrack shall, no later than 4 weeks after the issue of the Preliminary Rules of the Route/Plan Proposal or, as appropriate, the Subsidiary Rules Revision, notify each Bidder which is likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan of the amendments it has decided to make pursuant to Condition D2.1.4(a) or, where no amendments are proposed, that fact.

#### 2.1.5 *Optimisation of the Draft Timetable*

Notwithstanding the provisions of D2.1.3 and D2.1.4 Railtrack shall have the right having consulted with affected Bidders to make further modifications to the applicable Rules of the Route and the applicable Rules of the Plan, having due regard to the Decision Criteria, to facilitate optimisation of the Working Timetable; and Railtrack shall promptly notify the Bidders thus affected.

#### 2.1.6 *Referral to Timetabling Committee*

Following notification of Railtrack's decisions in accordance with Condition D2.1.4(b) or D2.1.5 a Bidder may refer any aspect of those decisions (including any decision of Railtrack not to make an amendment or any decision by Railtrack as to whether or not a revision is a Subsidiary Rules Revision) for determination by the Timetabling Committee under Condition D5, provided that such referral is made within the period specified in Condition D5.1. No such reference shall be made in respect of any aspect of a Major Project which is within and consistent with its method of implementation established pursuant to Condition D2.2 and which has:

- (a) not been referred to the Industry Committee for determination prior to the date referred to in Condition D2.2.4;
- (b) been finally determined by either the Industry Committee or the Regulator pursuant to that Condition; or
- (c) been determined by the Industry Committee and is not the subject of an appeal to the Regulator pursuant to that Condition.

#### 2.1.7 *Implementation pending outcome of determination*

Notwithstanding the provisions of Condition D2.1.6, but subject to Condition D2.1.8, Railtrack shall be entitled to implement (in particular for the purposes of developing the Working Timetable to be implemented on the next succeeding Passenger Change Date) any aspect of the applicable Rules of the Route or the applicable Rules of the Plan which has been referred for determination pursuant to that Condition, pending the outcome of that determination.

#### 2.1.8 *Procedure for amendment of the Rules of the Route/Plan and amendment of scheduled Train Slots*

Railtrack shall include within the Rules of the Plan a procedure to enable amendment of the Rules of the Route and the Rules of the Plan and consequential amendment of scheduled Train Slots other than as provided for in the foregoing provisions of this Condition D2.1. Notwithstanding the provisions of Condition D2.1.7, Railtrack shall not be entitled to implement any change to that procedure until any appeal against any such change has been determined pursuant to Condition D5.



### 2.1.9 Contents of amendment procedure

Each of the procedures proposed by Railtrack pursuant to Condition D2.1.8:

- (a) shall provide that no amendment shall be made to the applicable Rules of the Plan or the applicable Rules of the Route or that no revision shall be made to an accepted Bid (as the case may be) unless:
  - (i) Railtrack shall have consulted, to the extent reasonably practicable, with each Bidder likely to be affected by the amendment or revision (as the case may be); and
  - (ii) due regard shall have been had to the Decision Criteria; and
- (b) shall be deemed to have been accepted by each such Bidder unless any such Bidder shall, within 7 days of the relevant procedure being sent to it, have referred any aspect of it to the Timetabling Committee for determination in accordance with Condition D5.

## **2.2 Major Projects**

### 2.2.1 Notice of proposed Major Project

Railtrack shall, if it wishes to implement a Major Project, give notice of its proposal to each Bidder that may be affected by the project together with such particulars of the proposed method of implementation of the project as are reasonably necessary to enable each such Bidder to evaluate the effect of the proposed project on its Services or the operation of its trains. In this Condition D2.2 the expression "method of implementation" means a statement containing a programme of possessions or other restrictions on the use of the track which would be required in order to carry out the proposed project in question.

### 2.2.2 Consultation on proposed method of implementation

Railtrack shall invite the submission of comments from each Bidder to which it has given notice under Condition D2.32.1 within such period as is reasonable in the circumstances having due regard to the likely effect of the proposed project on those Bidders and shall consult with them concerning the method of implementation for the proposed project.

### 2.2.3 Notice of proposed method of implementation

Subject to having complied with the foregoing provisions of this Condition D2.2, Railtrack shall notify each Bidder to which it gave notice under Condition D2.2.1 of its proposed method of implementation for the proposed project, provided that:

- (a) in deciding such proposed method of implementation, Railtrack shall have had due regard to the Decision Criteria; and
- (b) it shall have taken into account any comments submitted to it pursuant to Condition D2.2.2.

#### 2.2.4 *Right of appeal*

If any Bidder is dissatisfied as to:

- (a) any matter concerning the operation of the procedure in this Condition D2.2; or
- (b) the method of implementation of the proposed Major Project as notified by Railtrack pursuant to Condition D2.2.3 and, in particular, the application by Railtrack of the Decision Criteria

it may, at any time prior to the date 30 days after the date on which it was notified pursuant to Condition D2.2.3 of the proposed method of implementation, refer the matter to the Industry Committee for determination.

#### 2.2.5 *Applicability of appeal procedure*

Any matter referred to the Industry Committee for determination under Condition D2.2.4 shall be treated as a matter referred to that Committee under Condition G6.1 and the provisions of Conditions G6.2 to G6.7 (inclusive) shall apply to it *mutatis mutandis* save that:

- (a) the reference in Condition G6.5.3(a)(ii) to "Network Change" shall be treated as a reference to "Major Project"; and
- (b) the provisions of Condition G6.5.3(b) shall be treated as a reference to the Regulator having power to specify any matter which Railtrack should have decided in proposing a method of implementation for the relevant Major Project pursuant to Condition D2.2.3.

#### 2.2.6 *Relationship with Part G and Condition D2.1*

The provisions of this Condition D2.2 shall be without prejudice to:

- (a) the provisions of Part G, if the proposed Major Project, once completed, would constitute a Network Change within the meaning of that Part; and
- (b) the requirement to comply with Condition D2.1, to the extent that the implementation of the proposed Major Project in accordance with the method of implementation would require an amendment to the applicable Rules of the Route and/or the applicable Rules of the Plan.

## CONDITION D3 - CONSULTATION PROCESS TO ESTABLISH THE FIRST WORKING TIMETABLE

### 3.1 *Consultation*

3.1.1 Bidders should hold appropriate consultation with Passenger Transport Executives, User Representatives and other parties with rights of representation regarding proposals for development of services.

3.1.2 Railtrack shall consult with Bidders before the Priority Date to establish their aspirations for development of their services in the relevant Timetable Development Period. Railtrack shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to development of the Bidder's services.

3.1.3 Railtrack shall facilitate and co-ordinate dialogue with all Bidders in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections and complementary service patterns.

### 3.2 *Process for preparation of the First Working Timetable*

#### 3.2.1 *Notification of rights to be exercised*

Bidders shall, on or before the Priority Date, notify Railtrack in respect of the Timetable Periods commencing on the next following Principal Change Date and the next following Subsidiary Change Date:

- (a) those Firm Rights that they intend to exercise;
  - (b) those Firm Rights that they do not intend to exercise;
  - (c) any other rights which they intend to exercise or wish to negotiate;
- and:
- (i) in the case of paragraphs (a) and (c) above, shall give an indication of the Train Slots that they aspire to operate in exercising those rights and the rights, if any, applicable to each of the Train Slots, which indication shall include the extent of its requirements (if any) as to the matters set out in Condition D3.3; and
  - (ii) in the case of paragraph (c) above, shall distinguish between
    - (A) Train Slots for which they would be seeking priority in the Draft Timetable in accordance with Condition D3.2.3(b);
    - (B) Train Slots for which they would be seeking priority in the Draft Timetable in accordance with Condition D3.2.3(c); and
    - (C) other Train Slots.

### 3.2.2 *Compilation of the First Working Timetable*

Railtrack, in consultation with Bidders, will compile a Working Timetable which is in accordance with the following provisions of this Condition D3.2 and which:

- (a) in Railtrack's opinion is capable of being brought into operation; and
- (b) takes account of the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of Railtrack as expressed in the applicable Rules of the Route and the applicable Rules of the Plan.

### 3.2.3 *Priorities in compiling the First Working Timetable*

Without prejudice to the exercise by Railtrack of a Flexing Right, Railtrack shall, in determining the order of priority for inclusion of Train Slots in the First Working Timetable, accord priority:

- (a) first, to the satisfaction of any Firm Rights which:
  - (i) a Bidder may have, provided that
    - (A) the rights have been notified to Railtrack on or prior to the Priority Date in accordance with Condition D3.2.1(a) and constitute Firm Rights on the intended dates of the operation of those Train Slots; or
    - (B) the rights were exercised in the corresponding timetable prior to the timetable that is being prepared but have not been notified to Railtrack on or prior to the Priority Date in accordance with Condition D3.2.1(a). In such case only those rights which relate to quantum and which have been notified to Railtrack prior to the Capacity Request Deadline shall have force; or
  - (ii) Railtrack may have including those contained in the applicable Rules of the Route or the applicable Rules of the Plan,  
each of paragraphs (i) and (ii) above having equal priority;
- (b) second, to the satisfaction of any rights or expectations of rights which:
  - (i) have been notified by a Bidder to Railtrack on or prior to the Priority Date in accordance with Condition D3.2.1(c); and
  - (ii) correspond to Firm Rights held by that Bidder at the Priority Date under an Access Agreement in force on that date but which at the Priority Date are prevented from constituting Firm Rights only because any or all of the intended dates of operation

of those Train Slots fall after the expiry of the Access Agreement, or fall after the expiry of the Firm Rights from which those Train Slots are derived, and provided that Railtrack reasonably expects that an Access Agreement containing corresponding Firm Rights will be in force on the intended dates of operation of those Train Slots;

- (c) third, having due regard to the Decision Criteria, to the satisfaction of any other rights or expectations of rights which:
  - (i) a Bidder has notified to Railtrack on or prior to the Priority Date in accordance with Condition D3.2.1(c); or
  - (ii) Railtrack may have including those contained in the applicable Rules of the Route or the applicable Rules of the Plan, and which (in any such case) do not fall within Condition D3.2.3(a)(ii),each of paragraphs (i) and (ii) above having equal priority; and
- (d) thereafter, having due regard to the Decision Criteria, to the satisfaction of any rights or expectations of rights which a Bidder has not notified to Railtrack on or prior to the Priority Date in accordance with Condition D3.2.1(c) but which are notified to Railtrack in accordance with Condition D3.2.4 or D3.2.6.

#### 3.2.4 Development of the Draft Timetable

- (a) Following the Priority Date and at any time before the Capacity Request Deadline each Bidder shall have the right to notify to Railtrack new aspirations (if any) which amend, delete or add to those aspirations which it notified in accordance with Condition D3.2.1.
- (b) Railtrack shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact, and the available time before the Capacity Request Deadline, and having due regard to the Decision Criteria, incorporate each new aspiration into the Draft Timetable in accordance with the priorities set out in Condition D3.2.3.

#### 3.2.5 Issue of the Draft Timetable

Railtrack shall, on or before the last day of the Drafting Period, provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of Railtrack in providing that information, the Draft Timetable which, as a result of notifications made to Railtrack under Condition D3.2.1 and/or the operation of Conditions D3.2.3 and D3.2.4, shall show:

- (a) in respect of a Principal Change Date, those Train Slots which Railtrack expects to include in the Working Timetable commencing on that Principal Change Date; and
- (b) in respect of a Subsidiary Change Date, those Train Slots which Railtrack expects to include in the Working Timetable commencing on that Subsidiary Change Date.

### 3.2.6 Finalisation of the First Working Timetable offer

- (a) Following the issue of the Draft Timetable in accordance with Condition D3.2.5 and up to the end of the Finalisation Period, each Bidder shall have the right to notify to Railtrack new aspirations (if any) which amend, delete or add to those Train Slots shown in the Draft Timetable.
- (b) Railtrack shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact, and the available time before the end of the Finalisation Period, and having due regard to the Decision Criteria, incorporate each new aspiration into the First Working Timetable in accordance with the priorities set out in Condition D3.2.3.

### 3.2.7 Offer of the First Working Timetable

Railtrack shall, on or before the last day of the Finalisation Period, provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of Railtrack in providing that information:

- (a) the Working Timetable which shall show:
  - (i) in respect of a Principal Change Date, those Train Slots which Railtrack has decided to include in the Working Timetable commencing on that Principal Change Date; and
  - (ii) in respect of a Subsidiary Change Date, those Train Slots which Railtrack has decided to include in the Working Timetable commencing on that Subsidiary Change Date; and
- (b) details of those Train Slots which Railtrack has decided not to include in the Working Timetable.

### 3.2.8 Acceptance of the First Working Timetable

A Bidder shall, in respect of

- (a) the Working Timetable notified in accordance with Condition D3.2.7(a); or

(b) the Train Slots notified in accordance with Condition D3.2.7(b) and any other Train Slots which the Bidder believes should have been notified in accordance with Condition D3.2.7,

within 14 days of receipt of the notification advise Railtrack of any Train Slots which it disputes and will be the subject of a reference to the Timetabling Committee. Railtrack's decisions in respect of those Train Slots not so advised by the Bidder shall be deemed to have been accepted by the Bidder and may not be the subject of a reference to the Timetabling Committee or the Regulator pursuant to Condition D5.

### 3.3 *Contents of a Bid*

A Bidder shall, in making a Bid, indicate, in respect of the Train Slots for which the Bid is being made, the extent of its requirements (if any) as to:

- (a) dates on which the Train Slots are intended to be used;
- (b) start and end points of the train movement;
- (c) intermediate calling points;
- (d) the times of arrival and departure from any point specified under paragraphs (b) and (c) above;
- (e) railway vehicles to be used;
- (f) train connections with other railway passenger services;
- (g) the route to be followed;
- (h) any Ancillary Movements;
- (i) platforming at any points specified pursuant to paragraphs (b) and (c) above; and
- (j) any relevant commercial and service codes.

### 3.4 *Flexing rights – Preparation of the First Working Timetable*

3.4.1 Railtrack may, in relation to any aspiration notified to Railtrack in accordance with Condition D3.2.1, D3.2.4 or D3.2.6, exercise a Flexing Right at any time prior to the end of the Finalisation Period, provided that:

- (a) Railtrack shall have first consulted with each person materially affected by the exercise of such Flexing Right;
- (b) Railtrack shall, in exercising that Flexing Right, have had due regard to the Decision Criteria; and

- (c) Railtrack shall notify the Bidder of the exercise of its Flexing Right as soon as practicable thereafter.

3.4.2 Railtrack shall exercise a Flexing Right at any time:

- (a) in order to give effect to a decision of the Timetabling Committee or the Regulator as provided for in Condition D5; or
- (b) if it is necessary to do so in order to comply with any directions issued or approval given by the Regulator in the exercise of his powers under section 17, 18 or 22 of the Act.



## **CONDITION D4 - SPOT BIDDING, VARIATION of SCHEDULED TRAIN SLOTS and the SUPPLEMENTAL TIMETABLE REVISION PROCESS**

### **4.1    *Making of Spot Bids***

4.1.1    Every Bidder shall have the right to make a Spot Bid to change, delete or add to the Train Slots shown in the Working Timetable.

4.1.2    A Spot Bid may be made at any time during the Timetable Period to which that Bid relates or during the Supplemental Period immediately prior to that period, and (in either case) shall relate to that Timetable Period.

4.1.3    Railtrack shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to a Spot Bid by that Bidder.

### **4.2    *Contents of a Spot Bid***

A Bidder shall, in making a Spot Bid, indicate in respect of the Train Slots for which the Spot Bid is being made the extent of its requirements (if any) as to the matters listed in Condition D3.3.

### **4.3    *Priorities in considering Spot Bids***

Without prejudice to the exercise by Railtrack of a Flexing Right, Railtrack shall, in relation to Spot Bids, accord priority, to the extent that the Spot Bid in question falls to be considered under Condition D4.8, as provided for in that Condition and, in all other cases, in the order in which they are received by Railtrack.

### **4.4    *Flexing rights – Spot Bids***

#### 4.4.1    Time of exercise

Railtrack may, in relation to any Spot Bid, exercise a Flexing Right at any time prior to the acceptance of that Spot Bid, provided that:

- (a)    Railtrack shall have first consulted with each person materially affected by the exercise of such Flexing Right;
- (b)    Railtrack shall, in exercising that Flexing Right, have had due regard to the Decision Criteria; and
- (c)    Railtrack shall notify the Bidder of the exercise of its Flexing Right as soon as practicable thereafter.

#### 4.4.2    Requirement to exercise

Railtrack shall exercise a Flexing Right at any time:

- (a) in the circumstances referred to in Condition D4.5.3 or Condition D4.8.6; or
- (b) in order to give effect to a decision of the Timetabling Committee or the Regulator as provided for in Condition D5; or
- (c) if it is necessary to do so in order to comply with any directions issued or approval given by the Regulator in the exercise of his powers under section 17, 18 or 22 of the Act.

#### 4.5 *Timing of acceptance, modification or rejection of Spot Bids*

4.5.1 Without prejudice to Conditions D2.1 and D4.4, Railtrack shall in relation to any Spot Bid give notice (subject to Conditions D4.5.3, D4.5.4 and D4.8) to the Bidder of its acceptance, modification or rejection of it:

- (a) no later than 5 Working Days after receipt of that Spot Bid; or
- (b) by 10.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on the day preceding day A which, if accepted, would be planned to operate on day C; or
- (c) by 15.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on day A which, if accepted, would be planned to operate on day C,

whichever of paragraphs (a), (b) or (c) is the earliest to occur, where day A, day B and day C are three consecutive days (excluding, in the case of day A, Saturdays and Sundays and, in the case of day B, Sundays), and

- (d) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by Railtrack of the Spot Bid,

provided that, in determining whether to accept, modify or reject a Spot Bid, Railtrack shall:

- (i) not accept such Bid if to do so would give rise to any conflict with any Train Slot already scheduled in the Working Timetable or with the applicable Rules of the Route or applicable Rules of the Plan; and
- (ii) otherwise have due regard to the Decision Criteria and, subject thereto and to the extent that the Spot Bid does not fall to be considered under Condition D4.8, give priority to that Spot Bid which is received first in time;

and any notice of rejection of a Bid shall include a concise explanation therefor.

4.5.2 Railtrack shall, where it fails to notify the Bidder in accordance with Condition D4.5.1, be deemed to have accepted the Bidder's Spot Bid.

- 4.5.3 If a Spot Bid for a Train Slot which is to be used for the carriage of passengers in connection with a sporting or other public event would, if accepted, conflict with any Train Slot already scheduled in the Working Timetable, Railtrack shall:
- (a) consult with the Train Operator who is entitled to that Train Slot with a view to obtaining its consent to the exercise by Railtrack of its Flexing Right to accommodate the relevant Spot Bid; and
  - (b) if that operator gives its consent, exercise such Flexing Right.
- 4.5.4 A Train Operator which is consulted by Railtrack pursuant to Condition D4.5.3 shall not unreasonably withhold or delay its consent to the exercise by Railtrack of its Flexing Right if the relevant Spot Bid is for a Train Slot to be used for the carriage of passengers in numbers which are materially greater than are usually carried on trains on the relevant part of the Network and on the days and times of day in question.
- 4.5.5 If, as a result of exercising its Flexing Right pursuant to Condition D4.5.3, Railtrack is required to make any payment to a Train Operator under that Train Operator's Access Agreement, the Train Operator whose Spot Bid was accommodated by the exercise of that Flexing Right shall reimburse to Railtrack the amount of that payment.

#### 4.6 *Decisions in relation to Spot Bids*

4.6.1 A Bidder shall in respect of any Spot Bid, following notice given by Railtrack of the rejection of that Spot Bid, or the exercise of a Flexing Right by Railtrack, notify Railtrack if it disputes that decision of Railtrack:

- (a) no later than 7 days after receipt by the Bidder of that notice; or
- (b) by 15.00 hours on day A in respect of any notice received by the Bidder by 10.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C; or
- (c) by 17.00 hours on day A in respect of any notice received by the Bidder by 15.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C. and

whichever of paragraph (a), (b) or (c) is the earliest to occur, where day A, day B and day C are three consecutive days (excluding, in the case of day A, Saturdays and Sundays and, in the case of day B, Sundays). and

- (d) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by the Bidder of that notice.

4.6.2 A Bidder shall, where it fails to notify Railtrack in accordance with Condition D4.6.1, be deemed to have accepted the decision of Railtrack and shall not,

in respect of that decision, be entitled to make a reference to the Timetabling Committee or the Regulator pursuant to Condition D5.

- 4.6.3 Upon acceptance or deemed acceptance of a Spot Bid or upon a final determination pursuant to Condition D5, Railtrack shall enter the Train Slots in question in the Working Timetable.

#### 4.7     ***Variation of scheduled Train Slot***

- 4.7.1 Once a Bidder is deemed to have accepted a decision of Railtrack under Condition D3.2.8 or D4.6.2 or Railtrack has accepted a Bidder's Bid in accordance with Condition D3.2.7 or D4.5, both the Bidder and Railtrack shall, subject to Conditions D3.4.2, D4.4.2 and D4.7.2, be bound by that decision.
- 4.7.2 A Train Slot scheduled in the Working Timetable may be varied by Railtrack:
- (a) in accordance with the procedures provided for in Condition D2.1.8, D4.5.3 or D4.8; or
  - (b) by agreement between Railtrack and the Bidder (provided that every other affected party has also agreed in writing); or
  - (c) in order to give effect to a decision of the Timetabling Committee or the Regulator as provided for in Condition D5.

#### 4.8     ***Supplemental Timetable Revision Process***

- 4.8.1 Railtrack shall, at least 26 weeks prior to any Passenger Change Date (and having previously consulted with each affected Bidder), provide to all those persons referred to in Condition D3.2.7, its specific proposals as to the Revision Notification Dates, Revision Bid Dates and Revision Offer Dates applicable to the Timetable Period commencing on that Passenger Change Date.
- 4.8.2 Railtrack shall, where it wishes to amend any Timetable Week Slot scheduled in the relevant Working Timetable in order to enable it to take possessions for the purpose of carrying out work included in the Rules of the Route applicable to that Timetable Week Slot, notify, prior to the relevant Revision Notification Date, the relevant Bidder of the requirement to amend the Timetable Week Slot in question.
- 4.8.3 The Train Operator shall, following receipt of notification from Railtrack under Condition D4.8.2 in respect of a particular Timetable Week Slot, submit:
- (a) a Revised Bid in respect of that Timetable Week Slot; and

- (b) a Revised Bid in respect of any other Timetable Week Slot, if any, which is materially affected by the revision of the Timetable Week Slot to which that notification relates;

in each case following the applicable Revision Notification Date and prior to the applicable Revision Bid Date.

4.8.4 Railtrack shall, in respect of any Revised Bid or in respect of any other Spot Bid which has been submitted to it prior to the Revision Bid Date in respect of a relevant Timetable Week, give notice to the Train Operator of its acceptance, modification or rejection of that Revised Bid or Spot Bid (as the case may be) by no later than the Revision Offer Date.

4.8.5 Railtrack shall, where it is in receipt of a Revised Bid which it considers to have been properly submitted to it in accordance with the provisions of this Condition D4.8, in determining whether to accept, modify or reject that Revised Bid:

- (a) not accept such Revised Bid if to do so would give rise to any conflict with any Train Slot already scheduled in the Working Timetable or with the applicable Rules of the Route or applicable Rules of the Plan; and

- (b) otherwise have due regard to the Decision Criteria,

and any notice of modification or rejection of a Revised Bid shall include a concise explanation therefor.

4.8.6 Railtrack shall be entitled to exercise its Flexing Right to amend any Timetable Week Slot in relation to which no Revised Bid has been submitted to Railtrack by a Train Operator in accordance with the provisions of this Condition D4.8 in order to enable Railtrack to take possessions for the purpose of carrying out work included in the Rules of the Route applicable to that Timetable Week Slot and that Train Operator shall not, in respect of that decision, be entitled to make a reference to the Timetabling Committee or the Regulator pursuant to Condition D5.

4.8.7 The Train Operator shall, following the date of receipt by it of notice of the modification or rejection by Railtrack of any Revised Bid made by it, notify Railtrack whether it accepts or disputes that decision of Railtrack, in each case prior to the relevant Revision Response Date, and the provisions of Conditions D4.6.2, D4.6.3 and D4.7.1 shall apply, *mutatis mutandis*.

## CONDITION D5 -TIMETABLE APPEAL PROCEDURE

### 5.1 *Right of appeal to the Timetabling Committee*

#### 5.1.1 *Grounds for making an appeal*

Without prejudice to Conditions [D4.6.2](#), [D4.7.1](#) and [D4.8.6](#), if any Bidder is dissatisfied with any decision of Railtrack made pursuant to [this Part D](#), other than in the circumstances prescribed in Condition D2.2.4, including:

- (a) the application by Railtrack of the Decision Criteria;
- (b) the acceptance or rejection by Railtrack of any Bid;
- (c) the exercise by Railtrack of a Flexing Right; and
- (d) any decision of Railtrack which may be referred to the Timetabling Committee pursuant to Condition D2.1.6 or D2.1.9.

it may refer the matter to the Timetabling Committee for determination.

#### 5.1.2 *Timescales for making an appeal*

- (a) A reference to the Timetabling Committee under Condition D5.1.1 shall, save as shown in paragraph (b) below, be made within 7 days of receipt of the relevant decision from Railtrack. If Christmas Day occurs within such period of 7 days then the period shall be lengthened to 14 days.
- (b) A reference to the Timetabling Committee in respect of a decision by Railtrack [regarding Train Slots notified to Train Operators in accordance with Condition D3.2.7](#) shall be made within 14 days of receipt of the relevant decision.

### 5.2 *Right of appeal to the Regulator*

If Railtrack or any Bidder is dissatisfied with any decision of the Timetabling Committee in relation to any matter referred to it under Condition D5.1, that person may, within 7 days of receipt of the Timetabling Committee's decision and reasons (pursuant to paragraph A5.11.6 of the Access Dispute Resolution Rules), refer the matter to the Regulator for determination.

If Christmas Day occurs within such period of 7 days then the period shall be lengthened to 14 days.

### **5.3 *Information to be sent in relation to the appeal***

Without prejudice to Condition D5.5, where Railtrack or a Bidder refers a matter to the Timetabling Committee or the Regulator pursuant to Condition D5.1 or D5.2, the person making the reference shall:

- 5.3.1 include with it a statement in reasonable detail as to the matter in dispute and his reasons for making the reference; and
- 5.3.2 at the same time, send a copy of the reference and the statement referred to in Condition D5.3.1 to the other party or parties to the dispute.

### **5.4 *Obligation to provide evidence***

Without prejudice to Condition D5.5, the Access Parties shall:

- (a) in the case of a reference to the Timetabling Committee pursuant to Condition D5.1 as soon as reasonably practicable after the relevant date of reference, and in any event no later than the last day of the Appeal Period, use their respective reasonable endeavours to procure that the Timetabling Committee is furnished with sufficient evidence so as properly to consider any matters referred to it under Condition D5.1; and
- (b) in the case of a reference to the Regulator pursuant to Condition D5.2 as soon as reasonably practicable after the relevant date of reference use their respective reasonable endeavours to procure that the Regulator is furnished with sufficient evidence so as properly to consider any matters referred to him under Condition D5.2.

### **5.5 *Power of appeal bodies***

In relation to a reference to it or him made pursuant to Condition D5.1 or D5.2, the Timetabling Committee or the Regulator (as the case may be) (each an "appeal body") shall, in determining the matter in question, have the power:

- 5.5.1 to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other; except to the extent specified in subparagraphs (a) and (b) of paragraph A5.3.5 of the Access Dispute Resolution Rules, directions given by the Timetabling Committee pursuant to this Condition D5.5.1 shall not be inconsistent with paragraphs A3.6.2, A5.1, A5.2 or A5.4 to A5.11 inclusive of those Rules;
- 5.5.2 in the case of the Regulator, to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by the Regulator;

5.5.3 in determining the matter in question:

- (a) in the case of either appeal body:
  - (i) to direct Railtrack to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions"); or
  - (ii) to direct the parties to accept any submissions made by Railtrack as to any Train Slots; and
- (b) in the case of the Regulator, to specify the Train Slots and other matters which Railtrack should have determined in its decision made pursuant to [this Part D](#),

any such directions under paragraph (a) or (b) being, in the case of the Timetabling Committee, only by final determination, but in the case of the Regulator, either by interim order or final determination;

5.5.4 having given general directions, on the application of Railtrack within 7 days (or 14 days if Christmas Day falls within such period of 7 days) of the determination of the matter in question (or such longer period as the appeal body shall allow), to make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions; and

5.5.5 to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the relevant appeal body shall determine) which shall be borne by either or both of the parties.

## **5.6 *Obligation to comply with determination of appeal***

The Access Parties shall, subject to and pending any reference to the Regulator, comply with any determination of the Timetabling Committee in relation to any dispute referred to it under this Condition D5, and shall comply with any interim order or final determination of the Regulator in relation to any such dispute referred to it.

## **5.7 *Effective date of Regulator's decision***

If, in relation to any particular dispute, any interim order or final determination of the Regulator is made during any Timetable [Period](#) to which the dispute relates, the Regulator may, if he is of the opinion that in the circumstances of the case the balance of material convenience to all affected persons (taking into account any material prejudice that may thereby result) favours such a course, stipulate that such order or determination shall take effect at a specified time during such [Timetable Period](#).



## 5.8 *Additional powers and immunities of the Regulator*

Where any Access Party shall have made a reference to the Regulator under Condition D5.2, the Regulator shall:

5.8.1 be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the Timetabling Committee, he determines that the reference should not proceed. The grounds on which the Regulator may make such a determination shall include, but not be limited to:

- (a) the matter in question not being of sufficient importance to the industry;
- (b) the reference to him being frivolous or vexatious; or
- (c) the conduct of the party making the reference ought properly to preclude its being proceeded with; and

5.8.2 not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.

## 5.9 *Liability of Railtrack*

Railtrack shall not be liable for the consequences of any decision made by it which is implemented in a Working Timetable where, as a result of a reference under this Condition D5 in respect of that decision, that decision is subsequently overturned, unless that decision is unreasonable or has been made in bad faith, in which case the making of that decision shall be deemed to have been a breach of Railtrack's obligations under this Part D.

## CONDITION D6 - DECISION CRITERIA

The Decision Criteria consist of the necessity or desirability of the following (none of which necessarily has priority over any other):

- (a) sharing the capacity, and securing the development, of the Network for the carriage of passengers and goods in the most efficient and economical manner in the interests of all users of railway services having regard, in particular, to safety, the effect on the environment of the provision of railway services and the proper maintenance, improvement and enlargement of the Network;
- (b) enabling a Bidder to comply with any contract to which it is party (including any contracts with their customers and, in the case of a Bidder who is a franchisee or franchise operator, including the franchise agreement to which it is a party), in each case to the extent that Railtrack is aware or has been informed of such contracts;

- (c) maintaining and improving the levels of service reliability;
- (d) maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (e) maintaining and improving connections between railway passenger services;
- (f) avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria;
- (g) ensuring that, where the demand of passengers to travel between two points is evenly spread over a given period, the overall pattern of rail services should be similarly spread over that period;
- (h) ensuring that where practicable appropriate provision is made for reservation of capacity to meet the needs of Bidders whose businesses require short term flexibility where there is a reasonable likelihood that this capacity will be utilised during the currency of the timetable in question;
- (i) enabling operators of trains to utilise their railway assets efficiently and avoiding having to increase the numbers of railway assets which the operators require to maintain their service patterns;
- (j) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;
- (k) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services;
- (l) avoiding, unless absolutely necessary, changes to provisional International Paths following issue of the applicable Rules of the Plan; and
- (m) taking into account the commercial interests of Railtrack and existing and potential operators of trains in a manner compatible with the foregoing.

In its consideration of paragraph (d) of this Condition D6, Railtrack shall not be entitled to determine that its possessions of any part of the Network shall be as contemplated by any relevant maintenance contract by reason only of the terms and conditions of that contract. In this paragraph, "relevant maintenance contract" is a contract which Railtrack shall have entered into, or shall intend to enter into, with any person for the maintenance, renewal or the carrying out of any other work on or in relation to the Network.

## Part E - Environmental Protection

### Explanatory Note

- A. *Part E is concerned with environmental protection. Train Operators are required to notify Railtrack of any materials they propose to transport which would, by virtue of their nature or the quantity transported, be likely to give rise to Environmental Damage if they were to escape, and are required to provide Railtrack with a copy of any relevant authority for their carriage (such as a licence or certificate of registration).*
- B. *Railtrack and Train Operators must promptly notify each other of any circumstances which are reasonably foreseeable as likely to give rise to Environmental Damage.*
- C. *Where Railtrack becomes aware or is given a direction by a competent authority that as a direct or indirect result of the activities of a Train Operator, Environmental Damage has occurred or is likely to occur and action is required to prevent, mitigate or remedy that damage, it must make an assessment on the best information available to it at that time as to which of Railtrack and the Train Operators using that part of the Network is or are the most appropriate persons to take such action.*
- D. *In making its assessment, Railtrack is obliged to have due regard to certain specified criteria. Railtrack is further obliged to give notice to affected Train Operators within specified time limits of its decision and the reasons therefor. If an affected Train Operator disagrees with Railtrack's assessment, it may appeal to the Industry Committee and then refer the matter to arbitration.*
- E. *If a Train Operator fails to take any action required of it to prevent, remedy or mitigate Environmental Damage within a reasonable time or to the reasonable satisfaction of Railtrack or otherwise in cases of urgency, provisions exist for Railtrack to take the necessary action.*
- F. *Subject to Railtrack having complied with conditions F4 and G5 (respectively Vehicle and Network Change imposed by competent authorities) and to having given to all affected Train Operators as much notice as shall be reasonably practicable, Railtrack has the right to restrict track access on a temporary basis where necessary to deal with Environmental Damage but must use its reasonable endeavours to minimise those restrictions.*
- G. *This Explanatory Note does not form part of the Access Conditions.*

## DEFINITIONS

In this Part E, unless the context otherwise requires:

"Environmental Condition"	<p>means:</p> <ul style="list-style-type: none"><li>(a) any Environmental Damage; or</li><li>(b) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage</li></ul> <p>which (in either case) in Railtrack's reasonable opinion could result in Railtrack incurring any material liability or being subject to the Direction of any Competent Authority;</p>
"Environmental Damage"	<p>means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;</p>
"relevant liability"	<p>means the obligation of any person to make any payment or to take or secure the taking of any action in relation to an Environmental Condition or the Direction of a Competent Authority of the kind referred to in Condition E2.1.1(b); and</p>
"relevant steps"	<p>in relation to a Train Operator, means the steps of the kind referred to in Condition E2.1.3(e)(i).</p>

## **CONDITION E1 - ENVIRONMENTAL INFORMATION REQUIREMENTS**

### **1.1 *Train Operator's licence compliance***

Each Train Operator shall provide Railtrack with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Regulator pursuant to its licence authorising it to be the operator of trains.

### **1.2 *Railtrack's licence compliance***

Railtrack shall provide each Train Operator with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Regulator pursuant to its network licence.

### **1.3 *Information as to materials to be transported***

Each Train Operator shall from time to time, and within a reasonable time of being requested to do so by Railtrack, provide Railtrack with:

- (a) information as to any materials it proposes to transport on the Network which would by virtue of their nature or the quantity transported be likely to give rise to Environmental Damage if those materials were to be discharged or emitted or to escape or migrate;
- (b) in relation to such materials as are referred to in sub-paragraph (a) above, a copy of any licence, authorisation, consent or certificate of registration required for their carriage.

### **1.4 *General information - Train Operator***

Each Train Operator shall promptly notify Railtrack (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which the Train Operator is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage as a result of or affecting the activities of the Train Operator. Each Train Operator shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

### **1.5 *General information - Railtrack***

Railtrack shall promptly notify a Train Operator (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which Railtrack is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage which may affect the Train Operator. Railtrack shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

## **CONDITION E2 - REMEDIAL ACTION**

### **2.1    *Assessment as to appropriate persons to take relevant steps***

#### **2.1.1   *Railtrack's assessment***

Where:

- (a)    Railtrack becomes aware that, as a direct or indirect result of the activities of a Train Operator, an Environmental Condition exists or has occurred and Railtrack reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
- (b)    Railtrack is given a Direction by a Competent Authority that some action is required to prevent, mitigate or remedy an Environmental Condition resulting directly or indirectly from the activities of a Train Operator

Railtrack shall make an assessment, on the best information available to it at the relevant time, as to which of Railtrack and the Train Operators with permission to use the relevant part of the Network is or are the persons who would be the most appropriate to take any relevant steps, and, if more than one is appropriate, in what proportions.

#### **2.1.2   *Relevant criteria***

In making an assessment under Condition E2.1.1, Railtrack shall have due regard:

- (a)    to the likelihood that the person in question may be liable (other than pursuant to this Part E) to make any payment or to take or omit to take any action in relation to the Environmental Condition or Direction in question, whether under any Access Agreement to which it is a party or otherwise;
- (b)    in relation to the steps to be taken and the objectives of those steps, to the efficiency and economy with which the steps may be taken, and the effectiveness of those steps, if that person takes those steps, irrespective of the matters referred to in paragraph (a) above; and
- (c)    all other relevant circumstances of the case.

### 2.1.3 *Notice of Railtrack's assessment*

Within 60 days of making its assessment, Railtrack shall give notice to each affected Train Operator of:

- (a) the Environmental Condition or Direction of Competent Authority in question;
- (b) the assessment;
- (c) its reasons for reaching the assessment;
- (d) the availability for inspection by the Train Operator of such information as Railtrack shall have used in making the assessment; and
- (e) the steps which Railtrack reasonably considers:
  - (i) will be necessary to prevent, mitigate or remedy the Environmental Condition or the events or circumstances giving rise to the Direction of the Competent Authority in question, or to comply with the Direction in question; and
  - (ii) which should be taken by the Train Operator in question.

### 2.1.4 *Compliance with Train Operator's request for information*

Railtrack shall comply with any reasonable request of an affected Train Operator for additional information in relation to the relevant liability or Railtrack's assessment, within a reasonable time of the request.

### 2.1.5 *Disagreement with Railtrack's assessment*

If an affected Train Operator shall be dissatisfied with Railtrack's assessment or with any other statement or information provided by Railtrack pursuant to Condition E2.1.3, it shall be entitled to refer the matter for resolution to the Industry Committee and thereafter to arbitration pursuant to the Access Dispute Resolution Rules. It shall lose that entitlement if it fails to make the reference within 120 days of the later of:

- (a) the date of its receipt of Railtrack's assessment; and
- (b) the date upon which it receives any further information to which it is entitled pursuant to this Condition E2.1.

## **2.2 Requirement to take relevant steps**

### **2.2.1 Obligation**

Subject to Conditions E2.1.5, E2.7 and E2.8, the Train Operator shall:

- (a) take the steps of which Railtrack gives it notice pursuant to Condition E2.1.3(e), provided Railtrack shall have given it a reasonable opportunity to do so; and
- (b) bear the costs of taking those steps.

### **2.2.2 Railtrack assistance and supervision**

In cases where the Train Operator reasonably requires access to any part of the Network in order to take any relevant steps, Railtrack shall provide the Train Operator with such assistance and co-operation as shall be reasonable in that respect.

## **2.3 Railtrack's right to take relevant steps**

If:

- (a) the Train Operator fails to take any relevant step within a reasonable time or to the reasonable satisfaction of Railtrack; or
- (b) in Railtrack's reasonable opinion, either:
  - (i) it is necessary to take any relevant step urgently; or
  - (ii) it is not reasonably practicable in the circumstances for the Train Operator to take any relevant step,

Railtrack shall be entitled to take the step in question and to be reimbursed by the Train Operator for a fair proportion of the reasonable costs of doing so. Railtrack shall give notice to the Train Operator in question of any step taken pursuant to this Condition E2.3.

## **2.4 Liability of Railtrack**

Where Railtrack takes any steps in accordance with Condition E2.3, it shall not be liable to the Train Operator for any direct physical damage which is caused as a result of the taking of such steps except to the extent that Railtrack, or any person acting on behalf of or on the instructions of Railtrack, has been negligent or has failed to perform any obligation.



## **2.5 Access to land**

Each Train Operator shall use all reasonable endeavours to procure that Railtrack shall be given such right of access to any land upon which plant, equipment, rolling stock or machinery of the Train Operator is located as may be reasonably necessary to enable Railtrack to take any relevant steps.

## **2.6 General right to restrict access to Network**

2.6.1 Subject to having complied with Conditions F4 and G5 and to having given to all affected Train Operators as much notice as shall be reasonably practicable, Railtrack shall have the right to restrict permission to use the Network to the extent and for such period as is reasonably necessary to prevent, mitigate or remedy an Environmental Condition or to comply with a relevant Direction of a Competent Authority in respect of an Environmental Condition.

2.6.2 Where permission to use the Network is restricted pursuant to Condition E2.6.1, Railtrack shall use all reasonable endeavours to keep the extent and duration of such a restriction to a minimum and shall keep all affected Train Operators reasonably and regularly informed of the steps being taken by Railtrack to remove the restriction.

## **2.7 Payments to be made on without prejudice basis**

Payments by a Train Operator under this Condition E2 shall be made without prejudice to the right of the Train Operator's right to recover the whole or any part of the amounts in question from Railtrack or any other person, whether under an Access Agreement or in any other way.

## **2.8 Action taken will not prejudice later claim**

No action taken by a Train Operator in compliance with its obligations under this Condition E2 shall prejudice the right of the Train Operator at a later date to claim that any other person has the relevant liability.

## Part F - Vehicle Change

### Explanatory Note

- A. *Part F provides a procedure by which changes may be made to railway vehicles, the use of which is permitted in the access contract, from the specifications in the access contract. Vehicle Change includes any alteration to the physical characteristics of the vehicles, any increase in the length of any trains beyond that specified in the relevant access contract and any introduction of different vehicles on to the relevant routes which, in any case, is likely materially to affect the maintenance or operation of the Network or the operation of trains on the Network.*
- B. *A Train Operator wishing to make a Vehicle Change must submit a proposal to Railtrack, who must consult with affected parties and must give the Train Operator an initial response within 28 days. Although there is no charge for such a preliminary response, Railtrack is entitled to reimbursement of 75% of all costs of any further investigation of the proposal after the 28 day period. Any such costs are restricted to the minimum reasonably necessary for Railtrack to carry out the investigation.*
- C. *A Train Operator is entitled to implement a proposed Vehicle Change except in certain specified circumstances, including where any such change would result in a material deterioration in the performance of the Network or any train on the Network which cannot be adequately compensated or would result in Railtrack breaking any other access contract.*
- D. *A Train Operator may have to pay compensation to Railtrack in respect of any costs, losses or expenses incurred by Railtrack, any other Train Operator or any other operator of railway assets as a result of a Vehicle Change. The benefit of the change to Railtrack, a Train Operator or any other operator of railway assets and their chances of recouping such costs will be taken into account in determining the amount of such compensation.*
- E. *It is expected that the normal means of resolving differences between Railtrack and each Train Operator, regarding proposed Vehicle Changes, will be by negotiation and agreement, possibly involving some element of financial compensation. However, in order to deal with those cases where agreement cannot be reached, provision is made for Train Operators to appeal against the relevant Railtrack decision. An appeal is, in the first instance, made to the Network and Vehicle Change sub-Committee of the Industry Committee. If either Railtrack or the Train Operator is dissatisfied with the decision of that Committee, it may appeal to the Regulator. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.*
- F. *This Explanatory Note does not form part of the Access Conditions.*

## DEFINITIONS

In this Part F, unless the context otherwise requires:

- “Specified Equipment” means, in respect of an Access Agreement, any railway vehicle the use of which is permitted on the track pursuant to that agreement;
- “Vehicle Change” means, in respect of a Train Operator, any change to the Specified Equipment including by way of:
- (a) alteration to the physical characteristics of Specified Equipment;
  - (b) any increase in the length of any trains beyond that specified in the Access Agreement to which it is party;  
or
  - (c) the inclusion in Specified Equipment of any railway vehicle which is not so included
- which, in any case, is likely materially to affect the maintenance or operation of the Network or operation of trains on the Network.

## CONDITION F1 - INITIATION OF VEHICLE CHANGE PROCEDURE BY A TRAIN OPERATOR

### 1.1 *Railway Group Standards*

The obligation to comply with the requirements of this Part F shall be without prejudice to the obligations of the Access Parties to comply with the Railway Group Standards.

### 1.2 *Submission of proposal*

A Train Operator shall, if it wishes to implement a Vehicle Change, submit to Railtrack a proposal for such change together with:

- (a) such particulars of the proposed change as are reasonably necessary to enable Railtrack to assess the effect of the change both on the operation by Railtrack of the Network and on the operation of trains on the Network, and which it is reasonable to expect the Train Operator to provide; and
- (b) permission for Railtrack to consult to the extent provided for under Condition F1.3(b) subject to such requirements as to confidentiality as are reasonable.

### **1.3 *Evaluation of proposal***

Railtrack shall following receipt of any proposal for Vehicle Change from a Train Operator:

- (a) evaluate and discuss that proposal with that Train Operator for such period as is reasonable having due regard to the likely impact of the proposed Vehicle Change on either or both of Railtrack and other operators of trains; and
- (b) consult with all other operators of railway assets who are likely to be materially affected by the proposed change to the extent reasonably necessary so as properly to inform them of the change and to enable them to assess the consequences for them of the change.

### **1.4 *Provision of estimate of costs by Train Operator***

The Train Operator proposing a Vehicle Change shall use all reasonable endeavours to facilitate such consultation following receipt of a reasonable request by Railtrack for it to do so. Any Train Operator so consulted shall as soon as and, so far as reasonably practicable, provide to Railtrack an estimate of those costs, losses and expenses referred to in Condition F3.1 which may be incurred by that operator as a result of the implementation of the proposed Vehicle Change.

### **1.5 *Obligation to provide preliminary response***

Railtrack shall, if requested to do so in writing by a Train Operator, provide, at no cost to the Train Operator, a preliminary written response in respect of a proposed Vehicle Change (which, unless Railtrack indicates otherwise, shall be binding on it) to that Train Operator as soon as practicable and in any event within the period of 28 days commencing on:

- (a) the date of first notification to it in writing of the proposal for Vehicle Change made by the Train Operator; or (if later)
- (b) the date of the request for a preliminary response,

and any such preliminary response, if negative, shall include the reasons therefor.

### **1.6 *Reimbursement of costs***

Subject to Conditions F1.5 and F3, Railtrack shall be entitled to reimbursement by a Train Operator of 75% of all costs incurred by Railtrack in assessing any Vehicle Change proposed by that operator. Those costs shall be the minimum reasonably necessary for Railtrack to carry out that assessment.

### **1.7 *Provision of estimate of costs by Railtrack***

Railtrack shall, upon request from a Train Operator from time to time, provide the Train Operator with written estimates of the costs of assessing a proposal for Vehicle Change submitted by that operator (as referred to in Condition F1.6) including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that evaluation before commencing such work; and
- (b) upon request from the Train Operator from time to time, provide the Train Operator or its agents with such information as may be reasonably necessary to enable the Train Operator to assess the reasonableness of any estimate.

### **1.8 *Accuracy of estimates***

Railtrack shall ensure that any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it.

### **1.9 *Obligation to incur no further costs***

Railtrack shall, if requested by a Train Operator at any time, incur no further costs (except any costs that cannot reasonably be avoided) in respect of any proposal for Vehicle Change made by that Train Operator.

## **CONDITION F2 - RELATIONSHIP WITH NETWORK CHANGE**

- 2.1 If the implementation of a proposed Vehicle Change also requires the implementation of a Network Change, the sponsor of the Vehicle Change shall follow the procedures and satisfy the requirements of both this Part F and Part G and the requirement for a Network Change shall not preclude the right of the sponsor to follow the procedure in this Part F for a Vehicle Change or vice versa.

## **CONDITION F3 - RESPONSE BY RAILTRACK TO VEHICLE CHANGE PROPOSAL**

### **3.1 *Obligation to give notice of response***

Railtrack shall give notice to the sponsor of a Vehicle Change if:

- (a) it considers that one or more of the following conditions has been satisfied:
  - (i) the implementation of the change would necessarily result in Railtrack breaching any access contract (other than an access contract to which the Train Operator which has made the relevant proposal is a party);
  - (ii) the sponsor of that change has failed in a material respect to comply with its obligations under Condition F1.2 provided that Railtrack shall first have given the sponsor a reasonable opportunity to remedy that failure; or
  - (iii) the implementation of that change would result in a material adverse effect on the maintenance or operation of the Network or operation of trains on the Network, which in any such case cannot adequately be compensated under this Condition F3;
- (b) any Train Operator shall have given notice to Railtrack that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from the sponsor for the consequences of the implementation of the change; or
- (d) any other operator of railway assets shall have given notice to Railtrack that it considers that it should be entitled to compensation from the sponsor for the consequences of the implementation of the change.

Any notice of the kind referred to in paragraphs (a) or (b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in paragraphs (c) or (d) above shall include a statement of the amount of compensation required and the means by which the compensation should be paid, including any security or other assurances of payment which the sponsor should provide. Any such statement shall contain such detail as is reasonable to enable the sponsor to assess the merits of the statement.

### **3.2 Amount of compensation**

Subject to Condition F3.3, the amount of the compensation referred to in Condition F3.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred by Railtrack or the operator in question as a consequence of the implementation of the proposed change other than any such costs, losses or expenses which are attributable to the sponsor of the change improving its ability to compete with other operators of railway assets.

### **3.3 Benefits to be taken into account**

There shall be taken into account in determining the amount of compensation referred to in Condition F3.1:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by Railtrack or any other operator of trains as a result of the proposed Vehicle Change; and
- (b) the ability or likely future ability of Railtrack or any other operator of trains to recoup any costs, losses and expenses from third parties including passengers and customers.

### **3.4 Rights in relation to implementation of Vehicle Change**

If:

- (a) Railtrack shall have given notice to the sponsor of a Vehicle Change pursuant to Condition F3.1 (a) or (b) and the sponsor shall have failed to refer the matter for determination pursuant to the Access Dispute Resolution Rules; or
- (b) Railtrack shall have given notice to the sponsor pursuant to Condition F3.1 (c) or (d) and the sponsor shall have failed either:
  - (i) to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or
  - (ii) to refer the matter for determination pursuant to the Access Dispute Resolution Rules within 14 days of the date of the notice in question,

the proposed Vehicle Change shall not be implemented. In any other case and subject to the other provisions of these Access Conditions, the sponsor of the Vehicle Change shall be entitled to implement it.

## **CONDITION F4 - CHANGES IMPOSED BY COMPETENT AUTHORITIES**

- 4.1 Where a Train Operator is required (other than at the request or instigation of the Train Operator) to implement a Vehicle Change as a result of any Change of Law or any Direction of any Competent Authority other than the Regulator:
- (a) each Access Party shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F1.2, F1.3 and F1.4 (other than the final sentence) in respect of that Vehicle Change;
  - (b) Railtrack shall make such alterations (if any) to the Network as are reasonably necessary to accommodate that Vehicle Change and each Access Party shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.2 and G1.3 (other than the final sentence); and
  - (c) each Access Party shall bear its own costs and losses arising out of the implementation of the Vehicle Change or the consequences thereof.

## **CONDITION F5 - APPEAL PROCEDURE**

### **5.1 *Right of appeal to Network and Vehicle Change Committee***

If a Train Operator is dissatisfied as to any matter concerning the operation of the procedure set out in this Part F, the contents of any notice given by Railtrack under Condition F3.1 (and, in particular, the amount of any compensation referred to in that Condition) or any estimate as referred to in Condition F1.7, it may refer the matter to the Network and Vehicle Change Committee for determination.

### **5.2 *Right of appeal to the Regulator***

If either Access Party is dissatisfied with any decision of the Network and Vehicle Change Committee in relation to any matter referred to it under Condition F5.1, that Access Party may refer the matter to the Regulator for determination.

### **5.3 *Information to be sent in relation to the appeal***

Without prejudice to Condition F5.5, where an Access Party refers a matter to the Network and Vehicle Change Committee or the Regulator pursuant to Condition F5.1 or F5.2, that Access Party shall at the same time:

- (a) provide a statement in reasonable detail as to the matter in dispute and its reasons for making the reference; and
- (b) send a copy of the reference and the statement referred to in Condition F5.3.1 to the other party or parties to the dispute.



## **5.4 *Obligation to provide evidence***

Without prejudice to Condition F5.5, the Access Parties shall, as soon as reasonably practicable after the date of reference, use their respective reasonable endeavours to procure that the Network and Vehicle Change Committee and the Regulator are, respectively, furnished with sufficient evidence to consider any matters referred to them under Condition F5.1 or F5.2.

## **5.5 *Power of appeal bodies***

In relation to a reference to it or him made pursuant to Condition F5.1 or F5.2, the Network and Vehicle Change Committee or the Regulator (as the case may be) (each an “appeal body”) shall, in determining the matter in question, have the power:

- 5.5.1 to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other; except to the extent specified in sub-paragraphs (a) and (b) of paragraph A5.3.5 of the Access Dispute Resolution Rules, directions given by the Network and Vehicle Change Committee pursuant to this Condition F5.5.1 shall not be inconsistent with paragraphs A3.6.2, A5.1, A5.2 or A5.4 to A5.11 inclusive of those Rules;
- 5.5.2 in the case of the Regulator, to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by the Regulator;
- 5.5.3 in determining the matter in question:
  - (a) in the case of either appeal body:
    - (i) to direct the parties to the dispute to comply with directions which specify the result to be achieved but not the means by which it shall be achieved (“general directions”); or
    - (ii) to direct the parties to accept any submissions made by Railtrack as to the relevant Vehicle Change; and
  - (b) in the case of the Regulator, to specify the matters which Railtrack should have determined in giving any notice pursuant to Condition F3.1,

any such directions under paragraph (a) or (b) being, in the case of the Network and Vehicle Change Committee, only by final determination, but in the case of the Regulator, either by interim order or final determination;

- 5.5.4 having given general directions, on the application of any party to the dispute within 7 days of the determination of the matter in question (or such longer period as the appeal body shall allow), to make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions; and
- 5.5.5 to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the relevant appeal body shall determine) which shall be borne by either or both of the parties.

## **5.6 *Obligation to comply with determinations***

The Access Parties shall, subject to and pending any reference to the Regulator, comply with any determination of the Network and Vehicle Change Committee in relation to any dispute referred to it under this Condition F5, and shall comply with any interim order or final determination of the Regulator in relation to any such dispute referred to him.

## **5.7 *Additional powers and immunities of the Regulator***

Where any Access Party shall have made a reference to the Regulator under Condition F5.2, the Regulator shall:

- 5.7.1 be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the Network and Vehicle Change Committee, he shall determine that the reference should not proceed, including on the grounds that:
  - (a) the matter in question is not of sufficient importance to the industry;
  - (b) the reference to him is frivolous or vexatious; or
  - (c) the conduct of the party making the reference ought properly to preclude its being proceeded with;
- 5.7.2 not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.

## Part G - Network Change

### Explanatory Note

- A. *Part G provides a procedure by which changes may be made to the Network. A Network Change includes any change to any part of the Network, the format of any operational documentation or any change or series of changes which has lasted for more than six months and in each case which is likely to materially affect the operation of the Network or of trains operated by an operator. In addition, a material change to the performance monitoring points and, after a certain period of time, to any previously agreed Network Change is subject to the Network Change procedure.*
- B. *Proposals for Network Change may be initiated either by Railtrack or by a Train Operator. Railtrack has a duty to consult with all affected Train Operators on any proposed Network Change and must give any Train Operator proposing a Network Change an initial response within 28 days. Although there is no charge for such a preliminary response, Railtrack is entitled to reimbursement of 75% of all costs of any further investigation of a Network Change proposal put forward by a Train Operator after the 28 day period. Any such costs are restricted to the minimum reasonably necessary for Railtrack to carry out an assessment. A similar provision applies in relation to costs incurred by a Train Operator assessing a Network Change proposed by Railtrack.*
- C. *Railtrack may implement a proposed Network Change except in certain circumstances including where any such change would result in a material deterioration in the performance of any train on the Network which cannot be adequately compensated. Railtrack can also implement a Network Change for safety reasons without following the Network Change procedure for up to three months but upon the expiration of three months Railtrack is obliged to implement the Network Change procedure.*
- D. *The proposer of the Network Change may have to pay compensation in respect of any costs, losses or expenses incurred by (if a Train Operator is the proposer) Railtrack or any other Train Operator or (if Railtrack is the proposer) by Train Operators, as a result of a Network Change. The benefit of the change to Railtrack or a Train Operator and their chances of recouping their costs or losses from third parties shall be taken into account in determining the amount of that compensation.*
- E. *It is expected that the normal means of resolving differences between Railtrack and each Train Operator, regarding proposed Network Changes, will be by negotiation and agreement, possibly involving some element of financial compensation. However, in order to deal with those cases where agreement cannot be reached, provision is made for Train Operators to appeal against the relevant Railtrack decision. An appeal is, in the first instance, made to the Network and Vehicle Change sub-Committee of the Industry Committee. If either Railtrack or the Train Operator is dissatisfied with the decision of that Committee, it may appeal to the Regulator. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.*
- F. *This Explanatory Note does not form part of the Access Conditions.*

## DEFINITIONS

In this Part G, unless the context otherwise requires:

- “Network Change” means, in relation to a Train Operator,
- (i) any change (including any improvement or enlargement) to
    - (a) any part of the Network; or
    - (b) the format of any operational documentation (other than Railway Group Standards) owned or used by Railtrack or a Train Operator,which is likely materially to affect the operation of the Network, or of trains operated by that operator on the Network; or
  - (ii) any material change to the location of any of the specified points referred to in Condition B1.1(a); or
  - (iii) any change (not being a change within paragraph (i) or (ii) above) to the operation of the Network (including a temporary speed restriction) or series of such changes which has lasted for more than six months (or such other period as may be specified in that operator's Access Agreement) and which is likely materially to affect the operation of trains by that operator on the Network; or
  - (iv) any material change to a previously agreed network change (and for the purposes of this definition a previously agreed network change means any change as referred to in paragraph (i), (ii) or (iii) above which has not yet been implemented by Railtrack but in respect of which the procedure set out in this Part G has been initiated),

and shall not include a closure or any change to any System or System Interface of any System owned or used by Railtrack or a Train Operator;

“System” means any configuration of computer hardware, software and related communications equipment, whether or not the components are located on one site; and

“System Interface” means that part (whether logical, electrical, mechanical or otherwise) of any System which enables that System to interface with any other System, including but not limited to interfacing for the purpose of passing data or other information between them.

## **CONDITION G1 - NETWORK CHANGE PROPOSAL BY RAILTRACK**

### **1.1 *Notice of proposal***

Subject to Conditions G1.8 and G1.9, Railtrack shall, if it wishes to implement a Network Change:

- (a) give notice of its proposal for Network Change to:
  - (i) each Train Operator that may be affected by the implementation of the proposed Network Change;
  - (ii) the Franchising Director;
  - (iii) the HSE;
  - (iv) the Regulator; and
  - (v) each Passenger Transport Executive that may be affected by the implementation of the proposed Network Change;together with particulars of the proposed change which are reasonably necessary to enable that person to assess the effect of the proposed change and to enable each Train Operator to assess the effect of the proposed change on the operation of its trains; and
- (b) invite the submission of comments from the persons specified in Condition G1.1(a) within such period as is reasonable in the circumstances having due regard to the likely impact of the proposed Network Change on those persons.

### **1.2 *Provision of estimate of costs***

Railtrack shall, in respect of any proposal by it for Network Change, consult with all operators of railway assets likely to be materially affected by the proposed change to the extent reasonably necessary so as properly to inform that operator of the change and to enable that operator to assess the consequences for it of the proposed change. Any Train Operator so consulted shall, as soon as and so far as reasonably practicable, provide to Railtrack an estimate of those costs, losses and expenses referred to in Condition G2.1 which may be incurred by the Train Operator as a result of the implementation of the proposed Network Change.

### **1.3 *Reimbursement of costs***

Subject to Conditions G1.4 and G2, each Train Operator shall be entitled to reimbursement by Railtrack of 75% of all costs incurred by that Train Operator in assessing any Network Change proposed by Railtrack. Those costs shall be the minimum reasonably necessary for that Train Operator to carry out that assessment.

#### **I.4 *Obligation to provide preliminary response***

A Train Operator shall, if requested to do so in writing by Railtrack, provide, at no cost to Railtrack, a preliminary written response in respect of a proposed Network Change (which, unless the Train Operator indicates otherwise, shall be binding on it) to Railtrack as soon as practicable and in any event within the period of 28 days commencing on:

(a) the date of first notification to it in writing of the proposal for Network Change; or (if later)

(b) the date of the request for a preliminary response,

and any such preliminary response, if negative, shall include the reasons therefor.

#### **I.5 *Further information regarding costs***

Each Train Operator shall, upon request from Railtrack from time to time, provide Railtrack with written estimates of the costs of assessing a proposal for Network Change proposed by Railtrack (as referred to in Condition G1.3) including estimated costings of the work to be carried out and shall:

(a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that evaluation before commencing such work; and

(b) upon request from Railtrack from time to time, provide Railtrack with such information as may be reasonably necessary to enable Railtrack to assess the reasonableness of any estimate.

#### **I.6 *Accuracy of estimates***

Each Train Operator shall ensure that any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it.

#### **I.7 *Obligation to incur no further costs***

A Train Operator shall, if requested by Railtrack at any time, incur no further costs (except any costs which cannot reasonably be avoided) in respect of any proposal for Network Change made by Railtrack.

## **1.8 *Changes to the operation of the Network***

In the case of a Network Change within the meaning of paragraph (iii) of that term's definition, Railtrack may commence implementing the procedure set out in this Part G and shall, upon notice being given by the relevant Train Operator to Railtrack at any time after the expiry of the relevant period, promptly commence implementing and thereafter comply with that procedure as if that change were a Network Change proposed by Railtrack.

## **1.9 *Network Change for safety reasons***

To the extent that a Network Change within the meaning of paragraph (i) of that term's definition is required to be made by Railtrack for safety reasons, Railtrack shall not be obliged to implement the procedure set out in this Part G in relation to that change until the change has lasted for three months (or such longer period as may be specified in the relevant Train Operator's Access Agreement). Upon expiry of the relevant period, Railtrack shall promptly commence implementing and thereafter comply with the procedure set out in this Part G as if the relevant Network Change were a Network Change proposed by Railtrack.

# **CONDITION G2 - RESPONSE BY TRAIN OPERATOR TO NETWORK CHANGE PROPOSAL**

## **2.1 *Obligation to give notice of response***

The Train Operator shall give notice to Railtrack if it considers that either:

- (a) one or more of the following conditions has been satisfied:
  - (i) the implementation of the proposed change would necessarily result in Railtrack breaching an access contract to which that Train Operator is a party;
  - (ii) Railtrack has failed, in respect of the proposed change, to provide sufficient particulars to that Train Operator under Condition G1.1; or
  - (iii) the implementation of the proposed change would result in a material deterioration in the performance of that Train Operator's trains which cannot adequately be compensated under this Condition G2; or
- (b) it should be entitled to compensation from Railtrack for the consequences of the implementation of the change.

Any notice of the kind referred to in paragraph (a) above shall include the reasons for the Train Operator's opinion. Any notice of the kind mentioned in paragraph (b) above shall include a statement of the amount of compensation required and the

means by which the compensation should be paid, including any security or other assurances of payment which Railtrack should provide. Any such statement shall contain such detail as is reasonable to enable Railtrack to assess the merits of the Train Operator's decision.

## **2.2 Amount of compensation**

Subject to Condition G2.3, the amount of the compensation referred to in Condition G2.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred by the Train Operator as a consequence of the implementation of the proposed change.

## **2.3 Benefits to be taken into account**

There shall be taken into account in determining the amount of compensation referred to in Condition G2.1:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Train Operator as a result of the proposed Network Change; and
- (b) the ability or likely future ability of the Train Operator to recoup any costs, losses and expenses from third parties including passengers and customers.

## **2.4 Rights in relation to implementation of Network Change**

If:

- (a) a Train Operator shall have given notice to Railtrack pursuant to Condition G2.1(a) and Railtrack shall have failed to refer the matter for determination pursuant to the Access Dispute Resolution Rules; or
- (b) a Train Operator shall have given notice to Railtrack pursuant to Condition G2.1(b) and Railtrack shall have failed either:
  - (i) to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or
  - (ii) to refer the matter for determination pursuant to the Access Dispute Resolution Rules within 14 days of the date of the notice in question,

the proposed Network Change shall not be implemented. In any other case and subject to the other provisions of these Access Conditions, Railtrack shall be entitled to implement the Network Change.



## **CONDITION G3 - NETWORK CHANGE PROPOSAL BY TRAIN OPERATOR**

### **3.1 *Submission of proposal***

A Train Operator shall, if it wishes to implement a Network Change, submit to Railtrack a proposal for such change together with:

- (a) such particulars of the proposed change as are reasonably necessary to enable Railtrack to assess the effect of the change both on the operation by Railtrack of the Network and on the operation of trains on the Network, and which it is reasonable to expect the Train Operator to provide; and
- (b) permission for Railtrack to consult to the extent provided for under Condition G3.2(b) subject to such requirements as to confidentiality as are reasonable.

### **3.2 *Evaluation of proposal***

Railtrack shall following receipt of any proposal for Network Change from a Train Operator:

- (a) evaluate and discuss the proposal for change with that Train Operator for such period as is reasonable having due regard to the likely impact of the proposed Network Change on either or both of Railtrack and other operators of trains; and
- (b) consult with all other operators of railway assets which are likely to be materially affected by the proposed change to the extent reasonably necessary so as properly to inform them of the change and to enable them to assess the consequences for them of the change.

### **3.3 *Provision of estimate of costs by Train Operator***

The Train Operator proposing a Network Change shall use all reasonable endeavours to facilitate such consultation following receipt of a reasonable request by Railtrack for it to do so. Any Train Operator so consulted shall, as soon as and so far as reasonably practicable, provide to Railtrack an estimate of those costs, losses and expenses referred to in Condition G4.1 which may be incurred by that operator as a result of the implementation of the proposed Network Change.

### **3.4 *Obligation to provide preliminary response***

Railtrack shall, if requested to do so in writing by a Train Operator, provide, at no cost to the Train Operator, a preliminary response in respect of a proposed Network Change (which, unless Railtrack indicates otherwise, shall be binding on it) to that Train Operator as soon as practicable and in any event within the period of 28 days commencing on:

- (a) the date of first notification to it in writing of the proposal for Network Change made by the Train Operator; or (if later)
- (b) the date of the request for a preliminary response,

and any such preliminary response, if negative, shall include the reasons therefor.

### **3.5 *Reimbursement of costs***

Subject to Conditions G3.4 and G4, Railtrack shall be entitled to reimbursement by a Train Operator of 75% of all costs incurred by Railtrack in assessing any Network Change proposed by that operator. Those costs shall be the minimum reasonably necessary for Railtrack to carry out that assessment.

### **3.6 *Provision of estimate of costs by Railtrack***

Railtrack shall, upon request from a Train Operator from time to time, provide the Train Operator with written estimates of the costs of assessing a proposal for Network Change submitted by that operator (as referred to in Condition G3.5) including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that assessment before commencing such work; and
- (b) upon request from the Train Operator from time to time provide the Train Operator or its agents with such information as may be reasonably necessary to enable the Train Operator to assess the reasonableness of any estimate.

### **3.7 *Accuracy of estimates***

Railtrack shall ensure that any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it.

### **3.8 *Obligation to incur no further costs***

Railtrack shall, if requested by a Train Operator at any time, incur no further costs (except any costs that cannot reasonably be avoided) in respect of any proposal for Network Change made by that Train Operator.

### **3.9 *Relationship with Vehicle Change***

If the implementation of a Network Change proposed by a Train Operator also requires the implementation of a Vehicle Change in respect of the trains operated by that Train Operator, the sponsor of the Network Change shall follow the procedures and satisfy the requirements of both this Part G and Part F and the requirement for a Vehicle Change shall not preclude the right of the sponsor to follow the procedure in this Part G for a Network Change or vice versa.

## **CONDITION G4 - RESPONSE BY RAILTRACK TO NETWORK CHANGE PROPOSAL**

### **4.1 *Obligation to give notice of response***

Railtrack shall give notice to the sponsor of a Network Change if:

- (a) it considers that one or more of the following conditions has been satisfied:
  - (i) the implementation of the change would necessarily result in Railtrack breaching any access contract (other than an access contract to which the Train Operator who has made the relevant proposal is a party);
  - (ii) the sponsor of that change has failed in a material respect to comply with its obligations under Condition G3.1 provided that Railtrack shall first have given the sponsor a reasonable opportunity to remedy that failure; or
  - (iii) the implementation of that change would result in a material adverse effect on the maintenance or operation of the Network or the operation of any train on the Network which in any such case cannot adequately be compensated under this Condition G4; or
- (b) any Train Operator shall have given notice to Railtrack that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from the sponsor for the consequences of the implementation of the change; or
- (d) any other operator of railway assets shall have given notice to Railtrack that it considers that it should be entitled to compensation from the sponsor for the consequences of the implementation of the change.

Any notice of the kind referred to in paragraph (a) or (b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in paragraph (c) or (d) above shall include a statement of the amount of compensation required and the means by which the compensation should be paid, including any security or other assurances of payment which the sponsor should provide. Any such statement shall contain such detail as is reasonable to enable the sponsor to assess the merits of the statement.

#### **4.2 *Amount of compensation***

Subject to Condition G4.3, the amount of the compensation referred to in Condition G4.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred by Railtrack or the operator in question as a consequence of the implementation of the proposed change other than any such costs, losses or expenses which are attributable to the sponsor of the change improving its ability to compete with other operators of railway assets.

#### **4.3 *Benefits to be taken into account***

There shall be taken into account in determining the amount of compensation referred to in Condition G4.1:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by Railtrack or any other Train Operator as a result of the proposed Network Change; and
- (b) the ability or likely future ability of Railtrack or any such other Train Operator to recoup any costs, losses and expenses from third parties including passengers and customers.

#### **4.4 *Rights in relation to implementation of Network Change***

If:

- (a) Railtrack shall have given notice to the sponsor of a Network Change pursuant to Condition G4.1(a) or (b) and the sponsor shall have failed to refer the matter for determination pursuant to the Access Dispute Resolution Rules; or
- (b) Railtrack shall have given notice to the sponsor pursuant to Condition G4.1(c) or (d) and the sponsor shall have failed either:
  - (i) to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or

- (ii) to refer the matter for determination pursuant to the Access Dispute Resolution Rules within 14 days of the date of the notice in question,

the proposed Network Change shall not be implemented. In any other case, and subject to the other provisions of these Access Conditions, the sponsor of the Network Change shall be entitled to have it implemented by Railtrack.

## **CONDITION G5 - CHANGES IMPOSED BY COMPETENT AUTHORITIES**

### **5.1 *Obligations following imposition of changes***

Where Railtrack is required (other than at its own request or instigation) to implement a Network Change as a result of any Change of Law or any Direction of any Competent Authority other than the Regulator:

- (a) Railtrack shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 (other than the final sentence) in respect of that Network Change;
- (b) each Train Operator shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that Network Change and shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F1.2, F1.3 and F1.4 (other than the final sentence); and
- (c) each Access Party shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof.

### **5.2 *Compliance with Railway Group Standards***

The obligation to comply with the requirements of this Part G shall be without prejudice to the obligations of the Access Parties to comply with the Railway Group Standards.

## **CONDITION G6 - APPEAL PROCEDURE**

### **6.1 *Right of appeal to Network and Vehicle Change Committee***

If any Access Party is dissatisfied as to any matter concerning the operation of the procedure in this Part G, the contents of any notice given under Condition G2.1 or G4.1 (and, in particular, the amount of any compensation referred to in that Condition) or any estimate referred to in Condition G1.5 or G3.6 that Access Party may refer the matter to the Network and Vehicle Change Committee for determination.

## **6.2 *Right of appeal to the Regulator***

If either Access Party is dissatisfied with any decision of the Network and Vehicle Change Committee in relation to any matter referred to it under Condition G6.1 that Access Party may refer the matter to the Regulator for determination.

## **6.3 *Information to be sent in relation to the appeal***

Without prejudice to Condition G6.5, where an Access Party refers a matter to the Network and Vehicle Change Committee or the Regulator pursuant to Condition G6.1 or G6.2, that Access Party shall at the same time:

- (a) provide a statement in reasonable detail as to the matter in dispute and his reasons for making the reference; and
- (b) send a copy of the reference and the statement referred to in Condition G6.3(a) to the other party or parties to the dispute.

## **6.4 *Obligation to provide evidence***

Without prejudice to Condition G6.5, the Access Parties shall, as soon as reasonably practicable after the relevant date of reference, use their respective reasonable endeavours to procure that the Network and Vehicle Change Committee and the Regulator are, respectively, furnished with sufficient evidence so as properly to consider any matters referred to them under Condition G6.1 or G6.2.

## **6.5 *Power of appeal bodies***

In relation to a reference to it or him made pursuant to Condition G6.1 or G6.2, the Network and Vehicle Change Committee or the Regulator (as the case may be) (each an “appeal body”) shall, in determining the matter in question, have the power:

- 6.5.1 to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other; except to the extent specified in subparagraphs (a) and (b) of paragraph A5.3.5 of the Access Dispute Resolution Rules, directions given by the Network and Vehicle Change Committee pursuant to this Condition G6.5.1 shall not be inconsistent with paragraphs A3.6.2, A5.1, A5.2 or A5.4 to A5.11 inclusive of those Rules;

6.5.2 in the case of the Regulator, to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by the Regulator;

6.5.3 in determining the matter in question:

- (a) in the case of either appeal body:
  - (i) to direct the parties to the dispute to comply with directions which specify the result to be achieved but not the means by which it shall be achieved (“general directions”); or
  - (ii) to direct the parties to accept any submissions made by any party as to the relevant Network Change; and
- (b) in the case of the Regulator, to specify the matters which any Access Party should have determined in giving any notice pursuant to Condition G2.1 or G4.1,

any such directions under paragraph (a) or (b) being, in the case of the Network and Vehicle Change Committee, only by final determination, but in the case of the Regulator, either by interim order or final determination;

6.5.4 having given general directions, on the application of any party to the dispute within 7 days of the determination of the matter in question (or such longer period as the appeal body shall allow), to make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions; and

6.5.5 to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the relevant appeal body shall determine) which shall be borne by either or both of the parties.

## **6.6 *Obligation to comply with determinations***

The Access Parties shall, subject to and pending any reference to the Regulator, abide by any determination of the Network and Vehicle Change Committee in relation to any dispute referred to it under this Condition G6, and shall abide by any interim order or final determination of the Regulator in relation to any such dispute referred to him.

## **6.7 Additional powers and immunities of the Regulator**

Where any Access Party shall have made a reference to the Regulator under Condition G6, the Regulator shall:

- 6.7.1 be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the Network and Vehicle Change Committee, he shall determine that the reference should not proceed, including on the grounds that:
  - (a) the matter in question is not of sufficient importance to the industry;
  - (b) the reference to him is frivolous or vexatious; or
  - (c) the conduct of the party making the reference ought properly to preclude its being proceeded with;
- 6.7.2 not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.



# Part H - Operational Disruption

## Explanatory Note

- A. *Part H provides procedures and plans for minimising the effects of operational disruption. Operational disruption is categorised as either a Disruptive Event or a case of minor disruption. The dividing line is materiality and different regimes apply to each category of disruption.*
- B. *A Disruptive Event materially prevents or materially disrupts the operation of trains on any part of the Network and in those circumstances Railtrack is required to decide the most appropriate action after the occurrence of a Disruptive Event, taking into account certain principles, Codes of Practice and Contingency Plans and with a view to minimising the inconvenience of passengers but having due regard to the interests of operators of non-passenger trains. If a Disruptive Event only affects one Train Operator, Railtrack is required to take such action as the Train Operator reasonably requires to restore the operation of trains over the affected part of the Network.*
- C. *There are provisions for the development and implementation of Contingency Plans and Codes of Practice, for minimising the effects of an extended period of disruption and for any consequential amendment to the Working Timetable including a consultation process with the Train Operators affected by a Disruptive Event and those likely to be affected.*
- D. *A Train Operator is required to comply with Railtrack's instructions in the event of a failure of one of its trains provided such request does not contravene any Railway Group Standard. Any Train Operator may be commissioned to assist a failed train of another Train Operator.*
- E. *In adverse weather conditions or where the track is obstructed, a Train Operator may be requested by Railtrack to provide Railtrack with any of its equipment and with reasonable assistance.*
- F. *Railtrack is required after the end of a Disruptive Event or extended period of disruption to restore the Working Timetable as soon as is reasonably practicable and if Railtrack has reasonable grounds to believe that it is not reasonably practicable so to do, Railtrack is required to give notice to the Train Operators affected or likely to be affected and to repeat the procedures for determining a Disruptive Event and implementing an amendment to the Working Timetable.*
- G. *Part H also deals with train regulation, which is in effect the means whereby operations are restored to normal following cases of minor disruption. Railtrack is obliged to establish and comply with a train regulation statement in respect of each discrete part of the Network which is a statement specifying the procedures to be followed in such circumstances taking into account certain specified objectives.*

- H. *The train regulation statement will be issued annually by Railtrack at the first Passenger Change Date occurring in each calendar year and will be preceded by a notification and consultation process with Train Operators affected or likely to be affected by any minor disruption commencing 240 days prior to such Passenger Change Date. During such period, if a Train Operator disagrees with the train regulation statement, it has a right of appeal to the Timetabling sub-Committee of the Access Disputes Resolution Committee (established under the Access Dispute Resolution Rules). If either Railtrack or the Train Operator is dissatisfied with the decision of that Committee, it may appeal to the Regulator or refer the matter to arbitration depending on the matter in dispute. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.*
- I. *This Explanatory Note does not form part of the Access Conditions.*

## DEFINITIONS

In this Part H, except where the context otherwise requires:

“access rights”	means permission to use track for the purpose of or in connection with the operation of railway assets by a Train Operator;
“affected train operator”	means a Train Operator which is reasonably likely to be affected by the implementation of the train regulation statement in question;
“appeal body”	means the Timetabling Committee, an arbitrator or the Regulator determining a matter referred to it or him pursuant to Condition H11.9;
“appellant”	means an affected train operator making a reference to the Timetabling Committee, an arbitrator or the Regulator pursuant to Condition H11.9;
“applicable train regulation statement”	means the train regulation statement which applies to a part or parts of the Network in respect of which the affected train operator in question has access rights;
“Appropriate Location”	means the nearer of:  (a) the nearest point at which it is reasonably practicable to attach an alternative locomotive to a Failed Train; and

- (b) (i) in respect of a Failed Train which is a passenger train, the nearest point at which it is reasonably practicable for its passengers to alight so as to continue with their forward journeys; and
- (ii) in respect of a Failed Train which is a non-passenger train, the nearest point at which it is reasonably practicable to stable it;

“case of minor disruption”	means the occurrence or existence of an event or circumstance which prevents or disrupts the operation of trains on any part of the Network in accordance with the Working Timetable (including an amended Working Timetable established pursuant to Condition H7.3) and which is not a Disruptive Event;
“Code of Practice”	means, in relation to any Route, a code of practice established pursuant to Condition H4 and designed to deal with a Disruptive Event in circumstances where either: <ul style="list-style-type: none"> <li>(a) no Contingency Plan has been developed; or</li> <li>(b) an existing Contingency Plan does not adequately deal with the Disruptive Event in question;</li> </ul>
“Contingency Objective”	has the meaning ascribed to it in Condition H3.1;
“Contingency Plan”	means a plan of action developed in accordance with the procedures set out in Condition H5;
“Control Point”	means that person or section within a Train Operator’s organisation whose responsibility includes dealing with Disruptive Events;
“deal with”	in relation to a Disruptive Event or an Extended Disruption, includes dealing with the consequences of the disruption in question;
“Disruptive Event”	has the meaning ascribed to it in Condition H1;
“Extended Disruption”	has the meaning ascribed to it in Condition H7.1;
“Failed Train”	means a train which is the subject of a Train Failure;

“first consultation notice”	means the notice given pursuant to Condition H11.4.1;
“freight customer”	means a person to whom services for the carriage of goods by railway are or are to be provided;
“non-passenger train”	means a train which is not a passenger train;
“passenger train”	means a train which provides services for the carriage of passengers by railway;
“Plan Route”	means, in respect of a Train Operator, any of its Routes covered by a Contingency Plan;
“Railtrack Control Centre”	means, in relation to a Route, that part of Railtrack’s organisation which is responsible for dealing with Disruptive Events on that Route;
“relevant third party”	means an affected train operator which the relevant appeal body shall have required to provide evidence or make submissions to it pursuant to Condition H11.10.3(b);
“through journey”	means a journey during which the passenger in question will require to change trains at least once;
“time sensitive goods”	<p>means goods carried by railway in respect of which the time at which they are delivered to their intended destination is a matter of material importance:</p> <ul style="list-style-type: none"> <li>(a) to either or both of the consignor and the consignee, whether because of their perishable nature, the terms of the contract for their sale, other disposal or transportation, or in any other respect; or</li> <li>(b) in the interests of safety or security;</li> </ul>
“Train Failure”	means any failure of a train to move under its own power (including as a result of breakdown or any failure properly to load the train) which adversely affects either the operation of other trains on the Network or any works carried out or to be carried out by or on behalf of Railtrack during a possession to which Railtrack is entitled pursuant to these Access Conditions or any Access Agreement;

“train regulation objective”	has the meaning ascribed to it in Condition H11.1; and
“train regulation statement”	means a policy and set of procedures established pursuant to Condition H11.2.

## **CONDITION H1 - DISRUPTIVE EVENTS AND ESTABLISHMENT OF COMMUNICATIONS**

### **1.1 *Definition***

A Disruptive Event is any event or circumstance which materially prevents or materially disrupts the operation of trains on any part of the Network in accordance with the Working Timetable.

### **1.2 *Notification by Train Operators***

Each Train Operator shall notify Railtrack of the occurrence of a Disruptive Event as soon as reasonably practicable after it becomes aware of it.

### **1.3 *Notification by Railtrack***

Railtrack shall notify a Train Operator of the occurrence of a Disruptive Event which is likely to affect the operation of trains by that operator, as soon as reasonably practicable after it becomes aware of it.

### **1.4 *Notification of expected Disruptive Events***

The Access Parties shall use their reasonable endeavours to provide one another of as much notice as is reasonably practicable of any Disruptive Event which they believe is likely to occur.

### **1.5 *Information to be provided in notices of Disruptive Events***

Each notice given pursuant to Conditions H1.2, H1.3 and H1.4 shall, as far as reasonably practicable, include a specification of the nature and extent of the Disruptive Event in question and its likely duration, in an amount of detail as shall be reasonably required so as to enable the person receiving the notice to inform his staff, passengers and other associates of the disruption in question and minimise the inconvenience and disruption which is likely to be caused to them.

## **1.6 *Designation of Railtrack Control Centres***

Railtrack shall designate and notify to each Train Operator the location and contact details of the Railtrack Control Centre in relation to its Routes.

## **1.7 *Train Operator's Control Points***

Each Train Operator shall liaise with Railtrack in relation to the identity and location of its Control Point and the setting up of communication arrangements sufficient to ensure proper contact with the relevant Railtrack Control Centre. Any such communication shall, in the case of the Train Operator, be through its Control Point and, in the case of Railtrack, be through the relevant Railtrack Control Centre.

## **1.8 *Conflict with Railway Group Standards***

If there is any conflict between this Part H and the provisions of any Railway Group Standard, the provisions of the relevant Railway Group Standard shall, to the extent of any inconsistency, prevail.

## **1.9 *Relationship with performance regimes***

The provisions of this Condition H shall have effect without prejudice to any regime established between Railtrack and a Train Operator in or pursuant to their Access Agreement in relation to any incentives and payments associated with the performance of their respective obligations under that agreement.

# **CONDITION H2 - ACTION FOLLOWING A DISRUPTIVE EVENT**

## **2.1 *Determination by Railtrack***

Railtrack shall, as soon as reasonably practicable following the occurrence of a Disruptive Event:

- (a) determine the most appropriate action to be taken to restore the operation of trains on the Network in accordance with the Working Timetable and, in making its determination, shall take account (in the order of priority in which they are listed where there is any inconsistency) of the following:
  - (i) any Contingency Plan which applies to the Disruptive Event in question;
  - (ii) any Code of Practice which applies to the Disruptive Event in question; and
  - (iii) the Contingency Objective; and

- (b) consult as fully and regularly as reasonably practicable with each Train Operator affected or likely to be affected by the Disruptive Event as to the action which Railtrack proposes to take in connection with that event.

## **2.2 *Disruptive Events affecting only one operator of trains***

If the action to be taken to deal with a Disruptive Event is not likely to affect the operation of trains of more than one Train Operator, that Train Operator shall be entitled to require Railtrack to take such actions as the Train Operator shall reasonably specify in relation to the restoration of the operation of the affected part of the Network so as to permit the operation of trains on that part in accordance with the Working Timetable.

## **CONDITION H3 - CONTINGENCY OBJECTIVE**

### **3.1 *Definition***

The Contingency Objective is the minimisation of the inconvenience of passengers following the occurrence of a Disruptive Event, having due regard to the interests of operators of non-passenger trains.

### **3.2 *Relevant considerations***

In signalling and otherwise controlling the train movements over or along any track, Railtrack shall use all reasonable endeavours to achieve the Contingency Objective. In doing so, Railtrack shall have due regard to the need to strike a fair and reasonable balance between the interests of both passengers and freight customers in relation to:

- (a) the maximisation of the number of passengers carried by available railway vehicles (provided that, so far as reasonably practicable, a balance shall be maintained between the level of overcrowding of railway vehicles and the time and distance involved in the relevant railway passenger services);
- (b) the minimisation of journey times;
- (c) the completion of through journeys;
- (d) the need to keep passengers moving towards their destinations by such means as are appropriate (including bus links and the diversion of passengers on to alternative routes);
- (e) the need to keep time sensitive goods moving towards their destinations by such means as are appropriate (including by diversion and, if appropriate, change of mode of transport);

- (f) the minimisation of costs to each Train Operator affected by the Disruptive Event in question; and
- (g) safety and security.

## **CONDITION H4 - CODE OF PRACTICE**

### **4.1 *Development and establishment***

Each Train Operator shall, as soon as reasonably practicable following the date on which its Access Agreement comes into effect, participate, in conjunction with Railtrack, in the development and establishment of a Code of Practice complying with Condition H4.2.

### **4.2 *Contents***

Each Code of Practice shall:

- (a) conform with the Contingency Objective;
- (b) establish in general terms the roles and responsibilities of Railtrack and operators of trains in responding to a Disruptive Event; and
- (c) in particular, include provisions dealing with the following matters:
  - (i) communications between Railtrack and operators of trains following a Disruptive Event;
  - (ii) the identity of any relevant diversionary routes;
  - (iii) arrangements as to the utilisation of railway vehicles and requirements as to any relevant route and traction knowledge of Train Crews;
  - (iv) arrangements as to the provision of alternative bus services or alternative means of transporting time sensitive goods;
  - (v) the involvement of persons engaged to repair, renew or maintain the Network; and
  - (vi) the names and contact numbers of personnel to be contacted in the event of protracted disruption.



## **CONDITION H5 - DEVELOPMENT AND ESTABLISHMENT OF CONTINGENCY PLANS**

### **5.1    *Development and establishment***

The Access Parties shall, as soon as reasonably practicable following the date of signature of their Access Agreement, use all reasonable endeavours to procure, with the agreement of other operators of trains, the development and establishment of appropriate Contingency Plans in relation to particular types of Disruptive Event which may affect the Routes which they have permission to use.

### **5.2    *Conformity with Contingency Objective***

Each Contingency Plan shall conform with the Contingency Objective.

### **5.3    *Information***

Railtrack shall ensure that each Train Operator is kept informed both of the Plan Routes which are relevant to it and of the identity of the other operators of trains to whom those Plan Routes are also relevant, together with any changes to those routes or those other operators.

### **5.4    *Copies***

Railtrack shall, following agreement of a Contingency Plan with all relevant operators of trains, promptly send a copy of it to each Train Operator affected by the plan.

## **CONDITION H6 - APPLICATION OF CONTINGENCY PLANS etc.**

### **6.1    *Implementation***

Subject to any determination by Railtrack to the contrary pursuant to Condition H2.1, the Access Parties shall, on the occurrence of a Disruptive Event for which a Contingency Plan has been established, proceed to implement that plan so far as reasonably practicable.

### **6.2    *Train Crew knowledge***

Each Train Operator shall ensure that its Train Crews have an adequate route and traction knowledge of any diversion set out in an applicable Contingency Plan to the extent that the Contingency Plan in question so provides.

### **6.3    *Adaptation of plan***

Each of the Access Parties shall use all reasonable endeavours to adapt a Contingency Plan to the specific circumstances arising out of the Disruptive Event.

### **6.4    *Application of Code of Practice***

Subject to any determination by Railtrack to the contrary pursuant to Condition H2.1, where no Contingency Plan exists or adequately deals with a particular Disruptive Event, Railtrack shall apply the applicable Code of Practice (if any) in such a manner as it considers to be reasonable and appropriate in the circumstances.

### **6.5    *Contingency Objective***

Subject to any determination by Railtrack to the contrary pursuant to Condition H2.1, where no Contingency Plan exists or adequately deals with a particular Disruptive Event and no Code of Practice exists, Railtrack shall use all reasonable endeavours to secure the Contingency Objective in such a manner as it considers to be reasonable and appropriate in the circumstances.

## **CONDITION H7 - EXTENDED DISRUPTION - EMERGENCY TIMETABLING PROCEDURE**

### **7.1    *Definition***

An Extended Disruption is a Disruptive Event which is likely to be of sufficient duration as to make it practicable to adopt a revised timetable.

### **7.2    *Agreed amendment of Working Timetable***

Railtrack and any Train Operator which is affected by an Extended Disruption shall use all reasonable endeavours to agree an amendment of the Working Timetable so as to minimise the effects of an Extended Disruption. If such an amended Working Timetable shall have been agreed, the provisions of Condition H7.3 shall have effect accordingly.

### **7.3    *Railtrack to establish amended Working Timetable***

Subject to Condition H7.2, where an amended Working Timetable shall have been agreed, in the case of an Extended Disruption, Railtrack shall promptly produce a revised Working Timetable:

- (a) complying, to the extent reasonably practicable, with the procedures set out in Part D and having due regard, in particular, to the Decision Criteria (as defined in Part D); and
- (b) consulting, to the extent reasonably practicable, with each Train Operator affected or likely to be affected by the Extended Disruption

and shall keep the operation of the revised timetable under review, modifying it, where it reasonably considers necessary and after due consultation with Train Operators affected or likely to be affected by the Extended Disruption as far as reasonably practicable, to comply with the Decision Criteria.

#### **7.4 *Rights of appeal***

The procedures set out in Condition D5 shall apply mutatis mutandis to any changes or proposed changes to the Working Timetable pursuant to this Condition H7.

### **CONDITION H8 - CLEARANCE OF TRACK BLOCKAGES**

#### **8.1 *Failure of Train Operator's Train***

##### **8.1.1 *Notification of Train Failure***

If a Train Failure occurs in respect of a train operated by a Train Operator, it shall promptly notify Railtrack of the location of the Failed Train and any other details reasonably required by Railtrack in respect of the Failed Train.

##### **8.1.2 *Railtrack's obligation to consult operators***

On becoming aware that a Train Failure has occurred in respect of a train operated by a Train Operator, Railtrack shall promptly:

- (a) consult with the operator of the Failed Train in order to ascertain the reason for the Train Failure and to obtain such other information as may be necessary in order to effect a safe and expeditious removal of the Failed Train; and
- (b) consult with other operators of trains whose trains are or are likely to be in the vicinity of the Failed Train in order to assess the capability of those trains or the locomotives coupled to them to move the Failed Train.

##### **8.1.3 *Movement of failed train by its operator***

If, after consultation in accordance with Condition H8.1.2, Railtrack reasonably believes that the Train Failure in question can be remedied by action taken by or on

behalf of the Train Operator's Train Crew at the site of the Train Failure, it may permit the Train Operator to take such action as is necessary to move the Failed Train. Such permission may be subject to such time limits as Railtrack shall reasonably specify to the Train Operator having due regard to the effect of the Train Failure on trains on the same or adjoining sections of track.

#### **8.1.4** *Consultation where assistance required*

If, after consultation in accordance with Condition H8.1.2 and, if relevant, the expiry of any time limit specified by Railtrack pursuant to Condition H8.1.3, Railtrack reasonably believes that the Failed Train can only be moved with the assistance of another train or locomotive or other equipment, Railtrack shall consult with the Train Operator operating the Failed Train as to the capabilities of any trains or locomotives which are available to assist the Failed Train or the nature of other assistance.

#### **8.1.5** *Compliance with Railtrack's instructions*

The Train Operator shall, subject to Railtrack having consulted with it in accordance with Conditions H8.1.2 and H8.1.4, comply with any reasonable instructions of Railtrack for the purpose of ensuring, with any such assistance as is referred to in Condition H8.1.4, the prompt removal of the Failed Train to an Appropriate Location.

### **8.2** *Assistance to a Failed Train*

#### **8.2.1** *Use of following train*

If, after consultation in accordance with Condition H8.1, Railtrack reasonably believes that the train, or the locomotive coupled to a train, immediately following a Failed Train is able to move the Failed Train by pushing or pulling it, Railtrack may commission the operator of such train or locomotive to use it to push or pull the Failed Train under the guidance and control of the operator of the Failed Train to such Appropriate Location as Railtrack shall notify to that operator.

#### **8.2.2** *Commissioning of other trains*

If a Failed Train cannot, in the opinion of Railtrack, be moved by the train or locomotive immediately following the Failed Train, Railtrack may commission any Train Operator in control of a train or locomotive in the vicinity of the Failed Train to move the Failed Train to such Appropriate Location as Railtrack shall notify to it. Railtrack may only commission the Train Operator's train or locomotive if, having had due regard to all relevant factors (including the factors set out in Condition H8.2.3), it reasonably believes the Train Operator's train or locomotive is the most appropriate means to move the Failed Train.

### 8.2.3 *Relevant factors*

The factors referred to in Condition H8.2.2 are, in relation to the relevant locomotive or train:

- (a) its fuel reserves;
- (b) the current use of the train or, in the case of a locomotive, the train to which it is coupled and, if relevant, the goods carried on the train;
- (c) the route knowledge of its Train Crew; and
- (d) the length of any delay to any assisting train or train to which an assisting locomotive is coupled (taking account of the time necessary to return an assisting locomotive or to provide a suitable replacement locomotive).

### 8.2.4 *Consent to commissioning required*

Railtrack may commission the train or locomotive of a Train Operator under this Condition H8 only with the consent of that Train Operator (which consent may not be unreasonably withheld or delayed).

### 8.2.5 *Compliance with directions*

Where it provides an assisting train or locomotive, a Train Operator shall comply with any directions given by Railtrack to move that Failed Train to such Appropriate Location as has been notified to him and, subject to such directions, that operator's Train Crew shall, during the course of moving the Failed Train, act under the guidance and control of the operator of the Failed Train. Nothing in this Condition H8.2.5 shall oblige any Train Operator to contravene any Railway Group Standard.

### 8.2.6 *Movement to Appropriate Location*

Railtrack shall use all reasonable endeavours to ensure that a Failed Train is moved to the Appropriate Location notified to the Train Operator in accordance with this Condition H8.2. A Train Operator commissioned to move a Failed Train under this Condition H8.2 shall be obliged to move such Failed Train only to an Appropriate Location notified to the Train Operator in accordance with this Condition H8.2.

### 8.2.7 *Timeous release of assisting train*

Railtrack shall use all reasonable endeavours to release the assisting train or locomotive to the assisting Train Operator within a period of 3 hours from the time at which such train or locomotive was commissioned by Railtrack in accordance with this Condition H8.2.

### 8.2.8 *Assistance in reaching intended destination*

Railtrack shall use all reasonable means to assist a Train Operator whose train or locomotive has been commissioned to move a Failed Train, to reach its intended destination, as soon as reasonably practicable.

### 8.3 Compensation for moving Failed Trains

#### 8.3.1 Obligation to reimburse Railtrack

Except as provided for in Condition H8.3.4, if one of a Train Operator's trains is subject to Train Failure due to a mechanical defect or other cause attributable to the Train Operator and such train is moved in accordance with Conditions H8.1 and H8.2, the Train Operator shall pay Railtrack the sum of the amounts payable under Condition H8.3.2.

#### 8.3.2 Right to payment for assisting Failed Train

Except as provided for in Condition H8.3.4, if a Train Operator is commissioned to use one of its trains or locomotives to assist a Failed Train in accordance with Condition H8.2.2, Railtrack shall pay to the Train Operator:

- (a) £2,090; and
- (b) £210 for every hour which the locomotive is assisting the Failed Train over and above 3 hours.

#### 8.3.3 Price Variation

- (a) The amounts specified in Condition H8.3.2. shall remain in force until 31<sup>st</sup> March 2001.
- (b) On 1<sup>st</sup> April each year commencing with 1<sup>st</sup> April 2001 the amounts specified in Condition H8.3.2. which applied in the immediately preceding year shall be adjusted by multiplying them by the Adjustment Factor rounded to three decimal places to be calculated in accordance with the following formula:

$$\text{Adjustment Factor} \equiv 1 + \frac{(\text{RPI}_{t-1} - \text{RPI}_{t-2})}{\text{RPI}_{t-2}} - 0.02$$

where:

RPI<sub>t-1</sub> means the average monthly value of the Retail Prices Index All Items ("RPI") issued by the Office for National Statistics for the 12 months up to and including the month of December immediately preceding the relevant 1<sup>st</sup> April.

RPI<sub>t-2</sub> means the average monthly value of the Retail Prices Index referred to above applicable for the 12 months up to and including the month of December which is 12 months before the month of December immediately preceding the relevant 1<sup>st</sup> April.

- (c) The amounts calculated in accordance with paragraph (b) above shall be rounded to the nearest £10.
- (d) As soon as reasonably practicable after 1<sup>st</sup> April each year, Railtrack shall give notice to each Train Operator of the adjusted amounts calculated in accordance with paragraph (b) above.

#### **8.3.4** *Alternative financial arrangements*

The provisions of Conditions H8.3.1, H8.3.2 and H8.3.3 shall apply subject to any alternative financial arrangements which may be agreed between Train Operators who are to pay and receive amounts under those conditions, provided such alternative arrangements have first been notified to and approved by Railtrack (such approval not to be unreasonably withheld or delayed).

#### **8.3.5** *Liability of assisting Train Operator for payments to Railtrack*

Without prejudice to any obligation arising as a result of its failure to perform any obligation or its negligence, no Train Operator shall be liable to pay to Railtrack any amount (whether in respect of permission to use track, signalling or other equipment or the provision of electricity or any service or otherwise) which it would, but for this Condition H8.3.5, have become liable to pay as a result of assisting a Failed Train.

### **CONDITION H9 - ADVERSE WEATHER CONDITIONS AND OBSTRUCTIONS**

#### **9.1** *Provision of equipment and assistance*

Subject to Condition H9.2, if a Train Operator holds any equipment which, in the reasonable opinion of Railtrack, may assist it in dealing with disruption to the operation of trains on the Network caused by either or both adverse weather conditions and obstructions of the track, it shall, where reasonably requested to do so by Railtrack, make that equipment available and otherwise provide reasonable assistance to Railtrack in remedying that disruption where requested to do so.

#### **9.2** *Payment*

Any equipment or assistance referred to in Condition H9.1 shall only be made available or provided to, or used in the assistance of, Railtrack on the payment of such fees as shall be agreed between the parties from time to time.

### **CONDITION H10 - RESTORATION OF WORKING TIMETABLE**

#### **10.1** *Obligation to restore normal operation*

Subject to Condition H10.2, as soon as reasonably practicable after the end of a Disruptive Event or Extended Disruption, Railtrack shall:

- (a) procure that the operation of the Network shall be restored so as to permit the operation of trains in accordance with the Working Timetable; and
- (b) give to each Train Operator affected by the disruption in question as much notice of such restoration as is reasonably practicable.

## **10.2 Continuation of emergency timetable**

As soon as reasonably practicable after Railtrack has reasonable grounds for believing that it is not likely to be reasonably practicable for it to procure that the operation of the Network shall be restored so as to permit the operation of trains in accordance with the Working Timetable after the end of a Disruptive Event or Extended Disruption, Railtrack shall:

- (a) give to each Train Operator affected or likely to be affected by the disruption in question notice of its opinion together with its reasons;
- (b) take into account any representations or objections which any of them shall make in relation to the matter; and
- (c) having regard to the fact that the amended timetable established pursuant to Condition H2 or H7 is likely to be in operation for a period which is longer than the period of operation expected when it was established, reconsider that timetable and re-comply with the procedures specified in Condition H2 or H7 (as the case may be).

The timetable established after compliance by Railtrack with this Condition H10.2 shall become the Working Timetable for the part or parts of the Network in question.

## **CONDITION H11 - TRAIN REGULATION**

### **11.1 Train regulation objective**

The train regulation objective is the striking of a fair and reasonable balance between:

- (a) minimising overall delay to train movements (including Ancillary Movements);
- (b) minimising overall delay to passengers travelling or intending to travel by railway and the movement of time-sensitive goods, both in respect of the aggregate delay to any one of them and the aggregate numbers of passengers and goods delayed;
- (c) maintaining connections between railway passenger services; and
- (d) avoiding undue discrimination between any person and any other person.

The interests of safety and security, as set out in Condition A1.1, are at all times paramount.

### **11.2 Railtrack's obligation to establish and comply with train regulation statements**

Railtrack shall establish and thereafter comply with a train regulation statement in respect of each discrete part of the Network in accordance with the provisions of this Condition H11.



### **11.3     *Contents of train regulation statements***

Each train regulation statement:

- (i) shall contain:
  - (a) a specification of the cases of minor disruption in which it shall apply; and
  - (b) the procedures which Railtrack shall follow in cases of minor disruption when signalling and otherwise controlling train movements over or along any track comprised in the part or parts of the Network to which it applies; and
- (ii) may contain provisions for its own amendment provided that in all cases due regard shall be had to the train regulation objective.

### **11.4     *Consultation of affected train operators prior to notice of proposed train regulation statement***

- 11.4.1 Not later than 240 days before the Passenger Change Date first occurring in each calendar year, Railtrack shall give notice to each affected train operator inviting it to make representations to it in relation to the manner in which train regulation should be carried out in cases of minor disruption in the year beginning on such Passenger Change Date in respect of each part of the network in respect of which such train operators have access rights.
- 11.4.2 Each affected train operator so consulted shall use all reasonable endeavours to provide to Railtrack such representations as it shall wish to make in respect of such train regulation within 30 days after receipt of the first consultation notice.

### **11.5     *Notice of proposed train regulation statement***

Not later than 60 days after giving the first consultation notice, Railtrack shall give notice to each affected train operator of its proposed applicable train regulation statement. Each such notice shall include:

- (a) the text of the proposed train regulation statement;
- (b) the part or parts of the Network to which it shall be intended to apply;
- (c) a statement of Railtrack's reasons for the proposed train regulation statement; and
- (d) such other information as it shall be reasonable for Railtrack to provide in order properly to inform affected train operators of the proposed train regulation statement and its likely effect on their operations.

#### **11.6 Consultation with affected train operators**

As soon as reasonably practicable after the date upon which Railtrack shall have given the first consultation notice, Railtrack shall consult each affected train operator in relation to the proposed train regulation statement, and shall invite the submission to it of representations or objections in respect of it.

#### **11.7 Establishment of train regulation statement**

Railtrack shall:

- (a) take into account all representations or objections received from affected train operators pursuant to Condition H11.6;
- (b) make such modifications to the proposed train regulation statement as it shall reasonably consider appropriate so as to ensure, so far as reasonably practicable, that the proposed train regulation statement complies with the train regulation objective; and
- (c) not later than 120 days after the date of the first consultation notice, establish the applicable train regulation statement by sending a copy of it to each affected train operator.

#### **11.8 Duration of train regulation statement**

A train regulation statement established pursuant to this Condition H11 shall have effect for the period of 12 months beginning with the first Passenger Change Date first occurring in each calendar year.

#### **11.9 Right of appeal against train regulation statements**

If any affected train operator shall be dissatisfied with a train regulation statement established by Railtrack pursuant to Condition H11.7, he shall be entitled:

- (a) in the case of an allegation that the statement in question does not achieve the train regulation objective, to refer the matter for determination to the Timetabling Committee and, if he is dissatisfied with that determination, to the Regulator; and
- (b) in any other case, to refer the matter for determination to the Timetabling Committee and, if he is dissatisfied with that determination, to arbitration pursuant to the Access Dispute Resolution Rules.

## **11.10 Appeal procedure**

11.10.1 If there shall have been a reference pursuant to Condition H11.9:

- (a) Railtrack shall provide the appellant with the name and address of every affected train operator within 7 days of the making of the reference; and
- (b) the appellant shall:
  - (i) include with it a statement in reasonable detail as to the matter in question and his reasons for making the reference; and
  - (ii) within 14 days of making the reference, send a copy of the reference and the statement referred to in sub-paragraph (i) above to Railtrack and every affected train operator of which he has notice pursuant to paragraph (a) above.

11.10.2 Each of Railtrack, the appellant and any relevant third party shall, as soon as reasonably practicable after the date of the reference, use their respective reasonable endeavours to procure that the appeal body is furnished with sufficient information and evidence so as to enable it properly to consider any matter referred to it.

11.10.3 In relation to a reference made to it pursuant to Condition H11.9, the appeal body shall, in determining the matter in question, have the power:

- (a) to give directions as the procedure to be followed in the appeal, including in relation to the making of any written or oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other; except to the extent specified in sub-paragraphs (a) and (b) of paragraph A5.3.5 of the Access Dispute Resolution Rules, directions given by the Timetabling Committee pursuant to this Condition H11.10.3 shall not be inconsistent with paragraphs A3.6.2, A5.1, A5.2 or A5.4 to A5.11 inclusive of those Rules;
- (b) to require any other affected train operator to make submissions or provide evidence, whether orally or in writing or both;
- (c) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter;
- (d) in the case of an appeal of the kind referred to in Condition H11.9(a), in determining the matter to direct Railtrack to amend its train regulation statement in a manner specified in its determination; and
- (e) to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the appeal body shall determine) which shall be borne by either or both of the parties.

- 11.10.4 Each party to a dispute which has been the subject of a reference pursuant to Condition H11.9 shall comply with any interim order of the kind referred to in Condition H11.10.3(c). A determination made following a reference pursuant to Condition H11.9 shall be final and binding on Railtrack and all affected train operators, whether or not any of them shall have been required to provide evidence or make submissions pursuant to Condition H11.10.2 or H11.10.3.
- 11.10.5 Where any reference shall have been made to him pursuant to Condition H11.9, the Regulator shall:
- (a) be entitled to decline to act on the reference if, having consulted the parties concerned and such other affected train operators as he shall consider appropriate and considered the determination of the Timetabling Committee, he shall determine that the reference should not proceed, including on the grounds that:
    - (i) the matter in question is not of sufficient importance to the industry;
    - (ii) the reference to him is frivolous or vexatious; or
    - (iii) the conduct of the party making the reference ought properly to preclude its being proceeded with; and
  - (b) not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.

***Annex***

***The  
Access Dispute  
Resolution Rules***



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# **Access Dispute Resolution Rules**

## **Explanatory note**

*(This note does not form part of the Rules)*

### **General**

1. *The Access Dispute Resolution Rules are a set of rules for the resolution of disputes arising usually from access contracts. The rules are designed to provide a speedy, efficient and economical method of resolving disputes in the railway industry in matters of access without recourse to the courts.*
2. *The rules provide a menu of options for the resolution of disputes. The options are the Access Dispute Resolution Committee itself, any of its specialist sub-committees, mediation, expert determination and arbitration.*
3. *It is not the rules which prescribe which method of dispute resolution should be used by parties to a dispute. Rather, it is the commercial contract between the parties (usually a track, station or depot access agreement) which determines which, if any, of the options in the rules will be used in a particular case. The parties may choose not to use the rules at all for some classes of dispute, although in substantially all access agreements the rules have been adopted. In certain types of case, the Track Access Conditions, Station Access Conditions and Depot Access Conditions prescribe that the rules must be used. These are cases where the dispute may have a bearing on the interests of third parties or where reference may be made to the Regulator for a final determination.*
4. *Whilst annexed to the Track Access Conditions, they are in fact used for the resolution of disputes arising out of station and depot access contracts as well. The Access Dispute Resolution Rules are separate from the parallel (but in some respects materially different) Railway Industry Disputes Resolution Rules. The latter rules are used for non-access disputes, including disputes arising out of rolling stock leases and other unregulated contracts (in the Access Dispute Resolution Rules, the parallel rules are referred to as the "Non-Access Dispute Resolution Rules"). The two sets of rules should not be confused.*
5. *In cases where a dispute is inextricably connected with another matter which falls to be dealt with by the Non-Access Dispute Resolution Rules, then the dispute may be handled under those Rules.*
6. *The rules may be changed by the Class Representative Committee or the Regulator under Part C of the Track Access Conditions. All changes require the approval of the Regulator.*

### **Access Dispute Resolution Committee**

7. *Part A of the rules concerns the establishment of the Access Dispute Resolution Committee and its sub-committees.*

### *Composition of Committee*

8. *The Access Dispute Resolution Committee consists of a Chairman, a Committee Secretary and eight elected members. Of the eight elected members, one is appointed by the Committee as Deputy Chairman. To ease the demands on the Chairman, provision is also made for the appointment by the Committee of one or more independent Vice-Chairmen who share the duties and responsibilities of the Chairman.*
9. *The elected members are appointed by the same constituencies as elect the members of the Class Representative Committee under Part C of the Track Access Conditions. Two members are appointed by Railtrack, one by each of the three bands of the Franchised Passenger Class, one by each of the two bands of the Non-Passenger Class and the eighth by the Non-Franchised Passenger Class. Appointment is made by election.*
10. *The elected members may appoint and remove alternates who act in their places.*
11. *Elected members retire by rotation.*
12. *The Access Dispute Resolution Committee is funded by a levy payable by parties which have agreed to resolve their disputes using the rules. The levy is directly proportionate to the licence fees payable by those parties.*

### *Chairman*

13. *The Chairman of the Committee holds a special position. He is not a member of the Committee, but he chairs it. He is appointed by unanimous resolution of the Committee. He may be removed by the Committee. To be eligible for appointment, he must have suitable experience of the railway industry and may not, whilst in office, be employed by or otherwise be connected with a party to an access agreement in a way which may compromise his impartiality.*
14. *The Chairman has important powers to make procedural and substantive rulings in cases before the Committee. He also plays an important part in determining questions of the confidentiality of the decisions of the Committee and its sub-committees, of arbitrators and experts dealing with disputes, and in questions concerning the disclosure of information by Railtrack to train operators under Part 9 of Schedule 7 of track access agreements (which concern the structure of track access charges payable to Railtrack).*

### *Deputy Chairman*

15. *The Deputy Chairman is one of the elected members of the Committee. He is not empowered to make substantive rulings in cases where he is employed by or otherwise connected with one of the parties to the dispute in a way which may compromise his impartiality.*

### *Disputes secretary*

- 16. The Committee appoints a Disputes Secretary with the approval of the Regulator. The Disputes Secretary maintains a register of persons who are suitably qualified to act as mediators, arbitrators and experts to determine disputes.*
- 17. The register must be provided to any industry party which requests it.*

### *Meetings of the Committee*

- 18. The quorum of the Committee is the Chairman and five elected members. The Deputy Chairman or any of the independent Vice-Chairmen may act in the place of the Chairman. Alternates may act in the place of elected members.*

### *Sub-committees*

- 19. The rules empower the Committee to establish specialist sub-committees.*
- 20. **Two** specialist sub-committees are established by the rules themselves. They are the Timetabling Sub-Committee (which deals with timetabling and train regulation disputes under Conditions D5 and H11.9(a) of the Track Access Conditions) and the Network and Vehicle Change Sub-Committee (which deals with disputes under Conditions F5 and G6 of the Track Access Conditions).*
- 21. The Chairman of the Access Dispute Resolution Committee is the Chairman of the Timetabling and Network and Vehicle Change Sub-Committees. His place may be taken by one of the independent Vice-Chairmen.*
- 22. Sub-committees may make their own rules of procedure. However, in the case of disputes which may be referred ultimately to the Regulator for determination, rules of procedure may not be inconsistent with certain entrenched rules.*
- 23. Questions of the jurisdiction of sub-committees are determined by the Committee by majority vote.*

### *Procedure of the Committee and its sub-committees*

- 24. The Committee is entitled to make its own rules of procedure. It may also make rules of procedure for a sub-committee.*
- 25. Certain detailed rules of procedure of the Committee are already established in the rules themselves.*
- 26. Parties to a dispute which is heard by the Committee are entitled to determine their own representation. One or more of the representatives of a party may be legally qualified. Other advisers are also allowed.*

27. *In disputes which are not appealable to the Regulator, the Chairman of the Committee has a discretion to disallow legal representation before the Committee. Before making such a ruling, the Chairman is obliged to consult the parties, the elected members and the independent Vice-Chairmen.*
28. *The Chairman is entitled to appoint a clerk of the Committee, assessors (in technical, legal or other matters) or to obtain other legal advice. The clerk to the Committee may, but need not, be a lawyer.*
29. *The Committee determines disputes referred to it unanimously. In doing so, its members fulfil an arbitral, not a partisan, role. If unanimity is not achieved, the Chairman's powers in relation to the next steps depend on the nature of the dispute. If the dispute is one which is appealable to the Regulator, the Chairman must either adjourn the hearing to a later meeting of the Committee or make a ruling himself. If the dispute is not one which is appealable to the Regulator, the Chairman has a discretion: to make a ruling, adjourn the hearing or declare the matter unresolved.*
30. *The Committee has the power to make awards of costs against a party to a dispute. In cases which are not appealable to the Regulator, there is a presumption that no such order will be made, but that presumption is rebuttable where the Committee is satisfied that the matter should not have come before the Committee in the first place or the conduct of the party against which the order is made has been such as to justify an order for costs being made against it.*
31. *After the Committee has finished with a dispute (whether by agreed determination, a Chairman's ruling or a declaration that the matter is unresolved), the right of a party which is dissatisfied with the outcome depends on the terms of the commercial contract under which the dispute was referred to the Committee in the first place. In cases which are appealable to the Regulator, the Track Access Conditions specify what is to happen next. In other cases, the contract should give the answer. In most track and station access agreements, it is provided that the matter will go next to arbitration. In some cases, the contract provides that the Committee itself (or the relevant sub-committee) will determine the next step.*

## **Mediation**

32. *Mediation is a private dispute resolution process involving a neutral mediator who meets the parties and tries to enable them to resolve their dispute by agreement.*
33. *Simple rules of procedure are specified in Part B of the rules.*
34. *Part B also contains rules as to the confidentiality of the mediation and of documents used in the mediation.*



## **Arbitration**

35. *Arbitration is a formal process which resembles proceedings in a court in many ways. However it is not subject to the same delays and rules as court proceedings, and it is not public.*
36. *The parties appoint an arbitrator by agreement. If they fail to agree, the Disputes Secretary appoints the arbitrator. An arbitration fee not exceeding £500 is payable.*
37. *The arbitrator has a complete discretion as to the rules of procedure to be followed in the arbitration, but the presumption is that the comprehensive set of rules of procedure in paragraph C3 will apply unless disapplied by the arbitrator in a particular case.*
38. *The rules of procedure in paragraph C3 are designed to focus as sharply as possible the issues of fact and law (if any) which separate the parties. The procedure provides for this to be done on paper before the matter reaches an oral hearing. It is achieved by the use of the procedure of "adjustment of pleadings" under which each averment (an assertion of fact or of law) of a party is answered in writing by the other party. When averments have been answered, the first party may in turn answer what the other party has said. The process is iterative and time-limited.*
39. *Once the issues have been so focused, a single document incorporating the averments and answers of each party is prepared. This enables the arbitrator and the parties to see clearly exactly what has to be proved and what the issues are. Extraneous material and matters which can be agreed or disposed of in advance are thus filtered out before any oral hearing of the matter. (It may be that the adjustment process causes the matter to be settled without a hearing). The outcome should minimise the amount of time used preparing for, and consumed by, an oral hearing. The process is designed to keep the number of witnesses and the facts to which they are required to speak to the irreducible minimum. The same applies to any points of law.*
40. *The arbitrator has powers to make substantially the same kinds of order as a court. These include orders for the payment of money, orders to take or not to take specified action, the determination of the meaning of an agreement and the award of costs.*
41. *The decision of the arbitrator (called the "award") is provided to the parties, the Chairman of the Access Dispute Resolution Committee and the Disputes Secretary. There is a presumption that the award will be published to the industry to enable "case law" to be built up. However, if either party believes that publication should not take place, it must give notice of that fact to the Chairman of the Committee within 7 days of receiving the award. The Chairman then follows a procedure of consultation of the parties concerned and decides whether publication should take place by balancing the interests of the party in question in the confidentiality of the award on the one hand and the interests of the industry in its publication on the other hand.*

### **Expert determination**

42. *Expert determination is provided for in Part D. It is an alternative to arbitration. It resembles arbitration in many ways but the decision of the expert is final and not challengeable in the same ways as an award of an arbitrator. The procedure is very much the same.*

### **Determinations by the Regulator**

43. *Part E makes certain provision for matters to be determined by the Regulator.*
44. *There are two ways in which the Regulator may come to determine a dispute. The first is where a contract (usually an access agreement) which the Regulator has approved provides for the Regulator to perform this role. The second is where the Regulator has given his consent in a particular case. Instances of the latter kind are expected to be rare.*
45. *The Track Access Conditions provide for certain appeals to be made to the Regulator for final determination. These are in certain cases of timetable, network change, vehicle change and train regulation disputes. These appeal mechanisms have been designed so as to minimise the numbers of appeals to the Regulator.*

## DEFINITIONS AND INTERPRETATION

### *Definitions*

In these rules, unless the context otherwise requires:

“Access Conditions”	in relation to an Access Agreement, means the document so entitled and incorporated by reference in that Access Agreement;
“affiliate”	<p>in relation to a company, means:</p> <ul style="list-style-type: none"><li>(a) a company which is either a holding company or a subsidiary of such a company; or</li><li>(b) a company which is a subsidiary of a holding company of which such company is also a subsidiary;</li></ul> <p>and for these purposes:</p> <ul style="list-style-type: none"><li>(i) "holding company" and "subsidiary" shall have the meanings given to them in section 736 of the Companies Act 1985; and</li><li>(ii) the British Railways Board shall be treated as if it were a company;</li></ul>
“alternate”	means an alternate of a member appointed pursuant to paragraph A2.6;
“arbitrator”	in Scotland, means arbiter;
“beneficiary”	has the meaning ascribed to it in section 17(7) of the Act;
“Chairman”	means the chairman of the Committee and, where he is acting as chairman, the Deputy Chairman;
“claimant”	means a person who refers a dispute to the Committee or an arbitrator;
“the Committee”	means the Access Disputes Resolution Committee established pursuant to paragraph A2;
“Committee Secretary”	means the person appointed as such pursuant to paragraph A3.7;

“costs”	includes expenses;
“Deputy Chairman”	means the deputy chairman of the Committee appointed pursuant to paragraph A3.1(b);
“Disputes Secretary”	means the person appointed as such pursuant to paragraph A3.11;
“financial associate”	in relation to any party, means a person from whom that party has obtained or is, in good faith, seeking to obtain any financial assistance, whether by way of loan, equity participation or otherwise;
“independent Vice-Chairman”	means a person appointed pursuant to paragraph A3.12;
“Industry Party”	means a facility owner or a beneficiary which in either case is a party to an Access Agreement;
“licence fees”	in relation to an Industry Party, means the amount payable by that Industry Party to the Regulator under each of the licences granted to it under section 8 of the Act which it holds;
“member”	means a member of the Committee;
“modifications”	has the meaning ascribed to it in section 151 of the Act and cognate expressions shall be construed accordingly;
“Non-Access Dispute Resolution Rules”	means the rules bearing the name "The Railway Industry Disputes Resolution Rules" (formerly the "Industry Disputes Resolution Committee, Mediation, Arbitration and Expert Determination Rules");
“party to a dispute”	in relation to a dispute, means a person who: <ul style="list-style-type: none"> <li>(a) has made a claim in the dispute;</li> <li>(b) has had a claim made against him; or</li> <li>(c) in the case of a reference by an Access Party under the Access Conditions, is likely to be materially affected by the outcome of the reference;</li> </ul>

“pleadings”	means the written averments, pleas, admissions and denials of each party to an arbitration;
“register”	means the register established and maintained pursuant to paragraph A3.11.2;
“Track Access Conditions”	means the publication known as The Railtrack Track Access Conditions 1995; and
“unlicensed Industry Party”	means an Industry Party which does not hold a licence under section 8 of the Act.

### *Interpretation*

Unless the context otherwise requires:

- (a) terms and expressions defined in the Track Access Conditions shall have the same meanings in these Rules;
- (b) the rules of interpretation in the Track Access Conditions shall have effect in these Rules; and
- (c) references to paragraphs and parts are to paragraphs and parts of these Rules.

## **A THE COMMITTEE**

### **A1.1 Purpose**

The purpose of the Committee is to discuss and, if possible, settle by agreement disputes which are referred to it by Industry Parties and which arise out of or in connection with:

- (a) an Access Agreement;
- (b) the Access Conditions incorporated by reference in the Access Agreement in question;
- (c) an access option,

except where:

- (i) such a dispute is required to be resolved pursuant to the Non-Access Dispute Resolution Rules;
- (ii) such dispute is so connected with a dispute (whether involving the same parties or not) which is required to be resolved pursuant to the Non-Access Dispute Resolution Rules that it is expedient for the two disputes to be resolved in the same proceedings; or
- (iii) the parties have agreed that the dispute will be resolved pursuant to the Non-Access Dispute Resolution Rules;

in each of which cases the dispute shall be referred to the Committee established under the Non-Access Dispute Resolution Rules.

### **A1.2 Jurisdiction in Disputes**

If there is a disagreement as to whether a dispute falls within paragraph A1.1(i) or (ii), each party to the disagreement shall submit its arguments in writing to the Committee Secretary and to the other party, so as to be received either before the notice of reference is served or within seven days of its service. The Committee Secretary shall rule on the disagreement within seven days of receiving the submissions. If either party refuses to accept the Committee Secretary's ruling, the issue shall be determined by the Chairman of the Committee established pursuant to paragraph A2 of the Non-Access Dispute Resolution Rules.

## **A2      *Establishment and composition of the Committee***

### **A2.1      *General***

The Committee is hereby established and shall consist of the Chairman, the Committee Secretary and eight members of whom one shall be appointed Deputy Chairman pursuant to paragraph A3.1. The members of the Committee shall be appointed by the following Bands and Classes:

- (a) two members by Railtrack;
- (b) one member by each of the three Bands of the Franchised Passenger Class;
- (c) one member by each of the two Bands of the Non-Passenger Class; and
- (d) one member by the Non-Franchised Passenger Class.

None of the Chairman, the independent Vice-Chairmen or the Committee Secretary shall be a member of the Committee.

### **A2.2      *Appointment***

#### **A2.2.1      *Elections***

Members of the Committee shall be appointed by election. The elections shall be carried out in the same way as elections of members of the Class Representative Committee are carried out under Part C of the Track Access Conditions.

#### **A2.2.2      *Affiliates***

Affiliates of one another (other than affiliates of the British Railways Board) shall be treated as the same person for the purpose of any election.

#### **A2.2.3      *Notification of elections***

The Committee Secretary shall, as soon as reasonably practicable following the election of a new member, notify the Chairman, the independent Vice-Chairmen, all members and Class Members of that election.

### **A2.3      *Duration of appointment***

Subject to paragraphs A2.4 and A2.5, unless he shall have been re-elected, a member shall be treated as having ceased to hold office on the 1 April which is nearest to the date which is two years after the date of his appointment.

#### A2.4 *Loss of office*

A member:

- (a) may be removed from office and a replacement member elected in his place by a majority in number of members of the relevant Class or Band (as the case may be) present (whether in person or by proxy) and voting at the relevant meeting called for the purpose of such removal and substitute appointment; and
- (b) shall be treated as having resigned from office if he dies or becomes of unsound mind.

#### A2.5 *Retirement by rotation*

Notwithstanding paragraph A2.3, members shall retire in rotation on 1 April in each year in the following order:

- (a) on 1 April 1995:
  - (i) the member appointed by the Band of the Franchised Passenger Class which is highest by value of relevant annual Track Charges payable by the Bands of that Class at the relevant time;
  - (ii) the member appointed by the Band of the Non-Passenger Class which is the higher of the two by value of relevant annual Track Charges payable by them at the relevant time;
  - (iii) the member appointed by the Band of the Non-Franchised Passenger Class; and
  - (iv) whichever of Railtrack's two members as Railtrack shall elect;
- (b) on 1 April 1996, the members of the Committee who shall not have retired pursuant to sub-paragraph (a) above.

#### A2.6 *Alternates*

##### A2.6.1 *Rights to appoint or remove alternates*

Each member (other than an alternate member) may:

- (a) appoint any person who is willing to act to be his alternate; and
- (b) remove that alternate from office.

##### A2.6.2 *Notice of appointment or removal*

The appointment or removal of an alternate shall be by notice given to the Chairman and the Committee Secretary within 7 days of the appointment or removal and signed by the member making or revoking the appointment.



#### **A2.6.3** *Rights of alternates*

An alternate shall be entitled:

- (a) to receive notice of all Committee meetings which his appointor is entitled to attend;
- (b) to attend and vote at any such Committee meeting at which the member which appointed him is not personally present; and
- (c) generally to perform all the functions of the member which appointed him as a member in his absence.

#### **A2.6.4** *Loss of office of alternates*

An alternate shall cease to be an alternate if the member which appointed him ceases to be a member.

### **A3** *The Chairman, Deputy Chairman and Committee Secretary*

#### **A3.1** *Appointment of Chairman and Deputy Chairman*

The Committee shall appoint:

- (a) its Chairman, who shall:
  - (i) not be a member of the Committee;
  - (ii) have suitable experience of the railway industry; and
  - (iii) subject to paragraph A3.5, not, during his term of office, be employed by or otherwise connected with any Industry Party or receive any benefit from any Industry Party in return for services provided to it, in either case in a way which may compromise his impartiality; and
- (b) one of its members to act as Deputy Chairman.

Such appointment and any re-appointment shall be made by unanimous resolution.

#### **A3.2** *Declaration of connections*

The Chairman shall on appointment declare to the Committee Secretary any relevant connection which he has or has had with the railway industry, and shall during his term of office promptly disclose any new connection of that kind. The Committee Secretary shall provide a copy of any disclosure made under this paragraph to each member and to every Industry Party which requests it.

### **A3.3**     *Fees, expenses and allowances of Chairman*

**A3.3.1**     Subject to paragraphs A3.4 and A3.5, the Chairman shall hold office on such terms as the Committee shall determine. Where the terms on which the Chairman holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Committee.

**A3.3.2**     The terms on which the Chairman holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Committee.

### **A3.4**     *Duration of appointment of Chairman*

#### **A3.4.1**     *Appointment and removal*

The Chairman shall be appointed for a term of two years, and may be reappointed. The Committee may remove him from office on the motion of any member, provided that at least two weeks' written notice of the intention to table such a motion has been given to all members of the Committee and the Chairman. A motion to remove the Chairman shall:

- (a)     in the case of removal on the ground of the incapacity or misbehaviour of the Chairman, be passed on the positive resolution of at least five members of the Committee; and
- (b)     in any other case, be passed only by unanimous resolution.

#### **A3.4.2**     *Appointment of successor Chairman*

If, within 45 days of the termination (for whatever reason) of the period of office of a Chairman, the Committee shall have failed to make the appointment of a new Chairman pursuant to paragraph A3.1, the Committee shall:

- (a)     by unanimous resolution, determine a list of three candidates for the office of Chairman;
- (b)     send the list to the Regulator, together with such information in relation to the candidates and the preferences of the members of the Committee as the Regulator may request; and
- (c)     be deemed to have appointed as Chairman the candidate selected by the Regulator.

### **A3.5**     *First Chairman from the British Railways Board*

Notwithstanding paragraphs A3.1 to A3.4 above, until 1 April 1995 the Chairman may be an employee of the British Railways Board, appointed by the Committee at its first meeting, who shall receive no payment or other remuneration in respect of his office. The Committee shall be entitled to substitute for the date specified above in this paragraph A3.5 a date which is not later than 1 April 1996. No such substitution shall have effect unless:

- (a) it is made in writing;
- (b) a copy has been sent to every Industry Party; and
- (c) it has been approved by the Regulator.

More than one such substitution may be made.

### **A3.6**     *Deputy Chairman*

#### **A3.6.1**   *Appointment and removal*

The Deputy Chairman shall be appointed by the Committee for a term of one year, and may be reappointed. The Committee may remove him from office on the motion of any member, provided that at least two weeks' written notice of the intention to table such a motion has been given to all members of the Committee and the Chairman and, unless the Chairman and all members of the Committee otherwise consent, a meeting of the Committee shall have been held at which the motion shall have been debated and, if thought fit, passed.

#### **A3.6.2**   *Voting by Deputy Chairman*

The Deputy Chairman shall be entitled to cast his vote as a member of the Committee notwithstanding that at the relevant time he shall be acting as Chairman of the Committee or the sub-committee in question.

### **A3.7**     *Committee Secretary*

The Chairman shall appoint a Committee Secretary, and an alternate, who may be employees of one or more Industry Parties. They may attend Committee meetings and may be removed from office by the Chairman.

**A3.8**     *Terms of appointment of Deputy Chairman, Committee Secretary etc.*

**A3.8.1**   The Deputy Chairman and the Committee Secretary and his alternate shall hold office on such terms as the Committee shall determine. Where the terms on which any of them holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Committee.

**A3.8.2**   The terms on which the Deputy Chairman, Committee Secretary and his alternate holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Committee.

**A3.9**     *Funding of Committee etc.*

**A3.9.1**   *Payments by Industry Parties*

Each Industry Party shall, within 30 days of being requested to do so by the Committee Secretary, pay to the Committee Secretary an amount of the estimated costs and expenses of the Committee equal to the proportion which its licence fees bears to the aggregate licence fees of all Industry Parties. The amount payable by any unlicensed Industry Party shall be assessed by the Committee and shall be fair and reasonable. The Committee Secretary shall receive and hold amounts paid pursuant to these rules on behalf of the Committee.

**A3.9.2**   *Committee to estimate costs*

The estimated costs and expenses of the Committee referred to in paragraph A3.9.1 shall be the amount which the Committee reasonably expects will be its costs of operation in the year beginning with the next following 1 April, net of any receipts (including amounts received pursuant to paragraphs A5.11.7 and C5.1) which it expects to be paid to it by any person, including any unlicensed Industry Party.

**A3.9.3**   *Adjustments of estimates*

To the extent that the actual costs and expenses of the Committee shall have been underestimated or overestimated by the Committee in respect of any period, the amount of the difference shall be carried over to the following year and shall be credited or deducted from the amounts payable by Industry Parties in that following year.

#### A3.9.4 *Accountants' certificate*

Any Industry Party shall be entitled to require the Committee Secretary to provide him with a certificate from a firm of chartered accountants of national standing in relation to the costs and expenses of the Committee in respect of any period. The Committee Secretary shall promptly comply with any such request.

#### A3.10 *Chairman etc. not employees*

None of the Chairman, the Deputy Chairman, the independent Vice-Chairmen, the Committee Secretary, his alternate or the Disputes Secretary shall by virtue of his office be an employee of the Committee or any person.

#### A3.11 *The Disputes Secretary*

##### A3.11.1 *Appointment*

The Committee shall, with the approval of the Regulator, appoint a Disputes Secretary, who may be employed by an Industry Party and may be the same person as the Committee Secretary. The Disputes Secretary may be removed from office by a decision of the Committee, provided that at least two weeks' written notice of the intention to table such a motion has been given to all members of the Committee, the Chairman and the Disputes Secretary.

##### A3.11.2 *Register*

The Disputes Secretary shall establish and maintain a register of persons who are suitably qualified, willing and able to act as mediators, arbitrators or experts and of organisations which are qualified to suggest such persons. The Disputes Secretary shall provide a copy of the register on request to any Industry Party or the Franchising Director.

##### A3.11.3 *Other functions and qualifications*

The Disputes Secretary shall have such other functions as the Committee shall determine. The Committee may authorise the Disputes Secretary to engage staff or consultants to assist him in his functions.

##### A3.11.4 *Terms of appointment etc.*

The provisions of paragraph A3.8 shall apply *mutatis mutandis* to the Disputes Secretary, his staff and consultants as they apply to the Committee Secretary.

### *A3.12 Independent Vice-Chairmen*

#### *A3.12.1 Power to appoint*

If the Committee shall be satisfied that, in addition to the Deputy Chairman appointed pursuant to paragraph A3.1(b), it is necessary or expedient that there shall be one or more Vice-Chairmen of the Committee who shall not be members of the Committee, it shall be entitled at any time and from time to time to make such an appointment.

#### *A3.12.2 Method of appointment*

An independent Vice-Chairman shall be appointed in the same way as, and according to the same conditions as apply to the appointment of, the Chairman, except that paragraph A3.4.2 shall not so apply.

#### *A3.12.3 Terms of appointment of independent Vice-Chairmen*

Each independent Vice-Chairman shall hold office and be liable to be removed from office in the same way as the Chairman. Paragraph A3.5 shall not apply to any independent Vice-Chairman.

#### *A3.12.4 Rights and obligations of independent Vice-Chairmen*

Except to the extent:

- (a) otherwise determined by the Committee; or
- (b) that the Chairman shall have acted or given notice to the independent Vice-Chairman in question that he has determined that he shall act in the matter in question,

each independent Vice-Chairman shall have the same rights and obligations as are exercisable and dischargeable by the Chairman under these rules. References in these rules to the Chairman shall be construed accordingly.

### *A3.13 Capacity of Committee to enter into Contracts with Officers*

In making any appointment or otherwise exercising its powers under this paragraph A3, the Committee is authorised to act on behalf of the Industry Parties.

#### A3.14 *Indemnities by new, and to retiring, Industry Parties*

A3.14.1 An Industry Party, on becoming such, shall indemnify those who are already industry Parties (“the existing Industry Parties”) against its share of any liability which arises:

- while it is an Industry Party and
- under a contract of appointment entered into by the Committee on behalf of the existing Industry Parties (or some of them, and whether or not with others) before it became an Industry Party.

Its share shall be the appropriate proportion of the liability calculated in accordance with paragraph A3.9.1, applied to the Industry Parties at the time the liability arises.

A3.14.2 An Industry Party which ceases to be such shall be indemnified by the Industry Parties which remain as such against any liability which arises:

- after it ceases to be an Industry Party and
- under a contract of appointment entered into by the Committee on behalf of it (with other Industry Parties) while it was an Industry Party,

such that the Industry Parties as at the date the liability arises shall bear it in the proportion set out in paragraph A3.9.1, applied to them.

#### **A4** *Sub-committees*

##### A4.1 *Particular sub-committees*

The following sub-committees of the Committee are hereby established:

- (a) a Timetabling Sub-Committee, which shall determine references made to it pursuant to Conditions D5 and H11.9(a) of the Track Access Conditions; and
- (b) a Network and Vehicle Change Sub-Committee, which shall determine references made to it pursuant to Conditions F5 and G6 of the Track Access Conditions.

#### A4.2 *Constitution of sub-committees*

##### A4.2.1 *Membership*

The membership of each sub-committee shall be determined in the same way as members of the Committee are appointed, and Part A of these rules shall apply *mutatis mutandis* to such determinations. The same person may be a member of the Committee and any sub-committee.

##### A4.2.2 *Chairmanship of sub-committees*

The chairman of the Timetabling Sub-Committee and the Network and Vehicle Change Sub-Committee shall be the Chairman of the Committee or one of the independent Vice-Chairmen. The chairman of any other sub-committee shall be either the Chairman of the Committee or any other person elected by the sub-committee in question and approved by the Chairman of the Committee.

##### A4.2.3 *Powers of sub-committee chairman to make rulings*

Where the chairman of a sub-committee is a person other than the Chairman of the Committee or one of the independent Vice-Chairmen and is an officer or employee of, or is otherwise connected with, an Industry Party (in either case in a way which may compromise his impartiality), he shall not be entitled to make a ruling under paragraph A4.5 or A5.11 if the Industry Party in question is a party to the dispute in question.

#### A4.3 *Meetings of the Timetabling Sub-Committee*

The Timetabling Sub-Committee shall meet within 35 days after the end of the Bidding Cycle.

#### A4.4 *Other sub-committees*

The Committee may decide to establish other sub-committees.

#### A4.5 *Constitution of other sub-committees*

The Committee shall have the power, by unanimous vote, to determine the constitution of any sub-committee established pursuant to paragraph A4.4. If it shall fail to reach such a decision, the Chairman shall make a ruling determining the matter.



**A4.6**     *Procedural rules*

Paragraph A5.3 applies in relation to the rules of procedure of sub-committees.

**A4.7**     *Questions of jurisdiction*

In any case in which either:

- (a) more than one of the sub-committees of the Committee has jurisdiction in a reference; or
- (b) the parties to a dispute are not in agreement as to which of the sub-committees of the Committee should determine their reference,

the question of jurisdiction shall be determined by the Committee by resolution pursuant to paragraph A7.

**A5**        ***Proceedings of the Committee***

**A5.1**     *Meetings*

Meetings of the Committee shall take place at the dates, times and places notified to Industry Parties by the Chairman, or the Committee Secretary on his behalf. Any Industry Party may, by notice to the Committee Secretary, require a meeting of the Committee to be called. That meeting shall take place within 14 days (or such longer period as the Industry Party in question shall agree with the Committee Secretary) of the receipt by the Committee Secretary of the notice. The quorum for each meeting of the Committee shall be the Chairman and five members or their alternates. With the consent of the Chairman or in accordance with such directions as the Chairman shall have given, the Deputy Chairman or any of the independent Vice-Chairmen may attend in the place of the Chairman and shall be counted as Chairman for the purposes of the quorum. If the Deputy Chairman so attends in place of the Chairman, he shall be counted both as Chairman and as a member.

**A5.2**     *Chairmanship of meetings*

Each meeting of the Committee shall be chaired by the Chairman or the Deputy Chairman. When he is chairing the Committee, the Deputy Chairman shall have all the powers of the Chairman, except that the Deputy Chairman shall not be entitled to make a ruling pursuant to paragraph A5.11 in relation to any dispute to which the Industry Party of which he is an employee (or is otherwise connected with in a way which may compromise his impartiality) is a party.

### A5.3 *Rules of procedure of Committee and sub-committees*

#### A5.3.1 *Committee to make rules*

Subject as provided in this paragraph A5.3, the Committee shall be entitled to make and from time to time revise the rules of procedure to be followed by the Committee and every sub-committee. If no rules of procedure shall have been made for any sub-committee, the rules of procedure of the Committee shall apply to the proceedings of the sub-committee as if it were the Committee.

#### A5.3.2 *Power to delegate power to make rules*

The Committee may delegate the power to make and revise rules of procedure for any sub-committee to the sub-committee in question, subject to such (if any) conditions as the Committee shall specify in the delegation. Any such delegation may be revoked at any time by notice in writing given by the Committee to the chairman of the sub-committee in question. Notice of any such delegation or revocation shall be promptly given to each member of the sub-committee in question. This paragraph A5.3 shall apply *mutatis mutandis* to rules made pursuant to a delegation, except that paragraph A5.3.3 shall apply as if references in that paragraph to the Chairman of the Committee were references to both the Chairman of the Committee and the chairman of the sub-committee in question.

#### A5.3.3 *Consultation with Chairman and independent Vice-Chairmen*

No rules of procedure may be made or revised pursuant to this paragraph A5.3 unless the Committee shall have:

- (a) consulted the Chairman of the Committee and each of the independent Vice-Chairmen as to the proposed rules or revisions; and
- (b) taken into account any representations or objections they shall have made within such time as the Committee shall have specified for the purpose.

In so consulting, the Committee shall provide a copy of the proposed rules or revisions to the Chairman and each of the independent Vice-Chairmen.

#### A5.3.4 *Access Conditions to prevail*

Where the Access Conditions in question provide for the procedure to be followed in the determination of any matter referred to the Committee or any sub-committee, those provisions shall prevail and the Committee shall have no power to make inconsistent rules of procedure.

#### A5.3.5 *Relationship with Access Dispute Resolution Rules*

Subject to paragraph A5.3.4, rules of procedure made pursuant to this paragraph A5.3 may not be inconsistent with any provision of Part A of these rules, except that:

- (a) a sub-committee may decide to meet with such frequency as it shall determine necessary for the proper discharge of its functions; and
- (b) rules of procedure may specify time limits which are different from those specified in this Part A provided they do not deny any party to a dispute the right:
  - (i) properly to make his case;
  - (ii) to receive proper notice of the case he has to answer; and
  - (iii) to a fair hearing.

#### A5.4 *Commencement of proceedings*

A person wishing to refer a dispute to the Committee shall serve a written notice of reference on the Committee Secretary and on every other party to the dispute. The notice shall:

- (a) state the subject-matter of the dispute;
- (b) identify the other parties concerned;
- (c) be accompanied by any papers which the claimant reasonably considers are necessary to or desirable for the Committee's consideration of the dispute; and
- (d) be sent so as to be received by each person to whom it is sent at least 7 days before the meeting of the Committee which is to consider the matter.

#### A5.5 *Responses*

Each other party to a dispute which has been notified to the Committee Secretary pursuant to paragraph A5.4 shall provide to the Committee Secretary and the other parties to the dispute such further information or documents which that party reasonably considers necessary or desirable to the Committee's consideration of the dispute. Such information or documents shall be sent so as to be received by each person to whom it is sent at least 7 days before the meeting of the Committee which is to consider the matter.

#### A5.6 *Circulation of papers*

The Committee Secretary shall circulate to members, so as to be received at least 4 days before a meeting of the Committee, a list of the issues to be tabled at that meeting, together with appropriate summaries and background papers relating to those issues. Late circulation of papers to members by the Committee Secretary shall not prevent or invalidate discussion of the disputes concerned.

#### A5.7 *Notification to parties to dispute*

The Committee Secretary shall notify an Industry Party, which is a party to a dispute to be considered at a meeting of the Committee, of the time, date and place of the meeting. Such notification shall be sent so as to be received at least 7 days before the meeting. If a party does not receive such notification at least 7 days before the meeting and the information submitted by each other party to the dispute by the time specified above (other than through its own fault), it shall be entitled to require the Committee to postpone its consideration of the dispute until a date which is not earlier than 7 days after its receipt of the notification in question. The Committee shall be entitled to proceed to consider any dispute referred to it unless:

- (a) any party to the dispute shall, before the beginning of the meeting, have exercised any right to have consideration of the dispute postponed; or
- (b) the Chairman, on the application of any party to the dispute, determines that the Committee's consideration of the dispute should be postponed on the grounds that the party which has made the application has received insufficient notice in any respect.

If the Committee's consideration of the dispute is not so postponed, no objection shall be made in relation to the failure of any party timeously to receive any notification, information or documents.

#### A5.8 *Time extensions*

The Chairman on cause shown may extend any period of time fixed by or pursuant to these rules whether or not that period of time has expired. He shall notify the members of the Committee, the Committee Secretary and the parties to the dispute of any such extension of time.

## **A5.9**     *Representation before the Committee*

### **A5.9.1**   *Representatives*

Subject to paragraph A5.9.5, each party to a dispute shall be entitled to be represented by such persons as it considers appropriate at that part of the meeting of the Committee which considers a dispute to which it is a party. If a member of the Committee is an officer or employee of a party to the dispute, that party may be represented by that member, whether or not it is also represented by any other person. A party intending to be represented shall notify the Committee Secretary and the other parties to the dispute of the name and address of each of its representatives. A person shall not be prevented from representing a party because he is or may be a witness in the proceedings. Nothing shall prevent a party being represented by different persons at different times.

### **A5.9.2**   *Right to be heard*

The representative of a party to the dispute shall be entitled to make written and oral representations to the Committee on behalf of the party in question.

### **A5.9.3**   *Legal representation and advice*

Subject to paragraph A5.9.5, the representative of a party to a dispute may be legally qualified, or may be accompanied by a legal adviser who shall be entitled to advise the representative at the meeting of the Committee.

### **A5.9.4**   *Other assistance and observers*

The representative of a party to a dispute shall be entitled to be accompanied at the meeting of the Committee by a representative of that party's insurers and by persons with technical or professional expertise (other than legal advisers) in relation to the subject matter of the dispute. Such persons shall be entitled to advise the representative.

### **A5.9.5**   *Discretion of Chairman in relation to legal representation etc. in certain matters*

In relation to disputes referred to the Committee other than pursuant to Conditions D5, F5, G6 and H11.9(a) of the Track Access Conditions, the Chairman of the Committee shall be entitled to direct that none of the parties to the dispute shall be entitled to be accompanied or represented by a person who is legally qualified. No such direction may be given unless the Chairman has first:

- (a) given not less than 5 days' notice to the parties to the dispute, the members of the Committee and the independent Vice-Chairmen of:
  - (i) his intention to give such a direction;

- (ii) his reasons; and
  - (iii) the period (which shall not be less than 48 hours) within which they may make representations or objections to him in relation to the matter; and
- (b) taken into account any representations or objections which any of them shall have timeously made.

Any such direction shall be in writing and shall be given to the parties to the dispute, and a copy sent to each member of the Committee and each independent Vice-Chairman, as soon as reasonably practicable after the Chairman shall have decided the matter.

#### A5.10 *Procedure at Committee meetings*

##### A5.10.1 *Length of proceedings*

The Chairman shall be entitled to determine for how long a party's representative may address the Committee, provided a fair and equal opportunity is given to the parties for the presentation of their cases.

##### A5.10.2 *Appointment of assessor*

Any party to a dispute shall be entitled to require the Committee to appoint a legal, technical or other assessor to assist it in its consideration of the dispute. The Chairman shall have the power to appoint an assessor on his own motion. Any such assessor shall:

- (a) attend all meetings of the Committee at which the dispute is considered unless the parties and the Chairman agree otherwise; and
- (b) if the Chairman determines that it is in the interests of the efficient and fair determination of the dispute, be entitled to ask questions of the parties to the dispute, their representatives and any other person required to give evidence.

The Committee shall have regard to but shall not be bound to adopt the views expressed by the assessor.

##### A5.10.3 *Appointment of clerk*

The Chairman shall be entitled to appoint any person to act as clerk to the Committee for the hearing of any dispute referred to the Committee.

The provisions of paragraph A3.8 shall apply *mutatis mutandis* to the clerk as they apply to the Committee Secretary.

#### A5.10.4 *Legal advice*

The Chairman shall be entitled to obtain legal advice in relation to any aspect of a dispute on his own motion.

#### A5.11 *Determination of disputes*

##### A5.11.1 *Determination by agreement*

After the conclusion of the hearing of the representatives of the parties to a dispute, the Committee shall make its determination of the dispute. The dispute shall be determined by the Committee only if all members of the Committee agree on the determination of the dispute. The Chairman may at any time call for a vote of the members to ascertain whether unanimity has been achieved. A determination shall be treated as having been unanimously agreed if no member present votes against it.

##### A5.11.2 *Failure to agree determination of dispute*

If the determination of a dispute shall not have been agreed pursuant to paragraph A5.11.1 at any meeting of the Committee:

- (a) in the case of a reference to the Committee under Conditions D5, F5, G6 or H11.9(a) of the Track Access Conditions, the Chairman shall either:
  - (i) postpone consideration of the dispute to a subsequent meeting of the Committee; or
  - (ii) make a ruling as to the determination of the dispute; and
- (b) in the case of any other reference to the Committee, the Chairman may:
  - (i) postpone consideration of the dispute to a subsequent meeting of the Committee;
  - (ii) make a ruling as to the determination of the dispute; or
  - (iii) declare that the dispute shall not have been resolved.

A ruling by the Chairman pursuant to paragraphs A5.11.2(a)(ii) or A5.11.2(b)(ii) shall be deemed to be a decision of the Committee or sub-committee in question for the purposes of the Track Access Conditions.

##### A5.11.3 *Power to make orders*

In the determination of a dispute, the Committee or the Chairman may make any of the orders provided for in paragraph C4.2.

#### A5.11.4 *Power to require further information*

Where the Chairman exercises his powers to postpone consideration of a dispute to a subsequent meeting of the Committee, he may require the parties to the dispute to provide the Committee with such further information in such form and by such times as he shall specify.

#### A5.11.5 *Written determination*

The Committee's or Chairman's determination of a dispute shall be in writing.

#### A5.11.6 *Reasons*

In the case of a reference to the Committee under Conditions D5, F5, G6 or H11.9(a) of the Track Access Conditions, the determination of the Committee or the Chairman shall be accompanied by a written statement of the reasons for the determination. In the case of any other reference, the Committee or the Chairman (as the case may be) shall not be obliged to provide a written statement of its or his reasons for the determination unless any of the parties to the dispute shall so require.

#### A5.11.7 *Costs and expenses*

The Committee shall have power, on the motion of any party to a dispute, to order any party to a dispute to meet the costs or expenses of the Committee and of any other party to the dispute, assessed in such manner as the Committee shall determine. In the case of references made to the Committee other than under Conditions D5, F5, G6 or H11.9(a) of the Track Access Conditions, there shall be a presumption that no such order shall be made. Such presumption shall be rebutted only where the Committee is satisfied that either:

- (a) the case of any party to the dispute shall have been so lacking in merit that the reference should not have been made; or
- (b) the conduct of any such party before or during the conduct of the reference was such as to justify an award of costs being made against it.

#### A5.11.8 *Minutes*

Without prejudice to paragraphs A5.11.5 and A5.11.6 and subject to paragraph A5.11.9:

- (a) the Committee Secretary shall prepare full and accurate minutes of every meeting of the Committee;
- (b) the minutes shall be considered and approved (with or without modification) at the next meeting of the Committee, or, in the circumstances in which the next meeting of the Committee is not anticipated to take place within three months, the minutes may be circulated



and approved by the assent in writing of all Committee members who were present at the meeting concerned; and

- (c) copies of the approved minutes shall be provided to every Industry Party and the Franchising Director not later than 7 days after their approval.

#### **A5.11.9 Confidentiality of Committee decision**

Subject to compliance with any provision of the Access Conditions in question, the Chairman shall have a discretion to direct that the decision of the Committee or any part of it shall be kept confidential. Paragraph C6.3 shall apply *mutatis mutandis* to decisions of the Committee as they apply to arbitration awards.

#### **A6 Implementation of determination**

Except as otherwise provided in the agreement under or in respect of which the dispute arose (including the Access Conditions), the parties to the dispute shall comply with the terms of the determination within such period as shall be specified in the determination.

#### **A7 Decisions of the Committee**

Except as otherwise provided in these rules, all decisions of the Committee (including decisions pursuant to paragraph A5.3 and any resolution for the removal of the Deputy Chairman pursuant to paragraph A3.6) shall be made by the votes of 5 or more members of the Committee present (whether in person or by proxy) at a meeting of the Committee. Each member shall have one vote.

#### **A8 Reference to further methods of dispute resolution**

If the agreement under which a dispute arises provides that the dispute shall be referred for determination to such body or person as the Committee shall specify, the Committee shall do so by a decision reached pursuant to paragraph A7. If the Committee fails so to reach a decision, the Chairman shall decide the matter, and his decision shall be final and binding on the parties to the dispute.

#### **A9 Liability of Officers**

None of the Chairman, the Deputy Chairman, the Independent Vice-Chairman, the Committee Secretary, the clerk to the Committee, or the Disputes Secretary shall be liable to any party for any act or omission (including negligence) in connection with any Committee proceedings or any dispute determined by the Committee or the Chairman under these rules unless the act or omission is established to have been in bad faith.

## **B        MEDIATION**

Mediation under these rules is a private dispute resolution process in which a neutral mediator tries to help the parties to reach a negotiated settlement.

### **BI        *Disputes to be submitted to mediation***

BI.1        Any dispute between Industry Parties or the Franchising Director, or between any of those persons and other parties, which the parties to the dispute have agreed shall be submitted to mediation under these rules, shall proceed according to the rules of this Part B. Such agreement may be made when the dispute arises or previously and may be made orally or in writing.

BI.2        Where a dispute which would otherwise be submitted to mediation in accordance with the provisions of this Part B:

- (i)        is required to be submitted to mediation pursuant to the Non-Access Dispute Resolution Rules;
- (ii)        is so connected with a dispute (whether involving the same parties or not) which is to be (or has been) submitted to mediation pursuant to the Non-Access Dispute Resolution Rules that it is expedient for the two disputes to be submitted to mediation in the same proceedings; or
- (iii)        the parties have agreed that it will be submitted to mediation pursuant to the Non-Access Dispute Resolution Rules;

the dispute shall be submitted to mediation under the Non-Access Dispute Resolution Rules.

BI.3        If there is a disagreement as to whether a dispute falls within paragraph BI.2(i) or (ii), each party to the disagreement shall submit its arguments in writing to the Committee Secretary and to the other party, so as to be received within five days of its receipt of the notification of a wish to submit to mediation referred to under paragraph B2. The Committee Secretary shall rule on the disagreement within seven days of receiving the submissions. If either party refuses to accept the Committee Secretary's ruling, the issue shall be determined by the Chairman of the Committee established pursuant to paragraph A2 of the Non-Access Dispute Resolution Rules.

## **B2      *Beginning a mediation***

A party wishing to refer a dispute to mediation shall so inform the Disputes Secretary and every other party to the dispute of which it is aware. The Disputes Secretary shall promptly approach all parties to the dispute and discuss with them the identity of a suitable mediator. Unless within 5 days of his initial approach the parties agree on the identity of a mediator, the Disputes Secretary shall appoint one from the register.

## **B3      *Procedure***

- B3.1      Immediately on his appointment, the mediator shall contact the parties and arrange to meet them. He may require them to provide him with a brief summary of the dispute and their contentions in relation to it. The mediator shall, at his discretion, be entitled to send a copy of such summary to the other party to the dispute.
- B3.2      Two representatives of each party shall attend each meeting with the mediator, at least one of whom shall be a senior manager with decision-making authority in relation to the dispute. No other persons may attend without the mediator's agreement.
- B3.3      The parties and the mediator may meet more than once but, unless all involved agree, the meetings shall not continue later than 35 days after the date of the appointment of the mediator.
- B3.4      The parties shall explain their respective positions to the mediator. He may see each on his own if he sees fit. The mediator shall not be entitled to disclose matters told to him in confidence without the permission of the party in question. He shall encourage the parties to resolve the dispute by agreement and may also discuss informally with any party his own views as to the merits of the dispute.
- B3.5      Within seven days of the final meeting, if the parties have not resolved the dispute by agreement the mediator may advise the parties of his views as to the likely outcome of the dispute if it were to be referred to arbitration and/or what he considers would be a fair settlement of the dispute. No party shall be bound to adopt the views expressed, or accept the advice provided, by the mediator.

## **B4      *Confidentiality***

- B4.1      The mediation is and shall be kept confidential.
- B4.2      The parties, their representatives and advisers, the mediator and the Disputes Secretary shall keep confidential all documents, submissions, statements and other information disclosed in the mediation, including any agreement for the settlement of the dispute, except when and insofar as disclosure is necessary:
- (a)    to implement or enforce the agreement for settlement of the dispute; or
  - (b)    to comply with an obligation to disclose owed to any financial associate of the party making the disclosure.
- B4.3      Its use in the mediation shall not affect the extent to which any document, submission, statement or other information disclosed in the mediation is admissible or subject to discovery or production (or, in Scotland, recoverable by commission and diligence under section 1 of the Administration of Justice (Scotland) Act 1972 or otherwise) in any subsequent arbitration, legal or other proceedings involving the parties.
- B4.4      New documents generated in the course and for the purposes of the mediation shall be treated as being on the same basis as without prejudice negotiations in an action in the courts.

## **B5      *Costs***

Unless the parties otherwise agree, each party shall bear its own costs of the mediation. The parties shall share equally the mediator's fees and expenses, the costs of his appointment and all other administrative costs of the procedure.

## **B6      *Termination of the mediation***

The mediation shall terminate upon service by one party to the mediation on the other and on the mediator of a notice of withdrawal from the mediation.

## **B7      *Communications, exclusion of liability, jurisdiction and governing law***

Paragraphs C7, C8 and C9 shall apply to mediations as if references to the arbitrator and arbitration were references to the mediator and mediation respectively.

**B8      *Mediator barred from further proceedings***

The mediator shall not be entitled to act in any capacity in relation to the subject matter of the mediation in which he acted as mediator in any subsequent arbitration, legal or other similar proceedings.

## **C ARBITRATION**

### **C1.1** *Disputes to be decided by arbitration*

Any dispute arising between Industry Parties or the Franchising Director, or between any of those persons and other parties, which the parties to the dispute have agreed should be referred in part or in whole to arbitration under these Rules shall be arbitrated in accordance with the provisions of this part C. In each of the following cases the arbitration may only proceed if a notice of arbitration is served on the Disputes Secretary by the party wishing to begin the arbitration:

- (a) in the case of a dispute referred to the Committee or a sub-committee of it and declared by the Chairman pursuant to paragraph A5.11.2(b)(iii) not to have been resolved, within 14 days of the Chairman's declaration;
- (b) in the case of a dispute referred to the Committee or a sub-committee of it and determined by a ruling by the Chairman pursuant to paragraph A5.11.2(b)(ii), within 14 days of the Chairman's ruling;
- (c) in the case of a dispute between Industry Parties which has been the subject of mediation pursuant to part B above, within 14 days of the end of the period provided for in paragraph B3.3; and
- (d) in the case of a dispute referred, other than under Access Conditions D5, F5, G6 or H11.9(a), to the Committee or a sub-committee of it and determined by agreement pursuant to paragraph A5.11.1, within 14 days of the decision of the Committee or sub-committee.

### **C1.2** *Relationship with Non-Access Dispute Resolution Rules*

Where a dispute which would otherwise be arbitrated in accordance with the provisions of this Part C:

- (a) has been referred to the Committee (or a sub-committee of it) established under the Non-Access Dispute Resolution Rules pursuant to paragraph A1.1(i), (ii) or (iii); or
- (b) is otherwise so connected with a dispute (whether involving the same parties or not) which is to be (or has been) referred to arbitration under the Non-Access Dispute Resolution Rules that it is expedient for the two to be resolved in the same proceedings;

the dispute shall be arbitrated under the Non-Access Dispute Resolution Rules.

### **C1.3** *Disputes*

If there is a disagreement as to whether a dispute falls within paragraph C1.2(a) or (b), each party to the disagreement shall submit its arguments in writing to the Committee Secretary and to the other party, so as to be received either before

the notice of reference is served or within seven days of its service. The Committee Secretary shall rule on the disagreement within seven days of receiving the submissions. If either party refuses to accept the Committee Secretary's ruling, the issue shall be determined by the Chairman of the Committee established pursuant to paragraph A2 of the Non-Access Dispute Resolution Rules.

## **C2      *Beginning an arbitration and appointing the arbitrator***

### **C2.1      *Notice of arbitration***

A person wishing to refer a dispute to arbitration shall serve a written notice of arbitration on the Disputes Secretary and shall serve a copy of the notice of arbitration on every other party to the dispute. The notice shall summarise the basis of the claim and list the other parties concerned. It may suggest one or more appropriate arbitrators, whether from the register or otherwise.

### **C2.2      *Appointment of arbitrator***

The Disputes Secretary shall promptly approach all parties to the dispute and discuss with them the identity of an arbitrator to decide it. Subject to any agreement of the parties to the contrary, if the parties fail to agree on an arbitrator within 7 days of the Disputes Secretary's initial approach, he shall appoint an arbitrator from the register. Upon the appointment of an arbitrator, the Disputes Secretary shall send to all the parties to the dispute a notice of the appointment of the arbitrator.

### **C2.3      *Change of arbitrator***

C2.3.1 If any arbitrator acting or appointed to act under these rules resigns, withdraws, dies or refuses to act, the Disputes Secretary shall, upon application by the arbitrator or any party to the arbitration, on proof satisfactory to the Disputes Secretary, declare the office of arbitrator vacant.

C2.3.2 If the arbitrator or any party to the arbitration considers that the arbitrator is unable by reason of mental or physical infirmity to perform the duties of his office or is disqualified for any reason from performing the duties of his office, or has delayed unreasonably in the conduct of the arbitration or in the making of any award, the Disputes Secretary may, at the request of the arbitrator or any party to the arbitration, having heard the arbitrator and the parties if they or any of them wish to be heard, declare the office of arbitrator vacant.

C2.3.3 Where the office of arbitrator shall have been declared to be vacant pursuant to this paragraph C2.3, paragraph C2.2 shall apply to the appointment of a replacement arbitrator.

### **C3      *Procedure***

#### **C3.1    *General***

The arbitrator shall conduct the arbitration in such manner as he considers most suitable for the fair resolution of the dispute. The parties may agree that an arbitration shall be conducted on the basis of written representations only. In such a case, nothing in this paragraph C3 shall prevent the arbitrator from requiring one or more oral hearings if he considers it appropriate for the just and expeditious determination of the proceedings. The arbitrator shall have the power at any time to make or amend the procedure to be followed by the parties in the arbitration. Unless the arbitrator rules otherwise, the following timetable and procedure shall apply:

- (i) Within 14 days of the notice of appointment of the arbitrator, the claimant shall serve on the arbitrator and the other party a written statement of its claim. The statement of claim shall specify all relevant facts and matters and contentions of law (if any, and naming the principal authorities) on which the claimant relies (or admits or denies) and the relief and remedies sought.
- (ii) Within 14 days of service by the claimant of the statement of its claim, the other party shall serve on the arbitrator and the claimant a written statement of its defence. The statement of defence shall specify the defence and all relevant facts and matters and contentions of law (if any, naming the principal authorities) on which the respondent relies (or admits or denies). The statement of defence may set out any counterclaim which the respondent wishes to make.
- (iii) The statements served pursuant to sub-paragraphs (i) and (ii) above shall be accompanied by copies of any documents referred to in them or upon which the party serving the statement wishes to rely. That party shall, if so requested, make the originals of such documents available for inspection by the arbitrator or the other party.
- (iv) After service by the respondent of its statement of defence (in Scotland, answers), the arbitrator may allow the parties a period (the "adjustment period") within which to adjust the written pleadings so that each material averment of the parties shall be answered (whether by admission, denial, explanation or otherwise).
- (v) On the expiry of the adjustment period, the pleadings shall be finalised and within 7 days thereafter the claimant shall reproduce the pleadings, as adjusted, into a single document (in Scotland, the closed record) and send 2 copies to each of the arbitrator and the other parties to the arbitration.
- (vi) Within 14 days after the pleadings have been so finalised, each party shall serve upon the arbitrator and the other party signed statements of any factual witnesses upon whose evidence it wishes to rely, together with any copies of documents referred to in them not already in the possession of



the other party. That party shall, if requested to do so, make the originals of such documents available for inspection by the arbitrator or the other party.

- (vii) If he considers it appropriate for the just and expeditious determination of the proceedings, the arbitrator shall be entitled to appoint one or more advisers (in Scotland, assessors) or experts on any matter (including matters of law) to report to him on any specific issue. The costs of any such person shall be subject to the provisions of paragraph C5.2. Where the arbitrator receives a report from any such person, he shall disclose the report to the parties and afford them such opportunity to comment on it as he considers appropriate.
- (viii) Within 7 days after the pleadings have been finalised, the Disputes Secretary shall agree with the arbitrator and the parties a hearing date and the estimated length of the hearing. The hearing date shall be no later than 28 days after the finalisation of the pleadings.
- (ix) In relation to the production of documents:
  - (a) the arbitrator may, on the application of a party, require the production of such specific identified documents as are within the possession, custody or control of the other party or any third party which the arbitrator considers relevant; the parties to the proceedings shall be given the opportunity to inspect and to comment upon any document so produced;
  - (b) if any document is not supplied to the arbitrator and the other party within such time as the arbitrator shall prescribe, the arbitrator may:
    - (aa) proceed with the arbitration on the basis of the documents already before him;
    - (bb) apply to the Court for an order to produce the documents; or
    - (cc) strike out (in Scotland, dismiss) the part of the claim or defence to which the document relates,and in making his award the arbitrator shall be entitled to make such allowance as he may think fit for the failure to supply the document;
  - (c) no party shall be obliged to produce any document which would be privileged from production in any proceedings in an action in the courts;
  - (d) an application by a party to the arbitrator pursuant to sub-paragraph (a) above shall be made not later than 21 days before the date fixed for the hearing; a party in receipt of a request from the arbitrator to produce a document shall comply with such a request within 7 days.
- (x) At least 5 days before the hearing each party shall serve on the other and on the arbitrator its written submissions.

- (xi) At the hearing:
  - (a) there shall be no oral opening submissions, but the arbitrator may ask the parties questions arising out of their written submissions or pleadings;
  - (b) subject sub-paragraph (c) below, the testimony of a witness may be presented in written form, either as a signed statement or as an affidavit duly sworn, provided paragraph C3.1(vi) has been complied with. Any party may apply to the arbitrator for an order that any witness whose written statement or affidavit is to be relied upon by a party should attend for oral examination at a hearing and the arbitrator shall make such order unless, having heard the parties, he is satisfied that such oral examination is not likely to assist him in making his award. If a witness is ordered to attend and fails to do so, the arbitrator may:
    - (aa) place such weight on the written statement or affidavit as he thinks fit;
    - (bb) exclude it altogether; or
    - (cc) apply to the Court for an order for the citation or attendance of witnesses;
  - (c) there shall be no examination-in-chief of factual or expert witnesses who give oral evidence. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the arbitrator;
  - (d) the parties may make oral closing submissions, not exceeding 20 minutes each;
  - (e) the parties may be legally represented; and
  - (f) the arbitrator shall be entitled to receive such evidence as he shall consider relevant, whether or not such evidence would have been admissible in a court of law.
- (xii) The arbitrator shall deliver to the parties a reasoned award within 14 days of the end of the hearing.

### C3.2 *Proposed amendments*

Immediately after his appointment, the arbitrator shall require each party to inform him of any amendments to the procedure or the time limits set out in paragraph C3.1 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall promptly send any proposed amendments to the arbitrator and the other party. Before responding, the arbitrator may require the parties to meet him.

### **C3.3**     *Supplemental*

- C3.3.1    The arbitrator shall have power to strike out (in Scotland, dismiss) part or all of any claim or defence made in the proceedings on any one or more of the following grounds:
- (a)    wilful breach of these rules;
  - (b)    deliberate non-compliance by a party with any order of the arbitrator; or
  - (c)    inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the arbitrator, given rise to a substantial risk that a fair determination of the dispute will not be possible, or which is such as to cause or to have caused serious prejudice to the other party.
- C3.3.2    The arbitrator shall have power to strike out (in Scotland, dismiss) part or all of any claim or defence made in the proceedings if he is satisfied that the claim or defence or any part of it is scandalous, frivolous or vexatious.
- C3.3.3    If either party fails to serve a pleading within the period allowed under these rules or by order of the arbitrator, and fails to remedy his default within 14 days after despatch to him by the arbitrator or any other party to the dispute of notice of that default, the arbitrator shall be entitled to rule that he shall be treated as having abandoned his claim or defence (as the case may be) and, having made such a ruling, the arbitrator shall be entitled to proceed with the reference on an *ex parte* basis.
- C3.3.4    Any party who becomes aware that any provision or requirement of these rules has not been complied with and who fails to state an objection to that failure within a reasonable time shall be deemed to have waived the right to object.

### **C4**        *Awards*

#### **C4.1**       *Final and binding*

Without prejudice to the provisions of the Arbitration Act 1979 or, for arbitrations taking place in Scotland, the Administration of Justice (Scotland) Act 1972 and the provisions of any agreement between the parties to the dispute and the relevant Access Conditions, awards shall be final and binding on the parties.

#### **C4.2**     *Power to make orders*

In addition to his other powers under these rules, the arbitrator may make such orders in his award as he considers necessary to resolve the dispute, including orders that:

- (a) one party shall pay an amount of money (including damages) to another party, whether that amount is specified in the arbitrator's order or calculated in accordance with such procedure as he shall specify;
- (b) one party should take or not take specified action;
- (c) the meaning of an agreement or a party's obligations under that agreement are as stated in the award; or
- (d) any principal sum he may order one party to pay to another shall carry interest at such rate and over such period as he shall determine.

#### **C4.3**     *Issue of arbitration award*

C4.3.1 The arbitrator shall send a copy of his award to the parties, the Chairman and the Disputes Secretary.

C4.3.2 Paragraph C6.3 applies in relation to the confidentiality of the award.

### **C5**     **Costs**

#### **C5.1**     *Arbitration fee*

Any party serving a notice of arbitration shall at the same time pay to the Disputes Secretary a fee, of an amount to be published from time to time by the Disputes Secretary but not exceeding £500 (excluding VAT). The arbitration shall not start until the fee has been paid. The Disputes Secretary shall promptly remit all amounts received pursuant to this paragraph C5.1 to the Committee Secretary.

#### **C5.2**     *Discretion to order payment of costs*

Whether or not the arbitration reaches the stage of a final award, the arbitrator may order any party to pay some or a specified proportion of any party's costs incurred in the arbitration, the arbitrator's fees, any costs of his appointment and any fee paid to the Disputes Secretary pursuant to paragraph C5.1, assessed in such manner as the arbitrator shall determine.

## **C6      *Confidentiality***

### **C6.1      *Documents***

All documents produced or disclosed in the course of an arbitration shall be treated as confidential by the arbitrator, the Chairman, the Disputes Secretary and all parties.

### **C6.2      *Use of documents***

Unless otherwise agreed by all parties, such documents shall only be used:

- (i) for the purposes of the arbitration, including any appeal against the arbitration award (or, in Scotland, any application under Section 3 of the Administration of Justice (Scotland) Act 1972, or for judicial review, in respect of the award);
- (ii) for enforcing the arbitration award; or
- (iii) in support of a plea of estoppel (or, for arbitrations taking place in Scotland, of *res judicata*) in any subsequent proceedings.

### **C6.3      *Confidentiality of arbitration awards***

#### **C6.3.1      *Copies to Industry Parties and Franchising Director***

Subject as provided in this paragraph C6, a copy of every award of an arbitrator pursuant to this Part C shall be sent by the Disputes Secretary to each Industry Party and the Franchising Director. No such copy shall be sent until the expiry of 21 days after the receipt by the Disputes Secretary of the copy of the award in question, unless the Chairman shall order otherwise.

#### **C6.3.2      *Discretion to order confidentiality***

The Chairman shall be entitled to direct that an award or any part of it shall be kept confidential, to the extent stated and subject to such conditions (if any) as shall be specified in the direction, on the grounds that:

- (a) publication would or might seriously and prejudicially affect the interests of any of the parties to the dispute or any other person; and
- (b) such prejudice outweighs or is likely to outweigh the interests of the industry in the publication of the award.

Any such direction shall be in writing and shall be given to the parties to the dispute and the Disputes Secretary.

### **C6.3.3** *Exceptions to confidentiality directions*

A direction given pursuant to paragraph C6.3.2 shall not apply to disclosure which is:

- (a) agreed in writing by all the parties to the dispute (including in any Access Agreement between them);
- (b) made to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
- (c) made to the Regulator or the Franchising Director;
- (d) required for the purposes set out in paragraph C6.2; or
- (e) required pursuant to the order of a court of competent jurisdiction.

### **C6.3.4** *Representations of parties as to confidentiality*

Within 7 days of its receipt of the award (or such longer period as the Chairman shall allow), each party to the dispute shall give notice to the Chairman and the other parties to the dispute:

- (a) as to whether it considers that the Chairman should exercise his discretion to exclude from publication any part of the award which relates to its affairs; and
- (b) if confidentiality is sought, its justification for considering that the grounds referred to in that paragraph exist.

### **C6.3.5** *Hearing on confidentiality representations*

The Chairman shall be entitled to hear the parties on the question of confidentiality under this paragraph C6.3.

### **C6.3.6** *Written reasons for decision*

If any representations shall have been made to him pursuant to paragraph C6.3.4, unless the parties to the dispute otherwise agree the Chairman shall provide the parties to the dispute with his reasons for making his determination. Such reasons shall be given in writing.

## **C7** *Communications*

Communications for the purposes of the arbitration shall be by telephone and confirmed in writing wherever possible. Unless the contrary is proved, faxes sent before 5.00 pm shall be deemed received on the day of sending and letters sent by first class post shall be deemed received two working days after posting.

**C8      *Exclusion of liability***

None of the Chairman, the Disputes Secretary or any arbitrator shall be liable to any party for any act or omission (including negligence) in connection with any arbitration under these rules unless the act or omission is established to have been in bad faith.

**C9      *Jurisdiction and governing law***

Arbitrations shall take place in England and be subject to English law, except where the Access Agreement in respect of which the dispute has arisen confers permission to use railway assets situated entirely in Scotland or the Access Agreement in question is governed by Scots law, in which case the arbitration shall take place in Scotland and be subject to Scots law. In either case the arbitrator may order otherwise. For the purposes of this paragraph C9, where a single Access Agreement confers permission to use track in both Scotland and England, the railway assets in question shall be treated as being situated partly in Scotland and partly in England.

**C10     *Interlocutory relief granted by the Court***

In an appropriate case, a party to a dispute which has been or may be submitted to arbitration may apply to the Court for interlocutory relief (whether negative or positive), notwithstanding that the relief sought may overlap with the relief which is, or may be, claimed in the arbitration.

## **D EXPERT DETERMINATION**

### **D1 *General***

Any dispute which the parties have agreed should be referred to expert determination under these Rules shall be determined by an expert agreed between the parties or appointed by the Disputes Secretary.

### **D2 *Application of Part C***

Part C shall apply to any such disputes, and to paragraph D1, as if references to the arbitrator and the arbitration were references to the expert and the expert determination respectively, save that in paragraph C3.1, unless otherwise ordered by the expert:

- (a) sub-paragraphs (iv), (v), (vi), (vii), (viii), (x) and (xii) shall not apply;
- (b) any notice served under sub-paragraph (ix)(d) shall be served within 35 days of the appointment of the expert;
- (c) the expert shall deliver his determination, and (unless the parties have agreed that he should not give them) the reasons for it within 56 days of his appointment; and
- (d) the expert's determination shall be final and binding save where it is so clearly erroneous on its face that it would be unconscionable for it to stand.



## **E DETERMINATION BY THE REGULATOR**

### **E1 *Commencement of proceedings***

The determination of any dispute:

- (a) in relation to which it is specified, in any agreement in respect of which the Regulator shall have issued directions under section 17 or 18 of the Railways Act 1993, or in any agreement which he shall have designated for the purposes of these Rules, that the Regulator shall have jurisdiction; or
- (b) which all parties to the dispute have agreed should be referred to determination by the Regulator and the Regulator has agreed to determine,

shall be begun by the person wishing to refer the dispute to the Regulator serving on the Regulator and on every other party to the dispute a written statement of its case.

### **E2 *Procedure***

The Regulator shall be entitled to determine any dispute referred to him pursuant to the preceding clause in such manner as he considers most suitable for the just resolution of the issues before him. He shall have the power at any time to make or amend the practice and procedure to be followed by the parties referring the dispute to him and shall have the power (if he considers it appropriate) to require the parties to adopt the procedure set down in paragraph C3 for use in arbitrations, subject to whatever amendments he considers appropriate. The Regulator's determination shall be final and binding on the parties.

### **E3 *Determinations by the Regulator***

In the case of a reference made to him pursuant to Conditions D5, F5, G6 or H11.9(a) of the Track Access Conditions, the Regulator shall be entitled to determine that any senior member of the staff of the Regulator who is authorised generally or specially in that behalf by the Regulator may either:

- (a) consider and determine the matter in question; or
- (b) report to the Regulator as to the determination of the matter after such procedure as the Regulator shall specify.

A determination made pursuant to this paragraph E3 shall be a determination of the Regulator.

## **F      AMENDMENT**

These Rules may be amended in accordance with the provisions of Part C of the Track Access Conditions.

## **G      REGULATOR'S APPROVAL**

No amendment of these Rules shall have effect unless approved by the Regulator.