

The Network Code

(with Explanatory Notes)

01 August 2010

Note:

This document is available on the Network Rail website at <http://www.networkrail.co.uk/aspx/116.aspx>. Two complimentary copies, in loose-leaf format, are supplied to each Access Party. Amendments to the Network Code are also on the Network Rail website at the “Completed Proposal for Change” web-page and include identification of the specific changes to the text. Amended pages will be dated in the bottom right hand corner and the “contents/amendments” page provides the reference (PfC number) to the “Proposal for Change” page of the website.

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The Secretary of the Class Representative Committee can be contacted on 020 3356 9284.

History of updates since 1 January 2009

Proposal for Change	Parts of the code updated	Effective date of changes
PfC 48	Part C, Part J, Part M and ADRR	1 February 2009
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PfC 54	Part A, Part B, Part C, Part D, Part E, Part F, Part G, Part H, Part J, Part K, Part L, Part M and ADRR.	01 August 2010

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ARRANGEMENT OF PARTS AND CONDITIONS

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Preface

- A. *The Network Code is a set of rules which is incorporated by reference into, and therefore forms part of, each bilateral access contract between Network Rail and a holder of access rights. It does not create any contractual relationship between operators of trains.*
- B. *The purpose of the Network Code 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 Network Code itself;*
 - (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 Network Code*

THE NETWORK CODE

Part A - General Provisions

Explanatory Note

- A. *Part A sets out certain definitions, general provisions and rules of interpretation which apply generally to this code. Definitions which are specific to individual parts of this code are contained in the relevant part.*
- B. *This Explanatory Note does not form part of the Network Code.*

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 this code shall be interpreted or construed as compromising that objective.

In this code, unless the context otherwise requires:

- (a) *This code*

References to this code means this code as modified from time to time. References to The Railtrack Track Access Conditions shall be treated as references to this code.

- (b) *Parts, Conditions and paragraphs*

References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of this code.

- (c) *Definitions in the Act*

Terms and expressions defined in the Act shall, unless the contrary intention appears, have the same meaning in this code.

(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 this code and the rules of interpretation contained in that Act shall apply to the interpretation of this code.

(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 this code or entered into, approved, authorised, accepted or issued by a person pursuant to this code 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 this code and an Access Agreement (not including this code) the following order of precedence shall apply:

- (1) this code; and
- (2) the Access Agreement.

(i) *Time limits*

Where in this code 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 this code.

(k) *Ruling language*

All notices served under this code shall be in the English language.

1.2 Definitions

In this code, unless the context otherwise requires:

“ADRR” means the set of rules regulating the resolution of disputes, entitled “Access Dispute Resolution Rules” and annexed to this code;

“Act” means the Railways Act 1993 as amended;

“Access Agreement” means any particular access contract, whether or not entered into pursuant to any directions of the Office of Rail Regulation under the Act, incorporating this code;

“Access Beneficiary” means, in respect of an Access Agreement, the Train Operator or Access Option Holder who is party to that Access Agreement;

“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 this code;

“access option” has the meaning ascribed to it in section 17(6) of the Act;

“Access Option Holder” means any person who may exercise an access option in respect of a railway facility:

	<ul style="list-style-type: none"> (a) which is not a station or a light maintenance depot; and (b) in respect of which the facility owner is Network Rail;
“Access Parties”	means, in respect of an Access Agreement, Network Rail and the Access Beneficiary who are party to that Access Agreement;
“Affiliate”	<p>means, in relation to any company:</p> <ul style="list-style-type: none"> (a) a company which is either a holding company or a subsidiary of such company; or (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary, <p>and for these purposes, “holding company” and “subsidiary” have the meanings ascribed to them in section 736 of the Companies Act 1985;</p>
“Change of Law”	<p>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:</p> <ul style="list-style-type: none"> (a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or (b) value added tax;
“Class Member”	has the meaning given to that term in Part C of this code;
“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 Office of Rail Regulation) 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 of it) 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;

“Franchised Services” has the meaning given to that term in Condition A1.6;

“hard copy information” means any relevant item which it is not reasonably practicable for Network Rail to publish on its website, having regard, in particular, to whether such relevant item is, or is likely to be:

- (a) Unavailable in electronic form; or
- (b) Incapable of being downloaded and/or printed by any class of persons accessing Network Rail’s website; or
- (c) Exceptionally costly to publish on its website;

“Legal Requirement” means (for the purpose of the definition of Change of Law), in relation to any person, any of the following:

- (a) Any enactment to the extent that it applies to that person;
- (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 in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;
“Network Change”	has the meaning ascribed to it in Part G of this code;
“Network Code”	means the document entitled “Network Code”;
“Network Rail”	means Network Rail Infrastructure Limited, incorporated in England and Wales under registered number 2904587;
“non-sensitive version”	means a version of a relevant item: <ul style="list-style-type: none">(a) from which sensitive information has been excised; and/or(b) in which sensitive information has been replaced by a summary containing no sensitive information;
“Passenger Transport Executive”	has the meaning ascribed to it in section 9 of the Transport Act 1968;
“Potential Access Party”	means any person who proposes in good faith to enter into an Access Agreement or become an Access Option Holder provided that such person has first undertaken to Network Rail to be bound by the relevant provisions of the Network Code and the ADRR;
“publish on a website”	means, in relation to any specified information to be published on a website, placing such specified information on the relevant website in a prominent

position and with links which enable visitors to that site to locate it quickly and without difficulty;

“railway funding authority” has the meaning as defined in section 45 of the Railways Act 2005;

“Railway Group Standards” means technical standards and operating procedures authorised pursuant to the Railway Group Standards Code issued by Rail Safety and Standards Board Limited and approved by the Office of Rail Regulation;

“relevant ADRR Panel” means the Panel established under Part E of the Access Dispute Resolution Rules which is to determine a relevant dispute in accordance with the principles and procedures set out in Part A of the Access Dispute Resolution Rules;

“relevant item” means, in respect of any specified information, the whole or part of any information, statement, proposal, draft, instrument or other document which constitutes or forms part of that specified information;

“Restriction of Use” means, for the purposes of the Network Code, a restriction of use of all or any part of the Network;

“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 this code;

“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 Restrictions of Use 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
- (b) any alternative train routes or stopping patterns which may apply during any Restriction of Use referred to in paragraph (a) above;

	and, for the purpose of this definition, track shall be regarded as subject to a Restriction of Use if it has been temporarily taken out of service or its capacity otherwise affected for the purposes stated in paragraph (a) above;
“Secretary”	has the meaning given to it in the ADRR
“secure information”	means a relevant item, the publication of which may, in the reasonable opinion of Network Rail, create any risk to the safety or security of the Network.;
“sensitive information”	means a relevant item, the publication of which by Network Rail: <ul style="list-style-type: none"> (a) is likely materially to compromise or otherwise prejudice the commercial interests of any Access Party or any of its Affiliates; or (b) may reasonably be expected seriously and prejudicially to affect the interests of any person;
“Services”	means, in respect of an Access Agreement: <ul style="list-style-type: none"> (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;
“specified information”	means any information, statement, proposal, draft, instrument or other document;
“Timetabling Dispute”	has the meaning given to it in the ADRR
“Track Access Contract Parties” or “TAC Parties”	means, in respect of any Access Agreement other than an access option, Network Rail and the Train Operator who are party to that Access 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;
“Working Day”	means each of Monday to Friday (inclusive) excluding common law and statutory public holidays; and
“Working Timetable”	means the timetable which Network Rail is obliged to draw up pursuant to Condition D1.6.1.

1.3 References to Train Operator

Each reference in Parts E, F, G, H, J, K, L and M 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.

- 1.4.1 Where in this code 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 and subject to Condition A1.4.2, 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.
- 1.4.2 Where in Part C of this code provision is made for the giving or issuing of any notice, consent or approval by any person, that notice, consent or approval may, unless otherwise specified, be sent by Network Rail or the Office of Rail Regulation to the email address most recently notified to Network Rail by the intended recipient (with confirmation copy by prepaid first class post) and the words “notify”, “consent” or “approve” (and cognate expressions) shall be construed accordingly.
- 1.4.3 Any notice, consent or approval sent by email in accordance with Condition A1.4.2 shall be deemed to have given and received unless otherwise proven:
 - (a) if sent before 17:00 hours on a Working Day, upon sending; and

- (b) in any other case, at 09:00 hours on the first Working Day following the day of transmission.

1.5 *Good faith*

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

1.6 *Franchised services*

References to Franchised Services include:

- (a) railway passenger services which the appropriate designating authority has designated as eligible for provision under franchise agreements pursuant to section 23 of the Act;
- (b) railway passenger services provided by a person appointed as a concessionaire or concession operator by a railway funding authority;

and

- (c) railway passenger services provided by the relevant franchising authority, or another person on behalf of the relevant franchising authority, under section 30 of the Act.

CONDITION A2 - STANDARDS OF DOCUMENTATION

Where in this code any person is required to prepare, produce or publish any specified information, that obligation is an obligation to ensure that the specified information:

- (a) is in terms which are, to the greatest extent reasonably practicable, precise, clear and unambiguous; and
- (b) contains the information specified for its contents by the provision of this code which requires its preparation, production or publication, and this Condition A2 is without prejudice to any further or other requirements specified in this code in relation to the specified information (including in Part K).

CONDITION A3 - PUBLICATIONS

3.1 *General Obligation*

3.1.1 Where in this code Network Rail is required to publish any specified information, that obligation is an obligation to ensure that the specified information:

- (a) is, subject to Condition A3.1.3, brought to the notice of every Train Operator, every Access Option Holder, every Passenger Transport Executive, Transport for London, the Scottish Ministers and the Welsh Assembly Government, the Office of Rail Regulation and the Secretary of State.
- (b) is published on its website.

3.1.2 The obligation of Network Rail under Condition A3.1.1 shall have full effect on and from the date on which Condition A3 comes into effect unless the Office of Rail Regulation has given a notice stating:

- (a) a later date on which Condition A3.1.1 shall have effect; and
- (b) its reasons,

in which event Condition A3.1.1 shall have effect on and from the date stated in the notice.

3.1.3 (a) Any person to whom Network Rail owes an obligation under Condition A3.1.1(a) may give notice to Network Rail at any time stating that it does not wish to have information of any type or class brought to its notice under Condition A3.1.1(a).

(b) If a person gives notice under Condition A3.1.3(a) Network Rail's obligation under Condition A3.1.1(a) to such person shall not apply to the extent stated in the notice.

(c) A person who has given notice under Condition A3.1.3(a) may revoke or modify its notice at any time by further notice to Network Rail.

3.2 Sensitive information

Where in this code Network Rail is required to publish any specified information which includes relevant items which are sensitive information on its website, that obligation shall be satisfied in respect of any relevant item if it publishes a non-sensitive version of that relevant item.

3.3 Secure Information

Where in this code Network Rail is required to publish on its website any specified information which includes relevant items which are secure information, that obligation shall be satisfied if it:

- (a) indicates on its website:
 - (i) in general terms, the nature of the relevant item; and
 - (ii) that it will comply with all reasonable requests to supply any person to whom Network Rail owes an obligation under Condition A3.1.1(a), subject to Condition A3.1.3, with a paper copy of the relevant item; and
- (b) complies with requests of the kind specified in Condition A3.3(a)(ii).

3.4 *Hard copy information*

Where in this code Network Rail is required to publish on its website any specified information which includes relevant items which are hard copy information, but are not sensitive information, that obligation shall be satisfied if it:

- (a) indicates on its website:
 - (i) the nature of the relevant item; and
 - (ii) that it will comply with all reasonable requests to supply any person with a paper copy of the relevant item; and
- (b) complies with requests of the kind specified in Condition A3.4(a)(ii).

3.5 *Hard copy sensitive information*

Where in this code Network Rail is required to publish on its website any specified information which includes relevant items which are hard copy information and are sensitive information, that obligation shall be satisfied if it:

- (a) indicates on its website:
 - (i) the nature of the relevant item; and
 - (ii) that it will comply with all reasonable requests to supply any person with a paper copy of the non-sensitive version of the relevant item; and
- (b) complies with requests of the kind specified in Condition A3.5(a)(ii).

3.6 *Determination*

3.6.1 A determination as to whether any relevant item is sensitive information may be made:

- (a) in relation to a relevant item submitted to Network Rail by another person, by the person submitting the relevant item, in the exercise of his rights under Condition A3.7.1; and
- (b) in relation to any other relevant item, by Network Rail.

3.6.2 A determination as to whether any relevant item is secure information or hard copy information may be made by Network Rail.

3.7 *Non-sensitive versions*

3.7.1 Any person who is obliged to submit specified information to Network Rail may submit a non-sensitive version of particular relevant items, provided that he also submits such relevant items in their entirety and Network Rail shall publish the non-sensitive version of those relevant items.

3.7.2 If no non-sensitive version of a particular relevant item is submitted to Network Rail, Network Rail shall be entitled to assume that the relevant item does not contain any sensitive information and shall publish that relevant item in its entirety.

3.8 *Appeals*

3.8.1 If any Access Party is dissatisfied with a determination made by:

- (a) Network Rail under Condition A3.6.1(b) or A3.6.2; or
- (b) any other person under Condition A3.6.1(a),

it may refer the matter for determination in accordance with the ADRR.

CONDITION A4 - NOTICE BY THE OFFICE OF RAIL REGULATION

4.1 *Giving of Notice*

Where in this code there is provision for a notice to be given by the Office of Rail Regulation for any purpose, such notice:

- (a) may be given from time to time; and
- (b) shall only have effect if it has been:

- (i) given to every Access Party, every Passenger Transport Executive, Transport for London, the Scottish Ministers and the Welsh Assembly Government, the Secretary of State, and every other person who has notified the Office of Rail Regulation that it wishes to receive any such notice; and
- (ii) published on its website and placed on the register maintained under section 72 of the Act (as a document issued or made by it under an access agreement).

4.2 *Deemed Receipt*

A notice shall be deemed to have been given and received:

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three days after posting unless otherwise proven;
- (c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 17.00 hours on a business day, on the day of transmission and, in any other case, at 09.00 hours on the next following business day ("business day" for these purposes being a day which is not a Saturday, Sunday or a public holiday in the place where the transmission is to be received); and
- (d) if sent by e-mail;
 - (i) upon sending if sent before 17:00 hours on a Working Day; or
 - (ii) in any other case, at 09:00 hours on the first Working Day following the day of transmission.

4.3 *Reasons for decisions*

An express provision of this code which requires or contemplates that the Office of Rail Regulation should give reasons for its decision in any case does not affect the right of any person to be given reasons for any other decision of the Office of Rail Regulation in any other case.

CONDITION A5 - LIMITATION ON LIABILITY

5.1 General

If an Access Party fails to perform an obligation under this code, the provisions of its Access Agreement limiting the liability of such Access Party under that contract shall have effect in relation to such failure unless and to the extent that:

- (a) an express provision states otherwise in any Part of this code; or
- (b) an express provision states otherwise in the relevant Access Agreement.

5.2 Saving

Condition A5.1 does not apply to an obligation to pay compensation under Condition F3, G2 or G4.

CONDITION A6 - CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

6.1 Application to third parties

Except as provided in this Condition A6, no person who is not an Access Party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this code.

6.2 Application to Network Code

Where in this code a right is given to any person who is not an Access Party, that person shall be entitled to enforce directly any such right under the Contracts (Rights of Third Parties) Act 1999 but only by way of injunction or other performance order of a court or competent tribunal and not by way of damages or other compensatory award.

CONDITION A7 - CONSULTATION

7.1 Consultation by a meeting

Where in this code a person is required to consult with other persons on any matter, such consultation may take place at a meeting to which such persons are invited.

Part B - Performance Monitoring

Explanatory Note

- A. *Part B provides for the establishment by Network Rail 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 Network Rail to determine and record the cause of any delay or cancellation. Provision is made for Network Rail 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 Network Rail and a Train Operator disagree as to cause.*
- B. *Train Operators are given the right to notify Network Rail if the Performance Monitoring System is not fit for purpose and require Network Rail to investigate the grounds for such notification and report on its findings.*
- C. *Both Network Rail 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 TAC 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.*
- G. *This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

In this Part B, unless the context otherwise requires:

“Alternate”	means an alternate Member appointed pursuant to Condition B6.2.6;
“Band”	has the meaning defined in Part C;
“Board”	means the Delay Attribution Board constituted in accordance with Condition B6.2;
“Board Meeting”	means a meeting of the Board;
“Board Secretary”	means the secretary of the Board;
“Chairman”	means the chairman of the Board appointed pursuant to Condition B6.3.1 and, where he is acting as Chairman, the Deputy Chairman;
“Class”	has the meaning defined in Part C;
“Class Member”	has the meaning defined in Part C;
“Class Representative Committee”	has the meaning defined in Part C;
“costs”	includes expenses;
“Delay Attribution Guide”	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 PLC (in railway administration) on 1 September 2002;
“Deputy Chairman”	means the deputy chairman of the Board appointed pursuant to Condition B6.3.1;
“Franchised Passenger Class”	has the meaning defined in Part C;

“Member”	means a member of the Board and “Board Member” shall be construed accordingly;
“Non-Franchised Passenger Class”	has the meaning defined in Part C;
“Non-Passenger Class”	has the meaning defined in Part C;
“Performance Data Accuracy Code”	means, subject to Condition A1.1(g), the code relating to the standards of performance data accuracy entitled “Performance Data Accuracy Code” as published by Railtrack PLC in April 1996;
“Performance Monitoring System”	means the system for monitoring train performance described in Condition B1;
“Proposal for Amendment”	means any proposal to amend the Delay Attribution Guide or the Performance Data Accuracy Code; and
“railway safety levy”	has the meaning ascribed to it in regulation 2 of The Railway Safety Levy Regulations 2006.

CONDITION B1 - PROCEDURES FOR MONITORING PERFORMANCE

1.1 *Performance Monitoring System*

Network Rail 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 *The Performance Data Accuracy Code*

1.2.1 *Incorporation*

The Performance Data Accuracy Code is incorporated into and shall form part of this Network Code. Condition C8 shall apply, but Conditions C1, C2, C3, C4, C5, C6, C7 and C9 shall not apply, to the Performance Data Accuracy Code.

1.2.2 *Obligations and Rights*

Each TAC 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 this Network Code. 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*

Network Rail shall, in relation to any train delay or cancellation (subject to any thresholds agreed between Network Rail 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*

Network Rail 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 Network Rail 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 Network Rail, whether such information is within Network Rail'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, Network Rail 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*

Network Rail 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 Network Rail 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 Network Rail 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 Network Rail 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 Network Rail 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 Network Rail 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 Network Rail and the Train Operator, of the matter being referred for review pursuant to Condition B2.4.2, Network Rail 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, Network Rail and the Train Operator are unable to agree on the attribution, they shall refer the matter for determination in accordance with the ADRR.

2.4.5 Precedence

For the purposes of operating the procedures set out in this Condition B2.4, in any Access Agreement Network Rail 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 or the Performance Data Accuracy Code*

2.5.1 Entitlement to make a Proposal for Amendment to the Delay Attribution Guide or the Performance Data Accuracy Code

Any Access 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;
- (c) be supported by an explanation in reasonable detail of the reasons for the proposed amendment; and
- (d) include, to the extent that it is able to do so, for the benefit of any Access Party to whom a notice is given under Condition B2.5.2(a), an assessment of any wider impact (including commercial impact) that the proposal is likely to have on another Access Party, and a proposed solution to mitigate such impact.

2.5.2 Notice of Proposal for Amendment

The Board shall, within seven days following receipt of a Proposal for Amendment from any Access 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 (including any associated impact assessment and proposed solution provided in accordance with Condition B2.5.1(d)) to each Access 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. In making representations, an Access Party should:
 - (i) specify whether or not it accepts the proposed change and provide an explanation for its position;
 - (ii) indicate any wider impact (including commercial impact) that the proposed change is likely to have on its business; and
 - (iii) confirm whether it is content with any solution proposed by the sponsor; or
 - (iv) provide details of any alternative solution it considers appropriate to address the wider impact (including commercial impact); and
 - (v) indicate whether such an alternative has been discussed and agreed with Network Rail and/or a potentially affected Train Operator.

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 Network Rail 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 approved Proposal for Amendment (and any associated impact assessment and proposed solution) to the Office of Rail Regulation, together with a written memorandum:

- (a) explaining in reasonable detail the reasons for the proposed amendment, why the Board considers that the proposed changes are necessary, and how they will improve the industry delay attribution process;
- (b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition B2.5.2(b));

- (c) detailing what, if any, changes were made to the original Proposal for Amendment in the light of representations received, and why these changes have been accepted;
- (d) stating the reasons behind the rejection of any representations in respect of the Proposal for Amendment;
- (e) providing details of where a number of Proposals for Amendment put forward to the Board have been merged; and
- (f) stating the reasons for any dissent from the Board's decision by any Board Member.

2.7.2 Requirement for Office of Rail Regulation's approval

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

2.7.3 Notification of approval

If the Office of Rail Regulation gives its 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 Access Parties;
- (b) arrange for the approved amendment to be incorporated into a revised version of the Delay Attribution Guide or Performance Data Accuracy Code; and
- (c) publish and circulate the revised version of the Delay Attribution Guide or Performance Data Accuracy Code to all Access Parties and to the Office of Rail Regulation.

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 Office of Rail Regulation, 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 Network Rail 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, Network Rail 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 Network Rail;
- (b) the results of Network Rail's investigations;
- (c) Network Rail'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) Network Rail's reasons for its conclusions and copies of all relevant data and documentation in respect thereof; and
- (e) any steps which Network Rail 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 TAC 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 TAC Party may, without prejudice to Condition B3.2 and on giving at least five days' prior notice to the other TAC 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 TAC 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 TAC Party, such tests to be as reasonably required by the first TAC 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 in accordance with Condition B4.2 shall be at the requesting TAC 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 TAC Party which is the subject of the audit, inspection, analysis, investigation or testing, that TAC Party shall bear the

reasonable cost of both TAC Parties of that audit, inspection, analysis, investigation or testing.

CONDITION B5 - CO-OPERATION

5.1 *Review of operations*

The TAC 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 TAC 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 TAC 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 and Performance Data Accuracy Code*

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 and the Performance Data Accuracy Code.

6.1.2 *Proposal for Amendment*

The Board may receive Proposals for Amendment, pursuant to Condition B2.5, and has responsibility for considering whether or not the Delay Attribution Guide or the Performance Data Accuracy Code as appropriate should be amended in accordance with any such proposal.

6.1.3 *Guidance*

The Board will also provide guidance to TAC 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 Network Rail;
- (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 Access 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 Access 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 Network Rail's six Members as Network Rail 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 appointer 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 Access Party or receive any benefit from any Access 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 Access 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 Network Rail 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 Office of Rail Regulation, together with such information in relation to the candidates and the preferences of the Board Members as the Office of Rail Regulation may request; and
- (c) be deemed to have appointed as Chairman the candidate selected by the Office of Rail Regulation.

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 *Network Rail as secretariat*

Network Rail 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. Network Rail 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 TAC Parties

Each TAC 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 the amount of railway safety levy most recently determined as payable by it bears to the aggregate railway safety levy payable by all TAC Parties. The amount payable by any TAC Party which is not required to pay any amount of railway safety levy 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 1 April) in respect of which the activities of the Board are required to be funded, taking into account any receipt, including any sums which it reasonably expects to receive in or for that period pursuant to Condition B6.4.1.

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 TAC Parties in that following year.

Any credit due to an TAC Party may be withheld, in whole or in part, at the sole discretion of the Board if that TAC 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 TAC 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 TAC Parties.

6.6 ***Indemnities by new, and to retiring, Access Parties***

6.6.1 *New Access Parties*

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

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

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

6.6.2 *Retiring Access Parties*

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

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

such that the Access 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 Network Rail 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 at least three shall be Members

representing Network Rail and at least three shall be Members representing 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.

If, due to unforeseen circumstances (including travel delay or ill health), neither the Chairman nor the Deputy Chairman are able to attend an arranged Board meeting, and the meeting has a quorum of seven members, of which at least three shall be Members representing Network Rail and at least three shall be Members representing other Classes, then those Members in attendance may elect, for that meeting only, a temporary Chairman from amongst the Members in attendance to enable the Board to carry out its business. The person elected as temporary Chairman shall be counted both as Chairman and as a 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 Access 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 Access 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 Network Code

Explanatory Note

- A. *Part C provides for a democratic process by which the Network Code and the ADRR may be changed. Class protection is provided for each of four interest groups (or Classes), namely Network Rail, franchised passenger Train Operators, non-franchised passenger Train Operators and non-passenger Train Operators (collectively referred to as “Train Operators”). The latter three classes may include Access Option Holders. 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. *An Access Beneficiary 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 Network Code.*
- D. *The Class Representative Committee is to establish rules of procedure which are to be followed for all Committee Meetings. Objections to any of the rules of procedure may be made by the Office of Rail Regulation and, in specific circumstances, by any Class Member or any person who proposes in good faith to enter into an Access Agreement or become the holder of an access option.*
- E. *Any Class Member, any person who proposes in good faith to enter into an Access Agreement or become the holder of an access option or the Office of Rail Regulation is entitled to make a Proposal for Change for consideration by the Class Representative Committee. Proposals must be made in writing to Network Rail.*
- F. *There are eight members of the Committee. Each of these may, as part of the democratic process, vote on proposals for changing the Network Code. Normally six must vote in favour for a Proposal for Change to the Network Code to be carried.*

- G. *On the satisfaction of certain criteria, Network Rail and any two of the Class Representatives of the Franchised Passenger Class have an ability to veto a proposal to change the Network Code. This right of veto is subject to an additional appeal procedure.*
- H. *Any Class Member, any person who proposes in good faith to enter into an Access Agreement or become the holder of an access option, the Office of Rail Regulation, the Secretary of State or any Class Representative is entitled to propose a modification to any Proposal for Change for consideration by the Class Representative Committee. The number of votes required for any such modification to be incorporated into the relevant Proposal for Change depends on whether or not the modification is a material modification.*
- I. *Network Rail 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 Network Code. As part of this function, Network Rail will maintain and update, as appropriate, a website containing various information relating to Committee Meetings and Proposals for Change.*
- J. *The Office of Rail Regulation is given certain rights to determine complaints made regarding a failure to comply with any part of the procedure relating to a Proposal for Change.*
- K. *In addition to the democratic process described above, the Office of Rail Regulation is given certain rights to require changes to the Network Code. Any such changes are to be made only after due consultation with all affected parties and with other relevant statutory bodies.*
- L. *The ADRR may be changed in accordance with the same procedures.*
- M. *This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

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

“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 Network Rail 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 who are Train Operators consisting respectively of those Train Operators 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 who are Train Operators consisting respectively of those Train Operators 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,

provided that in relation to an Access Option Holder who is not also a Train Operator already falling within paragraph (a) or (b) above, they will be assigned, as a member of either the Non-Passenger Class or Franchised Passenger Class, to the respective Non-Passenger Class band or Franchised Passenger Class band in accordance with paragraph (a) or (b) above based on their forecast annual Track Charges for the rights in the Access Option that have not been exercised within a track Access Agreement. The allocation of an Access Option Holder to a band will not displace any Train Operator already assigned to that band or who would otherwise be assigned to that band;

“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 Network Rail, 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	means, in respect of any Class, a meeting of that

Meeting”	Class other than an Annual Class Meeting;
“Franchised Passenger Class”	means all Access Beneficiaries whose Access Agreements are, at least in part, in respect of the provision or proposed provision of Franchised Services, as a class;
“Non-Franchised Passenger Class”	means all Access Beneficiaries whose Access Agreements are, at least in part, in respect of the provision or proposed provision of railway passenger services (other than Franchised Services), as a class;
“Non-Passenger Class”	means all Access Beneficiaries whose Access Agreements are, at least in part, in respect of the provision or proposed 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 Office of Rail Regulation under Condition C8) to change this code (including this Part C) or the ADRR, together with any modification of that proposal as referred to in Condition C5.4;
“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 Network Rail for and in connection with the permission to use the Network pursuant to that agreement for the period in question.

CONDITION C1 - CLASS MEETINGS

1.1 *Annual Class Meetings*

1.1.1 *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, Network Rail 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.

1.1.2 *Notices of meetings*

Network Rail shall, in respect of each Class (other than Network Rail), 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 Network Rail no later than 35 days prior to the meeting.

1.1.3 *Notification of business of meeting*

Network Rail 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 Network Rail 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*

Network Rail shall, in respect of any Class (other than Network Rail 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 (Network Rail having first consulted with each Class Member as to such date, venue and time);
- (e) specifying the matters notified to Network Rail 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.

1.3 *Extraordinary Class Meetings of Non-Franchised Passenger Class*

1.3.1 *Notices of requisitioned meetings*

Network Rail 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 (Network Rail 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 Network Rail 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.

1.3.2 *Notification of nominations*

Network Rail 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.

1.3.3 *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.

1.4 ***Band Meetings***

1.4.1 *Notices of requisitioned meetings*

Network Rail 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.

1.4.2 Notification of nominations

Network Rail 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.

1.4.3 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.

1.5 Conduct of Class and Band Meetings

1.5.1 Business

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

1.5.2 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).

1.5.3 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.

1.5.4 *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.

1.5.5 *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.

1.5.6 *Votes*

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

1.5.7 *Secretariat and minutes*

Network Rail 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 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 or, in respect of an Access Option Holder, it shall be a member of the Class corresponding to the type of railway services that will be operated when the option is exercised. No Access Beneficiary shall be a member of more than one Class.
- 1.6.2 Where an Access Option Holder exercises its rights under its access option, it shall only be eligible to be a Class Member in respect of any unexercised rights that remain within its access option.

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 Access Party, continue as representative.

1.7.7 *Filling casual vacancies*

A unanimous decision in writing, executed on behalf of every member of the relevant Class or Band to appoint a specified person as the Class Representative of that Class or Band to fill a casual vacancy shall be as valid and effective as if it had been passed at a Class Meeting of that Class or Band Meeting of that Band (as the case may be), provided that:

- (a) the identity of such members shall be determined as at the date of that decision;
- (b) the decision in writing may consist of several versions in the same form; and
- (c) the specified person shall be treated as elected Class Representative upon receiving notice to this effect, together with a copy of the decision, from Network Rail as the secretary of the Class Representative Committee.

CONDITION C2 - CLASS REPRESENTATIVE COMMITTEE

2.1 *Composition of Committee*

The Class Representative Committee shall comprise two Class Representatives appointed by Network Rail, 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*

Network Rail 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 Network Rail, 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 *Network Rail to call meetings*

Network Rail 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 7 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.

3.1.3 *Attendance at Committee Meetings*

Those entitled to attend and speak, but not vote, at a Committee Meeting are:

- (a) Class Members; and
 - (b) Potential Access Parties;
- and their professional advisers.

3.1.4 *Attendance through communications media*

Those entitled to attend and speak at a Committee Meeting and the Office of Rail Regulation may participate in a Committee Meeting by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Any person participating in a meeting in this manner shall be deemed to be present in person at such meeting.

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

3.2.1 *Regulation of business*

Subject as provided in this Part C, Class Representatives shall establish and from time to time revise rules of procedure to be followed by the Class Representative Committee. The Class Representative Committee shall adhere to such rules of procedure for all Committee Meetings provided that:

- (a) any resolution in respect of such rules of procedure 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.

The rules of procedure will not address voting passmarks and the procedure in Condition C5.4 relating to modifications of any Proposal for Change.

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 Network Rail. 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 Network Rail as the secretary of the Class Representative Committee (with all references to Network Rail in this Condition C3.2.6 being construed accordingly), not later than 2 days before a Committee Meeting and signed by the Class Representative making or revoking the appointment provided that:

- (a) if the appointment or removal of an Alternate Representative is communicated to Network Rail later than, or in a form or manner otherwise than, as so required, then Network Rail shall have discretion to accept the communication as effective for the purposes of the Committee Meeting following that communication; and
- (b) if such communication is accepted as effective, Network Rail shall state this at the start of the relevant Committee meeting.

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.

3.2.10 *Objection to rules of procedure*

- 3.2.10.1 The Office of Rail Regulation shall be entitled, at any time, to give a notice of objection, with reasons, to any rules of procedure established pursuant to Condition C3.2.1.
- 3.2.10.2 Any Class Member or any person referred to in Condition C3.1.3(b) shall be entitled, at any time, to give a notice of objection to any rules of procedure established pursuant to Condition C3.2.1 on the basis that the operation of any such rule will have a material and adverse effect on its interests and such notice shall be accompanied by such relevant information in support of such objection as it shall be reasonable to expect the objector to be able to provide.
- 3.2.10.3 If the Office of Rail Regulation objects to any rule of procedure under Condition C3.2.10.1, the Office of Rail Regulation may either:

- (a) instruct the Class Representative Committee to revise the relevant rules of procedure to address the Office of Rail Regulation's objection, in which case the Class Representative Committee shall proceed to make such revisions pursuant to Condition C3.2.1; or
 - (b) instruct a specific change to the rules of procedure in which case the Class Representative Committee shall revise the relevant rule of procedure in accordance with the Office of Rail Regulation's instructions and Conditions C3.2.1(a) and (b) will not apply in respect of such change.
- 3.2.10.4 If any Class Member or any person referred to in Condition C3.1.3(b) objects to any rule of procedure under Condition C3.2.10.2 the Class Representative Committee will consider such objection and decide whether the rules of procedure should be revised to address such objection.
- 3.2.10.5 If:
 - (a) the Class Representative Committee does not revise the rules of procedure to deal with the objection; or
 - (b) any Class Member or any person referred to in Condition C3.1.3(b) does not consider that any revision made to the rules of procedure addresses its objection,

the Class Member or any person referred to in Condition C3.1.3(b) may refer that matter to the Office of Rail Regulation for final determination. Any such determination by the Office of Rail Regulation shall be final and binding on all parties and the Office of Rail Regulation may instruct the Class Representative Committee accordingly pursuant to Condition 3.2.10.3(a) or (b).

CONDITION C4 - ADMINISTRATION OF CHANGE PROCEDURE

4.1 *Network Rail as secretariat*

- 4.1.1 Network Rail 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.

4.1.2 In its capacity as secretariat, Network Rail will establish, maintain and update, as necessary, a website, which shall be accessible via a prominent link on the Network Rail website, containing:

- (a) the current version of each of the Network Code and the ADRR, including all documents or other instruments which the Network Code expressly states are incorporated into it;
- (b) all previous versions of each of the Network Code and the ADRR (including all documents or other instruments which the Network Code expressly states are incorporated into it) since 1 January 1996 (together with a statement of the dates between which each respective version was in force);
- (c) the current composition of the Class Representative Committee;
- (d) the current rules of procedure to be followed for all Committee Meetings;
- (e) the minutes of the most recent Committee Meeting;
- (f) the date, place and time of the next Committee Meeting;
- (g) a fully searchable archive containing the minutes of all Committee Meetings which have taken place since 1 January 1996;
- (h) a fully searchable archive containing details of all Proposals for Change since 1 January 1996, including:
 - (i) any proposed modification to any Proposal for Change; and
 - (ii) any representations made in respect of any Proposal for Change; and
- (i) any written material prepared by or on behalf of Network Rail and submitted to the Class Representative Committee.

4.1.3 Network Rail shall publish on its website as soon as reasonably practicable after its receipt all information under C4.1.2 (h) (i) and (ii) .

- 4.1.4 Network Rail shall provide copies of the whole or any part of any of the documents contained on the website to any person upon request and Network Rail shall be entitled to charge for the provision of such copies. Such charge shall not exceed an amount which, in the opinion of the Office of Rail Regulation, is reasonable.

4.2 *Notification of Class Representatives and constituents*

Network Rail 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*

Network Rail 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*

Network Rail 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, any person referred to in Condition C3.1.3(b) or the Office of Rail Regulation 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 Network Rail and shall:

- (a) be in writing;
- (b) specify the wording of the proposed change and the date or series of dates on which it is proposed that it come into effect, if other than the period of 14 days after any approval notified by the Office of Rail Regulation pursuant to Condition C7.1.3; and

- (c) be supported by an explanation in reasonable detail of the reasons for the proposed change.

A Proposal for Change may be made in respect of:

- (a) an established part of the Network Code; and/or
- (b) a part for which amendments have been approved or directed by the Office of Rail Regulation under Condition C7 or Condition C8 but which have not taken effect and, in relation to a change being made under Condition C8, no appeal has been received within the timeframe for appeals under Condition C8.3.1. In such a case the Proposal for Change should take account of any such approved or directed amendment. If such a Proposal for Change would affect any such approved or directed amendment, it can only take effect in relation to that part after the amendment on which it is based takes effect.

5.2 *Notice of Proposal for Change*

Network Rail shall, within 7 days following receipt of a Proposal for Change from any Class Member, any person referred to in Condition C3.1.3(b), or the Office of Rail Regulation or, if later, within 7 days following receipt of any clarification that Network Rail may reasonably request from the sponsor of that proposal:

- (a) give notice of that proposal to each Class Member, each person who, in the opinion of Network Rail, shall be likely to become a Class Member, the Office of Rail Regulation and the Secretary of State, unless any such person has notified Network Rail that it does not wish to receive notice of a Proposal for Change; and
- (b) invite the submission to Network Rail 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*

Network Rail 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 copies of all representations received pursuant to Condition C5.2(b), including any proposed modifications to the Proposal for Change.

5.4 *Modification of Proposal for Change*

5.4.1 A modification to any Proposal for Change may be proposed:

- (a) by Network Rail or any of the persons referred to in Condition C5.2(a) during the Consultation Period; or
- (b) by any of the Class Representatives at the Committee Meeting called in respect of such Proposal for Change.

5.4.2 The Class Representative Committee shall consider any modifications, whether material or otherwise, which are proposed to a Proposal for Change.

5.4.3 If the proposed modification to any Proposal for Change is a material modification then:

- (a) if all the Class Representatives present, and entitled to vote, at the Committee Meeting called in respect of such Proposal for Change, shall have voted in favour of the proposed modification, or that proposed modification shall have been approved in accordance with Condition C3.2.9, no further consultation shall be carried out in respect of such Proposal for Change and the Class Representative Committee shall consider the Proposal for Change, as modified, pursuant to Condition C6.1; or
- (b) if paragraph (a) above does not apply, the Class Representative Committee shall request Network Rail to carry out a further

consultation in respect of such Proposal for Change and Condition C6.4 shall apply.

5.4.4 If the proposed modification to any Proposal for Change:

- (a) is not a material modification; and
- (b) 6 or more Class Representatives present, and entitled to vote, at the Committee Meeting called in respect of such Proposal for Change shall have voted in favour of the proposed modification,

then no further consultation shall be carried out in respect of such Proposal for Change and the Class Representative Committee shall consider the Proposal for Change, as modified, pursuant to Condition C6.1.

5.4.5 For the purposes of Condition C5.4, 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 proposed modification.

5.4.6 If Condition C5.4.4(a) is satisfied and Condition 5.4.4(b) is not satisfied, the proposed modification shall be disregarded and the Proposal for Change to which it relates shall be considered without taking the modification into account.

5.4.7 If the Class Representatives cannot agree unanimously whether or not a proposed modification is material then, for the purposes of this Condition C5.4, the modification will be treated as though it is a material modification.

5.5 Clarification

The sponsor of a Proposal for Change shall promptly comply with all reasonable written requests of Network Rail 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 Office of Rail Regulation 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 Network Rail 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 and any other person referred to in Condition C3.1.3 shall be entitled to attend any Committee Meeting at which the Proposal for Change is to be considered.

6.3 *Attendance by Office of Rail Regulation*

The Office of Rail Regulation shall be entitled to attend or be represented at any Committee Meeting.

6.4 *Further consultation*

Network Rail 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 Office of Rail Regulation, 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 Office of Rail Regulation 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 ADRR following a reference for such determination made by the group claiming the veto,

and evidence satisfactory to the Office of Rail Regulation shall have been provided to it 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 Office of Rail Regulation 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 Office of Rail Regulation 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 it 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 Office of Rail Regulation shall:

- (a) be entitled to decline to determine the appeal if, having consulted the parties concerned, it 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 it 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 its part (including negligence) in relation to the appeal.

6.5.7 The determination of the Office of Rail Regulation 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:
 - (a) Network Rail; or

- (b) any two of the Class Representatives of the Franchised Passenger Class.

CONDITION C7 - CONSEQUENCES OF CLASS REPRESENTATIVE COMMITTEE RECOMMENDATION

7.1 *Decision to Approve*

7.1.1 Network Rail 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 Office of Rail Regulation that a veto should not have effect following an appeal pursuant to Condition C6.5), submit the proposal to the Office of Rail Regulation, 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);
- (c) stating the reasons for any dissent from that decision by any Class Representative; and
- (d) stating the date or series of dates upon which it is considered that the proposal is to take effect, the first date being no earlier than 14 days after the date on which the Office of Rail Regulation approves the proposal pursuant to Condition C7.1.3.

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 Office of Rail Regulation.

7.1.3 The Office of Rail Regulation may notify Network Rail as soon as reasonably practicable of its approval or rejection of a Proposal for Change submitted to it pursuant to Condition C7.1.1.

7.1.4 No Proposal for Change shall have effect unless the Office of Rail Regulation gives notice to Network Rail in writing that it approves the proposal pursuant to Condition C7.1.3.

7.2 *Decision to Reject*

Network Rail 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.

7.3 *Procedural Irregularities*

7.3.1 If before the effective date or dates of any change (as determined under Condition C9.1.3 and approved by the Office of Rail Regulation under Condition C9.1.4) a complaint is made to the Office of Rail Regulation concerning a failure to comply with any part of the procedure relating to the relevant Proposal for Change, Condition C7.3.2 shall apply.

7.3.2 The Office of Rail Regulation shall consider the nature of the complaint and determine either that:

- (a) the change should become effective on the date determined under Condition C9.1.3 subject to Condition C9.1.4; or
- (b) the change should not become effective on the date determined under Condition C9.1.3 and shall be treated as a new Proposal for Change.

7.3.3 A change in respect of which a complaint has been made under Condition C7.3.1 shall not become effective unless and until the Office of Rail Regulation makes a determination under Condition C7.3.2(a).

7.3.4 If a complaint is made to the Office of Rail Regulation concerning a failure to comply with any part of the procedure relating to a Proposal for Change after the effective date or dates of any change, such change will remain in full force and effect as though no complaint had been made.

7.4 *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 a series of dates and Network Rail shall give notice of such determination to all relevant parties at the same time as it provides notification pursuant to Condition C7.1.1.

CONDITION C8 - MODIFICATION BY THE OFFICE OF RAIL REGULATION

- 8.1 The Network Code and the ADRR shall have effect with the modifications specified in any notice given by the Office of Rail Regulation for the purposes of this Condition C8, provided that the Office of Rail Regulation shall be satisfied as to the need for the modification as provided in Condition C8.2, the procedural requirements of Condition C8.4 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition C8.5.
- 8.2 A notice given by the Office of Rail Regulation under Condition C8.1 shall have effect if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:
- (a) 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
 - (b) 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 Office of Rail Regulation 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 Office of Rail Regulation shall otherwise agree, be determined in accordance with the ADRR within 180 days of the date upon which the affected operator shall have given notice to the Office of Rail Regulation 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 Office of Rail Regulation a notice of the kind referred to in Condition C8.3.1;
“modification notice”	means a notice given by the Office of Rail Regulation pursuant to Condition C8.1;
“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 Network Rail shall have been directed to enter into by the Office of Rail Regulation in the exercise of its 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 its consideration of the matters referred to in Condition C8.2, the Office of Rail Regulation shall have consulted the Secretary of State, Network Rail and the Class Representative Committee, together with all Class Members and any other persons which the Office of Rail Regulation shall consider ought properly to be consulted, in relation to the modification which it proposes to make;
- (b) in the consultations referred to in paragraph (a) above, the Office of Rail Regulation shall have made available to each person so consulted such drafts of the proposed modification as it shall

consider are necessary so as properly to inform such persons of the detail of the proposed modification;

- (c) the Office of Rail Regulation 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 its decision on the modification to be made;
 - (d) the Office of Rail Regulation shall have notified each person consulted pursuant to paragraph (a) above as to its 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 its reasons for those conclusions; and
 - (e) in effecting the notifications required by paragraph (d) above, the Office of Rail Regulation 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 Office of Rail Regulation 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 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 and any other person who, in the opinion of the Office of Rail Regulation, shall be likely to be a Class Member.
- 8.7 As soon as reasonably practicable after Network Rail shall have received any written material from the Office of Rail Regulation pursuant to Condition C8.4, Network Rail shall send a copy 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*

If the Office of Rail Regulation approves the proposed change in accordance with Condition C7.1.3 Network Rail shall ensure that all Class Members and the relevant franchising authority shall be notified of the change and its effective date.

9.1.2 *Effective date of Change*

Without prejudice to Condition C8, a notice under C9.1.1 shall specify the effective date(s) of the proposed change which shall be:

- (a) the date or series of dates determined pursuant to Condition C7.4;
or
- (b) unless otherwise determined 14 days from the date of notification made pursuant to Condition C9.1.1.

9.2 *Provision of revised texts*

Network Rail shall, as soon as reasonably practicable following issue of a notice under Condition C8.1 or following approval of a Proposal for Change by the Office of Rail Regulation pursuant to Condition C7.1.3, supply to all Class Members a revised version of this code or the ADRR (whichever is appropriate) incorporating the change.

Part D - Timetable Change

[applicable to preparation of the timetable commencing on 10 December 2006 and of subsequent timetables and all Timetable Weeks commencing on or after 10 June 2006.]

Explanatory Note

- 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 May).*
- B. *The development of a robust timetable demands dialogue between Network Rail 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 discussion between Bidders and Network Rail over a period of several years; provision is therefore made for this in Condition D1.5 headed 'Major Changes to the Timetable'. At least two years before each Principal Change Date, Network Rail, in collaboration with potential Bidders, will commence preparation of a Base Timetable for that year which will incorporate anticipated changes into a single unified timetable plan.*
- D. *Network Rail 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 Network Rail 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 Network Rail's ability to flex the timetable.*
- E. *Each year, at the start of the timetable development process, Network Rail 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, Network Rail 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 relevant ADRR Panel 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 dialogue between Network Rail and Bidders regarding the Base Timetable content and any variations to those train services which the Bidder aspires to run in that timetable year. Each Bidder will notify Network Rail of any changes in the contractual rights (as set out in the Bidder's Access Agreement with Network Rail) that the Bidder will wish to exercise in support of these services, giving reasons for such changes, and will also notify Network Rail of any changes to the Base Timetable Train Slots which will be sought. The notification must be made on or before the Priority Date.*
- G. *To facilitate the proper processes of dialogue and consultation Network Rail 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 Access Parties, Network Rail will lead a joint industry process with Bidders to prepare and issue a Draft Timetable which will be developed from the Base Timetable, taking account of the consultation held before, during and after the Timetabling Conference. Network Rail's decisions must take account of the Decision Criteria, where applicable, in Condition D6.*
- H. *Following issue of the Draft Timetable, Network Rail 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. Network Rail will make a formal offer of its proposed First Working Timetable and Bidders will have a right of appeal against Network Rail's decisions reflected in that Timetable.*
- I. *In respect of each Timetable Week, where Network Rail requires possessions or other restrictions of use in order to undertake engineering work on the Network, Network Rail will notify Bidders of the changes it proposes to make to the allocation of capacity and timetable structure in the relevant week and whether it requires Train Operators to submit Revised Bids for timetable slots for that week. Network Rail, in consultation with Bidders, will then compile a revised timetable taking into account any Revised Bids and any Spot Bids received in the same timescale.*
- 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, Network Rail may exercise its Flexing Right to resolve conflicts between Spot Bids.*
- K. *If a Spot Bid is received by Network Rail in relation to a sporting or other public event which, if accepted, would conflict with any Train Slot in the Working Timetable, Network Rail must consult with the Train Operator entitled to the Train Slot with a view to obtaining its consent to Network Rail exercising its Flexing Right to accommodate the Spot Bid. A Train Operator may not unreasonably withhold or delay its consent to a request from Network Rail 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 Network Rail is obliged to make payment to a Train Operator whose Train Slot is flexed by Network Rail, the Train Operator whose Spot Bid was accommodated must reimburse Network Rail the amount of such payment.

- L. In its capacity as manager of the Working Timetable, Network Rail 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). Network Rail 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 Network Rail in the light of the particular circumstances surrounding each decision and in certain circumstances Network Rail must also consider whether it is reasonably practicable for proposed amendments to the Working Timetable to be developed and implemented in the time available. There is a criterion that will enable Network Rail 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 series of engineering, maintenance or renewal works requiring restrictions of use 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, Network Rail may give notice to Train Operators affected by the works in order to consult, and if possible agree, with the relevant Train Operator a strategy for implementation of the works. Network Rail 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 Network Rail 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 Network Rail decision. An appeal is, in the first instance, made to the relevant ADRR Panel (established under the Access Dispute Resolution Rules). If either Network Rail or the Bidder is dissatisfied with the decision of that disputes panel, it may appeal to the Office of Rail Regulation. 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 Network Code.*

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;
“Appeal Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 6 weeks commencing on the first Working Day following the end of the Finalisation Period and forming part of the Supplemental Period;
“Base Timetable”	means, in respect of any Timetable Period, the timetable issued by Network Rail in accordance with Condition D2A.3 showing those Train Slots which Network Rail expects to include in the Working Timetable applicable to that Timetable Period;
“Base Timetable Initial Date”	means, in respect of any Timetable Period, the date to be notified by Network Rail pursuant to Condition D1.4 and normally falling one calendar year before the Priority Date in respect of such Timetable Period;
“Base Timetable Notification Date”	means, in respect of any Timetable Period, the date to be notified by Network Rail pursuant to Condition D1.4 and normally falling 8 weeks prior to the Priority Date in respect of such Timetable Period;
“Bid”	means any Train Slot included in the Base Timetable (to the extent not varied or withdrawn by any subsequent Bid), or any bid made to Network Rail for one or more Train Slots (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);

“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;
“Capacity Request Deadline”	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;
“Decision Criteria”	means those decision criteria set out in Condition D6;
“Development Commencement Date”	means the first day of a Timetable Development Period;
“Draft Timetable”	means the version of the Working Timetable which Network Rail provides in accordance with Condition D3.2.5;
“Drafting Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 16 weeks and commencing on the first Working Day following the end of the Preliminary Period;
“Finalisation Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 6 weeks and commencing on the first Working Day following the end of the Drafting Period;
“Firm Right”	<p>means:</p> <ul style="list-style-type: none">(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(b) in the case of Network Rail, a right under the applicable Rules of the Route or the applicable Rules of the Plan <p>which is not expressed to be subject to any contingency outside the control of the holder of</p>

the right, except, in a case within paragraph (a) above, the applicable Rules of the Route or the applicable Rules of the Plan, and any reference in an Access Agreement to “Firm Contractual Right” shall be deemed to be a reference to “Firm Right”;

“First Working Timetable”

means the version of the Working Timetable in respect of which Network Rail gives notice pursuant to Condition D3.2.7, as that version may be amended in accordance with Condition D3.2.9;

“Flexing Right”

means a right, exercisable by Network Rail, either

- (a) pursuant to Condition D3.4.1 or D4.4.1, to vary a Bid or to define in detail the content of a Train Slot or series of Train Slots in any way within and consistent with the Firm Rights (if any) of the Bidder; or
- (b) pursuant to Condition D3.4.2 or D4.4.2, to vary a Train Slot previously scheduled in the relevant Working Timetable or a Bid as the case may be;

“International Operator”

means each Bidder who has rights to train movements through the Channel Tunnel;

“International Path”

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;

“Passenger Change Date”

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

“Passenger Timetable”

means any timetable of railway passenger services published or procured to be published to the public by Network Rail;

“Possessions Strategy Notice”

means a notice issued by Network Rail in accordance with Condition D2.2.3 in relation to Network Rail’s proposed implementation of

works requiring Restrictions of Use, as such notice is amended from time to time;

“Preliminary Period”

means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 10 weeks and commencing on the first Working Day of the Timetable Development Period;

“Preliminary Rules of the Route/
Plan Proposal”

means an initial proposal made by Network Rail in respect of the applicable Rules of the Route or the applicable Rules of the Plan pursuant to Condition D2.1.3;

“Principal Change Date”

means the date, to be notified by Network Rail 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 Network Rail in accordance with the provisions of Directive 2001/14/EC;

“Priority Date”

means the date, notified under Condition D1.4 and in any event occurring not more than five Working Days after the commencement of the Drafting Period relating to a Timetable Development Period ending on a Principal Change Date, by which Bidders, in accordance with Condition D3.2.1, must notify to Network Rail those rights which they intend or, as the case may be, do not 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;

“Regulations”

means The Railways Infrastructure (Access and Management) Regulations 2005;

“Revised Bid”	means any Spot Bid seeking to revise a Train Slot scheduled in the relevant Working Timetable, as submitted to Network Rail 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 Network Rail 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 Finalisation Date”	means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Network Rail in accordance with Condition D4.8.1, occurring 10 Working Days prior to the relevant Revision Period End Date, or, when Christmas Day falls no more than 10 Working Days prior to the relevant Revision Period End Date, the date occurring 15 Working Days prior to the relevant Revision Period End Date, being the last date for notification by Network Rail of its decisions in respect of the Timetable Week to which that Revision Finalisation Date relates;
Revision Period Commencement Date	means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Network Rail in accordance with Condition D4.8.1, normally occurring between 14 and 17 weeks prior to the relevant Revision Period End Date for the Supplemental Timetable Revision Period in question;
“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 Finalisation Date;

“Short Notice Spot Bid”	means a Spot Bid for a Train Slot made to Network Rail 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 day A, Saturdays and Sundays and, in the case of day B, Sundays), 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 (other than a Revised Bid) made during the Timetable Period to which that Bid relates or during the Supplemental Period immediately prior to that Timetable Period;
“Subsidiary Change Date”	means the date to be notified by Network Rail in accordance with Condition D1.4 and normally falling on the Sunday which is eight days before the last Monday in May in any calendar year, or such alternative dates as may be notified by Network Rail in accordance with the Regulations;
“Subsidiary Rules Revision”	<p>means, in respect of any Timetable Period commencing on a Subsidiary Change Date, any revision to the applicable Rules of the Route or the applicable Rules of the Plan that either:</p> <ul style="list-style-type: none"> <li data-bbox="711 1310 1395 1459">(a) is 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 data-bbox="711 1482 1395 1625">(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;
“Supplemental Period”	means the period, to be notified by Network Rail in accordance with Condition D1.4, normally of 22 weeks, commencing on the first Working Day following the end of the Finalisation Period and ending on the day before the relevant Passenger Change Date;

“Supplemental Timetable Revision Period”	means, in respect of any Timetable Week, the period commencing on the relevant Revision Period Commencement 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, to be notified by Network Rail in accordance with Condition D1.4, normally of 55 weeks, ending on the day before that date and comprising, in chronological order: <ul style="list-style-type: none"> (a) a Preliminary Period; (b) a Drafting Period; (c) a Finalisation Period; and (d) a Supplemental Period;
“Timetable Period”	means the period of operation of a Working Timetable;
“Timetable Week”	means, in respect of a Timetable Period, 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;
“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 the Rail Passengers’ Council established under Section 19 of the Railways Act 2005; and

“Working Day” means each of Monday to Friday (inclusive) excluding common law and statutory public holidays.

Note 1:

When:

- (a) Christmas Day or
- (b) 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, Network Rail 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:

For the purposes of these Notes:

“Commencement Date” means 2 September 2006;

“Major Project Notice” means a notice of a Major Project given by Network Rail pursuant to Condition D2.2.1 of the October 2005 Code;

“The October 2005 Code” means the version of the Network Code dated 16 October 2005 and printed on pink paper; and

“Preceding Code” means the version of the Network Code in effect immediately prior to the Commencement Date and printed on yellow paper.

Note 3:

- (a) Any Restriction of Use notified under an established Major Project Notice shall be deemed to have been notified under an established Possessions Strategy Notice. For these purposes a Major Project Notice shall be deemed to be established if:
 - (i) Network Rail has complied with Condition D2.2 of the October 2005 Code in relation to such Major Project Notice; and
 - (ii) the proposed method of implementation set out in such notice:
 - (aa) has not been referred to the relevant ADRR Panel (as defined in the October 2005 Code) for determination prior to the date referred to in Condition D2.2.4 of the Preceding Code;

- (bb) has been finally determined by either the relevant ADRR Panel or the Office of Rail Regulation pursuant to that Condition; or
 - (cc) has been determined by the relevant ADRR Panel and is not the subject of an appeal to the Office of Rail Regulation pursuant to that Condition.
- (b) If prior to the Commencement Date Network Rail has given notice of an intended Major Project pursuant to Condition D2.2.1 of the October 2005 Code and the proposed method of implementation of such Major Project has not yet been established as referred to above, the provisions of Condition D2.2 of the October 2005 Code shall continue to apply in relation to such notice, save that:
 - (i) in Condition D2.2.4 of the October 2005 Code the words 'refer the matter to the Industry Committee for determination' shall be substituted by the words 'refer the matter to the Access Disputes Panel which shall determine the appropriate body to determine such matter'; and
 - (ii) Condition D2.2.5 of the October 2005 Code shall not apply.
- (c) In the event that Network Rail wishes to implement a Major Project, it shall issue a Possessions Strategy Notice in respect thereof in accordance with Condition D2.2 and identify that notice as one relating to a Major Project (and for these purposes 'Major Project' shall have the same definition as in the October 2005 Code), provided that such obligation of Network Rail shall cease to apply if the term 'Major Project Notice' is no longer used in defining a Significant Restriction of Use under any Access Agreement.

Note 4:

No Access Party shall have any liability for failure to comply with any provision of Part D if and to the extent: that the relevant act:

- (i) was not required under the Preceding Code; and
- (ii) was required under the current version of Part D to take place at a time prior to the Commencement Date.

CONDITION D1 - GENERAL

1.1 *Establishment of systems*

Network Rail 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 an Access Option Holder, shall be entitled to participate in the procedure set out in this Part D, provided that such person has first undertaken to Network Rail to be bound (as a Bidder) by the provisions of Parts A, D and M of this Code and the ADRR.

1.3 *Confidentiality*

Network Rail 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 Network Rail by a Bidder.

1.4 *Notification of relevant dates*

Network Rail shall, at least 12 weeks prior to the Base Timetable Initial 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 the relevant Development Commencement Date and the next following Development Commencement Date. The dates in such notice shall include each Passenger Change Date and the Base Timetable Initial Date, Base Timetable Notification Date and the Priority Date applicable to those change dates.

1.5 *Major changes to the timetable*

- 1.5.1 In order to facilitate effective development of the Draft Timetable where Network Rail considers that major timetable changes may be required, for example to accommodate growth in demand for railway services, Network Rail 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.

- 1.5.2 In such circumstances Network Rail 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.
- 1.5.3 Any Train Operator wishing to propose significant alterations to its services or any Bidder wishing to introduce significant new services shall consult with Network Rail at the earliest opportunity to assist Network Rail 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.

1.6 Working Timetable

- 1.6.1 Network Rail 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 Network Rail shall not be obliged to publish details of any Spot Bid which it accepts in any Passenger Timetable.

1.7 Accreditation

Network Rail may from time to time establish procedures for:

- (a) accrediting planners employed or engaged by Train Operators for the purposes of those planners carrying out work in relation to the preparation of the Working Timetable on behalf of Network Rail; and
- (b) allowing such planners to undertake such work in relation to the preparation of the Working Timetable.

Any such procedures shall be notified by Network Rail to all Train Operators.

CONDITION D2A – BASE TIMETABLE

2A.1 Consultation

2A.1.1 Network Rail shall consult with Bidders before the Base Timetable Initial Date to establish their aspirations for development of their services during the Timetable Development Periods to which such Base Timetable Initial Date relates. Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to the development of the Bidder's services.

2A.1.2 Bidders shall hold appropriate consultation regarding proposals for development of services with the Secretary of State, the Scottish Ministers, the Welsh Assembly Government, Transport for London, Passenger Transport Executives, User Representatives and any other parties with the right to be so consulted.

2A.1.3 Network Rail 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, complementary service patterns and efficiency of operation.

2A.2 Development of Base Timetable

2A.2.1 Following the consultation referred to in Condition D2A.1.1, Network Rail shall lead the development of a Base Timetable.

2A.2.2 In developing such Base Timetable Network Rail shall take account of any aspirations of Bidders for changes to the most recently issued Base Timetable which are notified to Network Rail on or before the Base Timetable Initial Date relating to the Timetable Development Period in question. Network Rail shall not be entitled to disregard such aspirations by reason solely of their complexity or the available time before the end of the Finalisation Period. Network Rail shall also take account of the views of Bidders who do not wish changes to be made to the most recently issued Base Timetable, if such views are notified to Network Rail on or before the Base Timetable Initial Date.

2A.2.3 Following the Base Timetable Initial Date and at any time before the Base Timetable Notification Date, each Bidder shall have the right to notify to Network Rail new aspirations (if any) which amend, delete or add to those aspirations (if any) which it notified in accordance with Condition D2A.1.1. Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the matters set out in Condition D2A.2.4, incorporate each new aspiration into the Base Timetable. If Network Rail decides that it is unable to incorporate any new aspiration into the Base Timetable it shall notify the relevant Bidder as soon as reasonably practicable.

2A.2.4 Network Rail, in consultation with Bidders, shall compile a Base Timetable which takes due account of:

- (a) the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of Network Rail in respect of the Rules of the Route and the Rules of the Plan;
- (b) the rights or expectations of rights of each Bidder and of Network Rail; and
- (c) the Decision Criteria.

2A.3 Issue of the Base Timetable

Network Rail shall, on or before the Base Timetable Notification Date, 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 Network Rail in providing that information, the Base Timetable which shall show:

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

Network Rail shall indicate any major aspects of the Base Timetable which are not capable of being brought into operation without further development work.

2A.4 *Right of appeal*

2A.4.1 *Referral to relevant ADRR Panel*

Following the provision of the Base Timetable in accordance with Condition D2.A.3, a Bidder may refer any decision by Network Rail in respect of the Base Timetable for determination by the relevant ADRR Panel under Condition D5, provided that such referral is made within the period specified in Condition D5.1.

2A.4.2 *Possessions Strategy Notice*

No reference under Condition D2A.4.1 shall be made in respect of any matter referred to in a Possessions Strategy Notice which is within and consistent with the method of implementation established pursuant to Condition D2.2 and which has:

- (a) not been referred to the relevant ADRR Panel for determination prior to the date referred to in Condition D2.2.4;
- (b) been finally determined by either the relevant ADRR Panel or the Office of Rail Regulation pursuant to that Condition or Condition D5.2; or
- (c) been determined by the relevant ADRR Panel and is not the subject of an appeal to the Office of Rail Regulation pursuant to Condition D5.2.

2A.4.3 *Implementation pending outcome of determination*

If any aspect of the Base Timetable has been referred for determination pursuant to Condition D2A.4.1, Network Rail shall be entitled (notwithstanding such Condition) to treat such aspect as accepted for the purposes of developing the Working Timetable for the Timetable Periods to which such Base Timetable relates, pending the outcome of that determination.

CONDITION D2 - CONSULTATION PROCESS TO ESTABLISH THE RULES of the ROUTE/PLAN

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

2.1.1 *Consultation*

At least 8 weeks prior to the Development Commencement Date Network Rail shall consult with each Bidder in respect of Network Rail's anticipated requirements for Restrictions of Use needed to undertake maintenance, renewal and enhancement works on the

Network during the Timetable Period to which such Development Commencement Date relates and the next following Timetable Period.

2.1.2 *Review by Network Rail*

Following the consultation referred to in Condition D2.1.1 Network Rail 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 this Network Code, Vehicle Change in accordance with Part F of this Network Code or of the implementation of any matter 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 D2.1.2 Network Rail 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 Network Rail shall incorporate that information in the Preliminary Rules of the Route/Plan Proposal.

2.1.3 *Preliminary Rules of the Route/Plan Proposal*

Network Rail 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.

2.1.4 *Consultation with Bidders*

Each Bidder shall:

- (a) consider the notice served on it by Network Rail in accordance with Condition D2.1.3 and discuss with Network Rail 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 Network Rail 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 Network Rail of any representations or objections it wishes to make in relation to that Subsidiary Rules Revision and any alternative proposals it may have.

2.1.5 *Rules of the Route/Plan Decision*

- (a) Network Rail shall, following consideration of any representations, objections and alternative proposals made by affected Bidders in accordance with Condition D2.1.4, 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) Network Rail 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 D2.1.5(a) or, where no amendments are proposed, that fact.

2.1.6 Optimisation of the Draft Timetable

Notwithstanding the provisions of D2.1.4 and D2.1.5 Network Rail 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 Network Rail shall promptly notify the Bidders thus affected.

2.1.7 Referral to the relevant ADRR Panel

Following notification of Network Rail's decisions in accordance with Condition D2.1.5(b) or D2.1.6 a Bidder may refer any aspect of those decisions (including any decision of Network Rail not to make an amendment or any decision by Network Rail as to whether or not a revision is a Subsidiary Rules Revision) for determination by the relevant ADRR Panel under Condition D5, provided that such referral is made within the period specified in Condition D5.1.

2.1.8 Possessions Strategy Notice

No such reference under Condition D2.1.7 shall be made in respect of any matter referred to in a Possessions Strategy Notice which is within and consistent with the method of implementation established pursuant to Condition D2.2 and which has:

- (a) not been referred to the relevant ADRR Panel for determination prior to the date referred to in Condition D2.2.4;
- (b) been finally determined by either the relevant ADRR Panel or the Office of Rail Regulation pursuant to that Condition or Condition D5.2; or
- (c) been determined by the relevant ADRR Panel and is not the subject of an appeal to the Office of Rail Regulation pursuant to Condition D5.2;

2.1.9 Implementation pending outcome of determination

Notwithstanding the provisions of Conditions D2.1.7 and D2.1.8, but subject to Condition D2.1.10, Network Rail 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.

2.1.10 Procedure for amendment of the Rules of the Route/Plan and amendment of scheduled Train Slots

Network Rail 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 D2.1.9, Network Rail 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.

2.1.11 Contents of amendment procedure

Each of the procedures proposed by Network Rail pursuant to Condition D2.1.10:

- (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) Network Rail 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 five Working Days of the relevant procedure being sent to it, have referred any aspect

of it to the relevant ADRR Panel for determination in accordance with Condition D5.

2.2 Possessions Strategy Notice

2.2.1 Notice of proposed possessions strategy

If Network Rail at any time proposes implementing works which require a programme of coordinated Restrictions of Use extending over:

- (a) a period of more than one year; or
- (b) a period which contains two or more Passenger Change Dates,

it may at its discretion give notice of its proposal to each Bidder that may be affected by the proposed works together with

- (i) such particulars of the proposed method of implementation of the works as are currently available to enable each such Bidder to understand the likely effect of the proposed works on its Services or the operation of its trains; and
- (ii) an explanation of Network Rail's reasons for the proposed method of implementation.

In this Condition D2.2 the expression "method of implementation" means a statement containing a programme of Restrictions of Use which would be required in order to carry out the proposed works.

2.2.2 Consultation on proposed method of implementation

Network Rail shall invite the submission of comments from each Bidder to which it has given notice under Condition D2.2.1 within such period as is reasonable in the circumstances having due regard to the likely effect of the proposed works on those Bidders and shall consult with them concerning the method of implementation for the proposed works.

2.2.3 Notice of intended method of implementation

Subject to having complied with the foregoing provisions of this Condition D2.2, Network Rail shall issue to each Bidder to which it gave notice under Condition D2.2.1 a notice of its intended method of implementation for the proposed works ('Possessions Strategy Notice'), provided that:

- (a) in deciding such intended method of implementation, Network Rail 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 and given its reasons for discounting any it has discounted.

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 intended method of implementation of the proposed works as notified by Network Rail pursuant to Condition D2.2.3 and, in particular, the application by Network Rail 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 intended method of implementation, refer the matter to the relevant ADRR Panel for determination.

2.2.5 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 works referred to in a Possessions Strategy Notice, 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 works 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.

2.2.6 Amendment procedure

Network Rail shall include within the Rules of the Plan a procedure to enable amendment or withdrawal of any Possession Strategy Notice (subject to Conditions D2.2.7 and D2.2.8).

2.2.7 Contents of amendment procedure

The procedure proposed by Network Rail pursuant to Condition D2.2.6:

- (a) shall provide that no amendment shall be made to a Possessions Strategy Notice unless:
 - (i) Network Rail shall have consulted, to the extent reasonably practicable, with each Bidder likely to be affected by the amendment; 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 five Working Days of the relevant procedure being sent to it, have referred any aspect of it to the relevant ADRR Panel for determination in accordance with Condition D5.

2.2.8 Priority

In the event of any inconsistency between the applicable Rules of the Route and/or the applicable Rules of the Plan for a particular Timetable Period (once finalised in accordance with Condition D2.1.5) and any Possessions Strategy Notice (or any amendment to a Possessions Strategy Notice) relating to such period, the applicable Rules of the Route and/or the applicable Rules of the Plan (as the case may be) shall prevail to the extent of such inconsistency.

CONDITION D3 - CONSULTATION PROCESS TO ESTABLISH THE FIRST WORKING TIMETABLE

3.1 Consultation

3.1.1 Following the issue of the Base Timetable:

- (a) Bidders shall hold appropriate consultation regarding proposals for development of services with the Secretary of State, the Scottish Ministers, the Welsh Assembly Government, Transport for London, Passenger Transport Executives, User Representatives and other parties with the right to be so consulted;
- (b) Network Rail shall consult with Bidders before the Priority Date to establish their aspirations for development of their services in the relevant Timetable Development Periods. Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to development of the Bidder's services; and

- (c) Network Rail 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 Network Rail in respect of the Timetable Periods commencing on the next following Principal Change Date and the next following Subsidiary Change Date of:

- (a) those Firm Rights which they intend to exercise together with (to the extent such Firm Rights are being exercised to obtain the Train Slots which are different to those in the Base Timetable), an explanation of why they wish to exercise such Firm Rights in a manner different to the Base Timetable;
- (b) those Firm Rights which they have previously exercised to obtain the Train Slots in the Base Timetable but which they do not intend to exercise;
- (c) any other rights which they intend to exercise or wish to negotiate; and
- (d) an indication of any amendments, additions or deletions they wish to make in respect of the Train Slots in the Base Timetable (pursuant to the notifications under paragraph (a), (b) or (c) above), which indication shall include the extent of their requirements (if any) as to the matters set out in Condition D3.3 in respect of each amended or additional Train Slot requested;

and:

- (i) in the case of paragraph (b) above, shall identify any Train Slots in the Base Timetable to which such Firm Rights relate and which they do not wish to operate;
- (ii) in the case of paragraph (c) above, shall distinguish between
 - (A) Train Slots (whether or not included within the Base Timetable)_for which they would be seeking priority in the Draft Timetable in accordance with Condition D3.2.3(b);
 - (B) Train Slots (whether or not included within the Base Timetable)_for which they would be seeking priority in the

Draft Timetable in accordance with Condition D3.2.3(c);
and

(C) other Train Slots (whether or not included within the Base Timetable); and

- (iii) in the case of paragraph (d) above, shall identify the rights, if any, applicable to each of the amended or additional Train Slots requested.

3.2.2 *Compilation of the First Working Timetable*

Network Rail, 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 Network Rail's opinion is capable of being brought into operation;
- (b) takes account of the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of Network Rail as expressed in the applicable Rules of the Route and the applicable Rules of the Plan; and
- (c) includes, in respect of the relevant Timetable Period, the Train Slots shown in the Base Timetable, together with the additions, amendments and deletions requested by Bidders in accordance with Condition D3.2.1 so far as reasonably practicable taking into account the complexity of those changes, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the Decision Criteria.

3.2.3 *Priorities in compiling the First Working Timetable*

Without prejudice to the exercise by Network Rail of a Flexing Right, Network Rail 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 Network Rail 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 Network Rail 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 Network Rail prior to the Capacity Request Deadline shall have force; or

- (ii) Network Rail 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 Network Rail 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 Network Rail 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 Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(c); or

- (ii) Network Rail 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 Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(c) but which are notified to Network Rail in accordance with Condition D3.2.4 or D3.2.6

provided that Network Rail shall only accord priority pursuant to paragraph (a), (b) or (c) above if the Train Slots to which the relevant Firm Rights, rights or expectations of rights relate have been notified to Network Rail on or before the Priority Date in accordance with Condition D3.2.1(d) or included in the Base Timetable.

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 Network Rail new aspirations (if any) which amend, delete or add to those requests for changes which it notified in accordance with Condition D3.2.1.
- (b) Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, 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

Network Rail 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 Network Rail in providing that information, the Draft Timetable which, as a result of notifications made to Network Rail 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 Network Rail 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 Network Rail 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 Network Rail new aspirations (if any) which amend, delete or add to those Train Slots shown in the Draft Timetable.
- (b) Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, 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

Network Rail 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 Network Rail in providing that information:

- (a) the Working Timetable which shall show:
 - (i) in respect of a Principal Change Date, those Train Slots which Network Rail 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 Network Rail has decided to include in the Working Timetable commencing on that Subsidiary Change Date; and
- (b) details of those Train Slots which Network Rail 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 10 Working Days of receipt of the notification advise Network Rail of any Train Slots which it disputes and will be the subject of a reference to the relevant ADRR Panel. Network Rail'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 relevant ADRR Panel or the Office of Rail Regulation pursuant to Condition D5.

3.2.9 Notification of Working Timetable

As soon as possible after the expiry of the Appeal Period Network Rail shall give notice to each Bidder of the changes (if any) to the version of the Working Timetable provided under Condition D3.2.7 which it has made as a result of appeals determined pursuant to Condition D5 and/or Part M.

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;
- (j) any relevant commercial and service codes; and
- (k) the maximum train speed, maximum train weight and maximum train length.

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

3.4.1 Network Rail may, in relation to

- (a) any Train Slot included in the Base Timetable;
- (b) any request for change notified to Network Rail in accordance with Condition D3.2.1; or
- (c) any aspiration notified to Network Rail in accordance with Condition D3.2.4 or D3.2.6;

exercise a Flexing Right at any time prior to the end of the Finalisation Period, provided that:

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

3.4.2 Network Rail shall exercise a Flexing Right at any time:

- (a) in order to give effect to a decision of the relevant ADRR Panel or the Office of Rail Regulation 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 Office of Rail Regulation in the exercise of its powers under section 17, 18, 22 or 22A 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 Network Rail 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 Network Rail of a Flexing Right, Network Rail shall, in relation to any Spot Bid which falls to be considered under Condition D4.8, deal with such Spot Bid as provided for in that Condition, and in all other cases shall accord priority to Spot Bids in the order in which they are received by Network Rail.

4.4 *Flexing rights – Spot Bids*

4.4.1 *Time of exercise*

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

4.4.2 *Requirement to exercise*

Network Rail 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 relevant ADRR Panel or the Office of Rail Regulation 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 Office of Rail

Regulation in the exercise of its powers under section 17, 18, 22 or 22A 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, Network Rail 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) in relation to a Spot Bid received by Network Rail no later than five weeks prior to the applicable Revision Finalisation Date, no later than five Working Days after receipt of that Spot Bid;
- (b) in relation to a Spot Bid not falling within paragraph (a), by the later of:
 - (i) five Working Days after the Revision Finalisation Date in respect of the Timetable Week during which that Spot Bid would, if accepted, be planned to operate; and
 - (ii) five Working Days after receipt of that Spot Bid; or
- (c) 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
- (d) 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 (b), (c) or (d) 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

- (e) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by Network Rail of the Spot Bid,

provided that, in determining whether to accept, modify or reject a Spot Bid, Network Rail 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 Spot Bid shall include a concise explanation therefor.

4.5.2 Network Rail 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, Network Rail 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 Network Rail of its Flexing Right to accommodate the relevant Spot Bid; and
- (b) if that Train Operator gives its consent, exercise such Flexing Right.

4.5.4 A Train Operator which is consulted by Network Rail pursuant to Condition D4.5.3 shall not unreasonably withhold or delay its consent to the exercise by Network Rail 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, Network Rail 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 Network Rail 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 Network Rail of the rejection of that Spot Bid, or the exercise of a Flexing Right by Network Rail, notify Network Rail if it disputes that decision of Network Rail:

- (a) no later than five Working Days after receipt by the Bidder of such 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,

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 Network Rail in accordance with Condition D4.6.1, be deemed to have accepted the decision of Network Rail and shall not, in respect of that decision, be entitled to make a reference to the relevant ADRR Panel or the Office of Rail Regulation 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, Network Rail 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 Network Rail under Condition D3.2.8 or D4.6.2 or Network Rail has accepted a Bidder's Bid in accordance with Condition D3.2.7 or D4.5, both the Bidder and Network Rail 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 Network Rail:

- (a) in accordance with the procedures provided for in Condition D2.1.10, D4.5.3 or D4.8; or
- (b) by agreement between Network Rail 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 relevant ADRR Panel or the Office of Rail Regulation as provided for in Condition D5.

4.8 Supplemental Timetable Revision Process

4.8.1 Network Rail 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 Period Commencement Dates, Revision Bid Dates and Revision Finalisation Dates applicable to the Timetable Period commencing on that Passenger Change Date.

4.8.2 Network Rail shall,

- (a) on or before each Revision Period Commencement Date, provide to each Bidder its outline proposals for revision of the allocation of capacity in respect of the Timetable Week to which such Revision Period Commencement Date relates in order to enable Network Rail to take the Restrictions of Use contained in the Rules of the Route and/or Rules of the Plan applicable to that Timetable Week;
- (b) in consultation with Bidders, develop the structure of the amended train plan for the relevant Timetable Week, including any revision of the allocation of capacity, in accordance with agreed criteria, on Routes directly affected by Restrictions of Use included in the applicable Rules of the Route and/or Rules of the Plan and on diversionary routes; and
- (c) within 4 weeks of each Revision Period Commencement Date, notify each affected Bidder:
 - (i) of its capacity allocation decisions and proposed structure for the amended train plan for the relevant Timetable Week; and
 - (ii) whether Network Rail requires any Bidder to prepare a Revised Bid in respect of any Timetable Week Slot in that Timetable Week.

4.8.3 Each Bidder shall, following receipt of notification from Network Rail under Condition D4.8.2(c)(ii) 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 no later than 4 weeks prior to the applicable Revision Finalisation Date.

- 4.8.4 Network Rail in consultation with Bidders, will compile and amended timetable in respect of each Timetable Week, which is in accordance with its decisions notified under Condition D4.8.2(c)(i) and which:
- (a) in Network Rail's opinion is capable of being brought into operation;
 - (b) subject to Condition D4.8.5, takes account of any Revised Bids submitted in accordance with Condition D4.8.3; and
 - (c) takes account of any Spot Bids received no later than 4 weeks prior to the applicable Revision Finalisation Date.
- 4.8.5 Network Rail 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 D4.8.3, 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 therefore.
- 4.8.6 Network Rail shall be entitled as reasonably necessary to amend any Timetable Week Slot notified in accordance with Condition D4.8.2(c)(ii) and in relation to which no Revised Bid has been submitted to Network Rail by a Bidder in accordance with Condition D4.8.3 in order to enable Network Rail to take Restrictions of Use for the purpose of carrying out work included in the Rules of the Route and / or Rules of the Plan applicable to that Timetable Week Slot and that Bidder shall not, in respect of that decision, be entitled to make a reference to the relevant ADRR Panel or the Office of Rail Regulation pursuant to Condition D5.
- 4.8.7 Network Rail shall, by no later than the Revision Finalisation Date in respect of each Timetable Week, notify each Bidder of its decisions regarding additional, amended and deleted Timetable Week Slots, including its decisions to accept, reject or modify any Revised Bid or any Spot Bid which has been submitted to it not less than 4 weeks prior to the Revision Finalisation Date in respect of the relevant Timetable Week.

- 4.8.8 The Bidder shall, following the receipt by it of notice of any decision by Network Rail pursuant to Condition D4.8.2(c) or Condition D4.8.7, notify Network Rail whether it accepts or disputes that decision of Network Rail, 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*.
- 4.8.9 Without prejudice to Conditions D4.4 and D4.7, nothing in this Condition D4.8 shall entitle Network Rail to amend any Train Slot already scheduled in the relevant Working Timetable except:
- (a) in order to take Restrictions of Use in accordance with the applicable Rules of the Route and the applicable Rules of the Plan; or
 - (b) by way of revision of the allocation of capacity on Routes directly affected by such Restrictions of Use and on diversionary routes in accordance with this Condition D4.8.

CONDITION D5 -TIMETABLE APPEAL PROCEDURE

5.1 Right of appeal to relevant ADRR Panel

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 Network Rail made under this Part D, including:

- (a) the application by Network Rail of the Decision Criteria;
- (b) the acceptance or rejection by Network Rail of any Bid;
- (c) the exercise by Network Rail of a Flexing Right; and
- (d) any decision of Network Rail which may be referred to the relevant ADRR Panel under Condition D2.1.7, D2.1.11, D2.2.4 or D2.2.7,

it may refer the matter to the relevant ADRR Panel for determination.

5.1.2 Timescales for making an appeal to the relevant ADRR Panel

- (a) A reference to the relevant ADRR Panel under Condition D5.1.1 shall, save as shown in paragraph (b) or (c) below, be made within five Working Days of receipt of the relevant decision from Network Rail. If Christmas Day occurs within such period of five Working Days then the period shall be lengthened to 10 Working Days.
- (b) A reference to the relevant ADRR Panel in respect of a decision by Network Rail regarding Train Slots notified to Bidders in accordance with Condition D2A.3 or Condition D3.2.7 shall be made within 10 Working Days of receipt of the relevant decision.
- (c) A reference to the relevant ADRR Panel pursuant to Condition D2.2.4 shall be made within 30 days of receipt of the notification referred to in Condition D2.2.3.

5.2 Right of appeal to the Office of Rail Regulation

If Network Rail or any Bidder is dissatisfied with any decision of the relevant ADRR Panel in relation to any matter referred to it under Condition D5.1, that person may, within five Working Days of receipt of the relevant ADRR Panel's written reasoned determination, refer the matter to the Office of Rail Regulation for determination under Part M. If Christmas Day occurs within such period of five Working Days then the period shall be lengthened to 10 Working Days.

5.3 Power of dispute bodies

In relation to a reference to it made pursuant to Condition D5.1 or D5.2, any dispute panel or the Office of Rail Regulation (as the case may be) (each a "dispute body") shall, in determining the matter in question, have the power:

5.3.1 in determining the matter in question:

- (a) to direct Network Rail to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions");
- (b) to direct the parties to accept any submissions made by Network Rail as to any Train Slots; and/or

- (c) to specify the Train Slots and other matters which Network Rail should have determined in its decision made pursuant to this Part D,

provided that a dispute panel shall only take any action under paragraph (c) above in exceptional circumstances;

- 5.3.2 having given general directions, on the application of Network Rail within five Working Days (or 10 Working Days if Christmas Day falls within such period of five Working Days) of the determination of the matter in question (or such longer period as the dispute 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.

5.4 *Liability of Network Rail*

Network Rail 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 Network Rail'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) seeking consistency with any current Route Utilisation Strategy which is either (i) published by the Strategic Rail Authority or the Department for Transport before 31 May 2006, or (ii) established by Network Rail in accordance with its Network Licence;
- (c) 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 Network Rail is aware or has been informed of such contracts;

- (d) maintaining and improving the levels of service reliability;
- (e) maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (f) maintaining and improving connections between railway passenger services;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;
- (l) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services;
- (m) encouraging the efficient use of capacity by considering a Bidder's previous level of utilisation of Train Slots;
- (n) avoiding, unless absolutely necessary, changes to provisional International Paths following issue of the applicable Rules of the Plan; and
- (o) taking into account the commercial interests of Network Rail and existing and potential operators of trains in a manner compatible with the foregoing.

In its consideration of paragraph (d) of this Condition D6, Network Rail shall not be entitled to determine that its Restrictions of Use 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 Network Rail 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 D - Timetable Change

[applicable to preparation of the timetable commencing on 23 May 2010 and of subsequent timetables and all Timetable Weeks commencing on or after 13 December 2009.]

Explanatory Note

- 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 May).*
- B. *The development of a robust timetable demands dialogue between Network Rail 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 discussion between Bidders and Network Rail over a period of several years; provision is therefore made for this in Condition D1.5 headed 'Major Changes to the Timetable'. At least two years before each Principal Change Date, Network Rail, in collaboration with potential Bidders, will commence preparation of a Base Timetable for that year which will incorporate anticipated changes into a single unified timetable plan.*
- D. *Network Rail 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 Network Rail 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 Network Rail's ability to flex the timetable.*
- E. *Each year, at the start of the timetable development process, Network Rail 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, Network Rail 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 ADRR 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 dialogue between Network Rail and Bidders regarding the Base Timetable content and any variations to those train services which the Bidder aspires to run in that timetable year. Each Bidder will notify Network Rail of any changes in the contractual rights (as set out in the Bidder's Access Agreement with Network Rail) that the Bidder will wish to exercise in support of these services, giving reasons for such changes, and will also notify Network Rail of any changes to the Base Timetable Train Slots which will be sought. The notification must be made on or before the Priority Date.*
- G. *To facilitate the proper processes of dialogue and consultation Network Rail 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 Access Parties, Network Rail will lead a joint industry process with Bidders to prepare and issue a Draft Timetable which will be developed from the Base Timetable, taking account of the consultation held before, during and after the Timetabling Conference. Network Rail's decisions must take account of the Decision Criteria, where applicable, in Condition D6.*
- H. *Following issue of the Draft Timetable, Network Rail 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. Network Rail will make a formal offer of its proposed First Working Timetable and Bidders will have a right of appeal against Network Rail's decisions reflected in that Timetable.*
- I. *In respect of each Timetable Week, where Network Rail requires possessions or other restrictions of use in order to undertake engineering work on the Network, Network Rail will notify Bidders of the changes it proposes to make to the allocation of capacity and timetable structure in the relevant week and whether it requires Train Operators to submit Revised Bids for timetable slots for that week. Network Rail, in consultation with Bidders, will then compile a revised timetable taking into account any Revised Bids and any Spot Bids received in the same timescale.*
- 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, Network Rail may exercise its Flexing Right to resolve conflicts between Spot Bids.*
- K. *If a Spot Bid is received by Network Rail in relation to a sporting or other public event which, if accepted, would conflict with any Train Slot in the Working Timetable, Network Rail must consult with the Train Operator entitled to the Train Slot with a view to obtaining its consent to Network Rail exercising its Flexing Right to accommodate the Spot Bid. A Train Operator may not unreasonably withhold or delay its consent to a request from Network Rail 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 Network Rail is obliged to make payment to a Train Operator whose Train Slot is flexed by Network Rail, the Train Operator whose Spot Bid was accommodated must reimburse Network Rail the amount of such payment.

- L. In its capacity as manager of the Working Timetable, Network Rail 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). Network Rail 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 Network Rail in the light of the particular circumstances surrounding each decision and in certain circumstances Network Rail must also consider whether it is reasonably practicable for proposed amendments to the Working Timetable to be developed and implemented in the time available. There is a criterion that will enable Network Rail 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 series of engineering, maintenance or renewal works requiring restrictions of use 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, Network Rail may give notice to Train Operators affected by the works in order to consult, and if possible agree, with the relevant Train Operator a strategy for implementation of the works. Network Rail 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 Network Rail 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 Network Rail decision. An appeal is, in the first instance, made in accordance with the ADRR. If either Network Rail or the Bidder is dissatisfied with the outcome of that process in respect of a Timetabling Dispute it may appeal to the Office of Rail Regulation. 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 Network Code.*

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;
“Appeal Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 6 weeks commencing on the first Working Day following the end of the Finalisation Period and forming part of the Supplemental Period;
“Base Timetable”	means, in respect of any Timetable Period, the timetable issued by Network Rail in accordance with Condition D2A.3 showing those Train Slots which Network Rail expects to include in the Working Timetable applicable to that Timetable Period;
“Base Timetable Initial Date”	means, in respect of any Timetable Period, the date to be notified by Network Rail pursuant to Condition D1.4 and normally falling one calendar year before the Priority Date in respect of such Timetable Period;
“Base Timetable Notification Date”	means, in respect of any Timetable Period, the date to be notified by Network Rail pursuant to Condition D1.4 and normally falling 8 weeks prior to the Priority Date in respect of such Timetable Period;
“Bid”	means any Train Slot included in the Base Timetable (to the extent not varied or withdrawn by any subsequent Bid), or any bid made to Network Rail for one or more Train Slots (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);

“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;
“Capacity Request Deadline”	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;
“Capacity Allocation Decision Date”	means the date, when Network Rail provides the notification required by Condition D4.8.2(c)(i);
“Decision Criteria”	means those decision criteria set out in Condition D6;
“Development Commencement Date”	means the first day of a Timetable Development Period
“Draft Timetable”	means the version of the Working Timetable which Network Rail provides in accordance with Condition D3.2.5;
“Drafting Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 16 weeks and commencing on the first Working Day following the end of the Preliminary Period;
“Finalisation Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 6 weeks and commencing on the first Working Day following the end of the Drafting Period;
“Firm Right”	means: (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

- (b) in the case of Network Rail, a right under the applicable Rules of the Route or the applicable Rules of the Plan

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 Route or the applicable Rules of the Plan, and any reference in an Access Agreement to “Firm Contractual Right” shall be deemed to be a reference to “Firm Right”;

“First Working Timetable”

means the version of the Working Timetable in respect of which Network Rail gives notice pursuant to Condition D3.2.7, as that version may be amended in accordance with Condition D3.2.9;

“Flexing Right”

means a right, exercisable by Network Rail, either

- (a) pursuant to Condition D3.4.1 or D4.4.1, to vary a Bid or to define in detail the content of a Train Slot or series of Train Slots in any way within and consistent with the Firm Rights (if any) of the Bidder; or
- (b) pursuant to Condition D3.4.2 or D4.4.2, to vary a Train Slot previously scheduled in the relevant Working Timetable or a Bid as the case may be;

“International Operator”

means each Bidder who has rights to train movements through the Channel Tunnel;

“International Path”

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;

“Passenger Change Date”

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

“Passenger Timetable”	means any timetable of railway passenger services published or procured to be published to the public by Network Rail;
“Possessions Strategy Notice”	means a notice issued by Network Rail in accordance with Condition D2.2.3 in relation to Network Rail’s proposed implementation of works requiring Restrictions of Use, as such notice is amended from time to time;
“Preliminary Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 10 weeks and commencing on the first Working Day of the Timetable Development Period;
“Preliminary Rules of the Route/ Plan Proposal”	means an initial proposal made by Network Rail in respect of the applicable Rules of the Route or the applicable Rules of the Plan pursuant to Condition D2.1.3;
“Principal Change Date”	means the date, to be notified by Network Rail 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 Network Rail in accordance with the provisions of Directive 2001/14/EC;
“Priority Date”	means the date, notified under Condition D1.4 and in any event occurring not more than five Working Days after the commencement of the Drafting Period relating to a Timetable Development Period ending on a Principal Change Date, by which Bidders, in accordance with Condition D3.2.1, must notify to Network Rail those rights which they intend or, as the case may be, do not 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;

“Regulations”

means The Railways Infrastructure (Access and Management) Regulations 2005;

“Revised Bid”

means any Spot Bid seeking to revise a Train Slot scheduled in the relevant Working Timetable, as submitted to Network Rail 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 Network Rail 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 Finalisation Date”

means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Network Rail in accordance with Condition D4.8.1, occurring 10 Working Days prior to the relevant Revision Period End Date, or, when Christmas Day falls no more than 10 Working Days prior to the relevant Revision Period End Date, the date occurring 15 Working Days prior to the relevant Revision Period End Date, being the last date for notification by Network Rail of its decisions in respect of the Timetable Week to which that Revision Finalisation Date relates;

“Revision Period Commencement Date”

means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Network Rail in accordance with Condition D4.8.1, normally occurring between 14 and 17 weeks prior to the relevant Revision Period End Date for the Supplemental Timetable Revision Period in question;

“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 Finalisation Date;
“Short Notice Spot Bid”	means a Spot Bid for a Train Slot made to Network Rail 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 day A, Saturdays and Sundays and, in the case of day B, Sundays), 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 (other than a Revised Bid) made during the Timetable Period to which that Bid relates or during the Supplemental Period immediately prior to that Timetable Period;
“Subsidiary Change Date”	means the date to be notified by Network Rail in accordance with Condition D1.4 and normally falling on the Sunday which is eight days before the last Monday in May in any calendar year, or such alternative dates as may be notified by Network Rail in accordance with the Regulations;
“Subsidiary Rules Revision”	means, in respect of any Timetable Period commencing on a Subsidiary 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"> (a) is 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 (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;

“Supplemental Period”	means the period, to be notified by Network Rail in accordance with Condition D1.4, normally of 22 weeks, commencing on the first Working Day following the end of the Finalisation Period and ending on the day before the relevant Passenger Change Date;
“Supplemental Timetable Revision Period”	means, in respect of any Timetable Week, the period commencing on the relevant Revision Period Commencement Date and ending on the relevant Revision Period End Date;
“Timetable Development Period”	<p>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, to be notified by Network Rail in accordance with Condition D1.4, normally of 55 weeks, ending on the day before that date and comprising, in chronological order:</p> <ul style="list-style-type: none">(a) a Preliminary Period;(b) a Drafting Period;(c) a Finalisation Period; and(d) a Supplemental Period;
“Timetable Period”	means the period of operation of a Working Timetable;
“Timetable Week”	means, in respect of a Timetable Period, 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;
“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

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appropriate) and end points of each train movement;

“User Representative” means the Rail Passengers’ Council established under Section 19 of the Railways Act 2005; and

“Working Day” means each of Monday to Friday (inclusive) excluding common law and statutory public holidays.

Note 1:

When:

- (a) Christmas Day or
- (b) 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, Network Rail 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:

Any reference in an Access Agreement to Revision Notification Date should be taken to be a reference to Capacity Allocation Decision Date.

Note 3:

No Access Party shall have any liability for failure to comply with any provision of Part D if and to the extent that the relevant act:

- (a) was not required under the version of Part D of the Network Code dated 1 September 2008 and printed on yellow paper where distributed; and
- (b) was required under the current version of Part D (referred to as applicable to preparation of the timetable commencing on 23 May 2010 and of subsequent timetables and all Timetable Weeks commencing on or after 13 December 2009) to take place at a time prior to that current version coming into effect.

CONDITION D1 - GENERAL

1.1 *Establishment of systems*

Network Rail 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 an Access Option Holder, shall be entitled to participate in the procedure set out in this Part D, provided that such person has first undertaken to Network Rail to be bound (as a Bidder) by the provisions of Parts A, D and M of this Code and the ADRR.

1.3 *Confidentiality*

Network Rail 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 Network Rail by a Bidder.

1.4 *Notification of relevant dates*

Network Rail shall, at least 12 weeks prior to the Base Timetable Initial 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 the relevant Development Commencement Date and the next following Development Commencement Date. The dates in such notice shall include each Passenger Change Date and the Base Timetable Initial Date, Base Timetable Notification Date and the Priority Date applicable to those change dates.

1.5 *Major changes to the timetable*

- 1.5.1 In order to facilitate effective development of the Draft Timetable where Network Rail considers that major timetable changes may be required, for example to accommodate growth in demand for railway services, Network Rail 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.

- 1.5.2 In such circumstances Network Rail 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.
- 1.5.3 Any Train Operator wishing to propose significant alterations to its services or any Bidder wishing to introduce significant new services shall consult with Network Rail at the earliest opportunity to assist Network Rail 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.

1.6 Working Timetable

- 1.6.1 Network Rail 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 Network Rail shall not be obliged to publish details of any Spot Bid which it accepts in any Passenger Timetable.

1.7 Accreditation

Network Rail may from time to time establish procedures for:

- (a) accrediting planners employed or engaged by Train Operators for the purposes of those planners carrying out work in relation to the preparation of the Working Timetable on behalf of Network Rail; and
- (b) allowing such planners to undertake such work in relation to the preparation of the Working Timetable.

Any such procedures shall be notified by Network Rail to all Train Operators.

CONDITION D2A – BASE TIMETABLE

2A.1 Consultation

2A.1.1 Network Rail shall consult with Bidders before the Base Timetable Initial Date to establish their aspirations for development of their services during the Timetable Development Periods to which such Base Timetable Initial Date relates. Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to the development of the Bidder's services.

2A.1.2 Bidders shall hold appropriate consultation regarding proposals for development of services with the Secretary of State, the Scottish Ministers, the Welsh Assembly Government, Transport for London, Passenger Transport Executives, User Representatives and any other parties with the right to be so consulted.

2A.1.3 Network Rail 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, complementary service patterns and efficiency of operation.

2A.2 Development of Base Timetable

2A.2.1 Following the consultation referred to in Condition D2A.1.1, Network Rail shall lead the development of a Base Timetable.

2A.2.2 In developing such Base Timetable Network Rail shall take account of any aspirations of Bidders for changes to the most recently issued Base Timetable which are notified to Network Rail on or before the Base Timetable Initial Date relating to the Timetable Development Period in question. Network Rail shall not be entitled to disregard such aspirations by reason solely of their complexity or the available time before the end of the Finalisation Period. Network Rail shall also take account of the views of Bidders who do not wish changes to be made to the most recently issued Base Timetable, if such views are notified to Network Rail on or before the Base Timetable Initial Date.

2A.2.3 Following the Base Timetable Initial Date and at any time before the Base Timetable Notification Date, each Bidder shall have the right to notify to Network Rail new aspirations (if any) which amend, delete or add to those aspirations (if any) which it notified in accordance with Condition D2A.1.1. Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the matters set out in Condition D2A.2.4, incorporate each new aspiration into the Base Timetable. If Network Rail decides that it is unable to incorporate any new aspiration into the Base Timetable it shall notify the relevant Bidder as soon as reasonably practicable.

2A.2.4 Network Rail, in consultation with Bidders, shall compile a Base Timetable which takes due account of:

- (a) the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of Network Rail in respect of the Rules of the Route and the Rules of the Plan;
- (b) the rights or expectations of rights of each Bidder and of Network Rail; and
- (c) the Decision Criteria.

2A.3 Issue of the Base Timetable

Network Rail shall, on or before the Base Timetable Notification Date, 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 Network Rail in providing that information, the Base Timetable which shall show:

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

Network Rail shall indicate any major aspects of the Base Timetable which are not capable of being brought into operation without further development work.

2A.4 *Right of appeal*

2A.4.1 *Referral for determination in accordance with the ADRR*

Following the provision of the Base Timetable in accordance with Condition D2.A.3, a Bidder may refer any decision by Network Rail in respect of the Base Timetable for determination in accordance with the ADRR under Condition D5, provided that such referral is made within the period specified in Condition D5.1.

2A.4.2 Possessions Strategy Notice

No reference under Condition D2A.4.1 shall be made in respect of any matter referred to in a Possessions Strategy Notice which is within and consistent with the method of implementation established pursuant to Condition D2.2 and which has:

- (a) not been referred for determination in accordance with the ADRR prior to the date referred to in Condition D2.2.4;
- (b) been finally determined either in accordance with the ADRR or, in respect of a Timetabling Dispute, by the Office of Rail Regulation pursuant to that Condition or Condition D5.2; or
- (c) been determined in accordance with the ADRR and, in respect of a Timetabling Dispute, is not the subject of an appeal to the Office of Rail Regulation pursuant to Condition D5.2.

2A.4.3 *Implementation pending outcome of determination*

If any aspect of the Base Timetable has been referred for determination pursuant to Condition D2A.4.1, Network Rail shall be entitled (notwithstanding such Condition) to treat such aspect as accepted for the purposes of developing the Working Timetable for the Timetable Periods to which such Base Timetable relates, pending the outcome of that determination.

CONDITION D2 - CONSULTATION PROCESS TO ESTABLISH THE RULES of the ROUTE/PLAN

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

2.1.1 *Consultation*

At least 8 weeks prior to the Development Commencement Date Network Rail shall consult with each Bidder in respect of Network Rail's anticipated requirements for Restrictions of Use needed to undertake maintenance, renewal and enhancement works on the

Network during the Timetable Period to which such Development Commencement Date relates and the next following Timetable Period.

2.1.2 Review by Network Rail

Following the consultation referred to in Condition D2.1.1 Network Rail 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 this Network Code, Vehicle Change in accordance with Part F of this Network Code or of the implementation of any matter 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 D2.1.2 Network Rail 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 Network Rail shall incorporate that information in the Preliminary Rules of the Route/Plan Proposal.

2.1.3 Preliminary Rules of the Route/Plan Proposal

Network Rail 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.

2.1.4 *Consultation with Bidders*

Each Bidder shall:

- (a) consider the notice served on it by Network Rail in accordance with Condition D2.1.3 and discuss with Network Rail 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 Network Rail 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 Network Rail of any representations or objections it wishes to make in relation to that Subsidiary Rules Revision and any alternative proposals it may have.

2.1.5 *Rules of the Route/Plan Decision*

- (a) Network Rail shall, following consideration of any representations, objections and alternative proposals made by affected Bidders in accordance with Condition D2.1.4, 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) Network Rail 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 D2.1.5(a) or, where no amendments are proposed, that fact.

2.1.6 Optimisation of the Draft Timetable

Notwithstanding the provisions of D2.1.4 and D2.1.5 Network Rail 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 Network Rail shall promptly notify the Bidders thus affected.

2.1.7 Referral for determination in accordance with the ADRR

Following notification of Network Rail's decisions in accordance with Condition D2.1.5(b) or D2.1.6 a Bidder may refer any aspect of those decisions (including any decision of Network Rail not to make an amendment or any decision by Network Rail as to whether or not a revision is a Subsidiary Rules Revision) for determination by the relevant ADRR Panel under Condition D5, provided that such referral is made within the period specified in Condition D5.1.

2.1.8 Possessions Strategy Notice

No such reference under Condition D2.1.7 shall be made in respect of any matter referred to in a Possessions Strategy Notice which is within and consistent with the method of implementation established pursuant to Condition D2.2 and which has:

- (a) not been referred for determination in accordance with the ADRR prior to the date referred to in Condition D2.2.4;
- (b) been finally determined either in accordance with the ADRR or, in respect of a Timetabling Dispute, by the Office of Rail Regulation pursuant to that Condition or Condition D5.2; or
- (c) been determined in accordance with the ADRR and, in respect of a Timetabling Dispute, is not the subject of an appeal to the Office of Rail Regulation pursuant to Condition D5.2;

2.1.9 Implementation pending outcome of determination

Notwithstanding the provisions of Conditions D2.1.7 and D2.1.8, but subject to Condition D2.1.10, Network Rail 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.

2.1.10 Procedure for amendment of the Rules of the Route/Plan and amendment of scheduled Train Slots

Network Rail 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 D2.1.9, Network Rail 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.

2.1.11 Contents of amendment procedure

Each of the procedures proposed by Network Rail pursuant to Condition D2.1.10:

- (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) Network Rail 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 five Working Days of the relevant procedure being sent to it, have referred any aspect

of it for determination in accordance with the ADRR and in accordance with Condition D5.

2.2 Possessions Strategy Notice

2.2.1 Notice of proposed possessions strategy

If Network Rail at any time proposes implementing works which require a programme of coordinated Restrictions of Use extending over:

- (a) a period of more than one year; or
- (b) a period which contains two or more Passenger Change Dates,

it may at its discretion give notice of its proposal to each Bidder that may be affected by the proposed works together with

- (i) such particulars of the proposed method of implementation of the works as are currently available to enable each such Bidder to understand the likely effect of the proposed works on its Services or the operation of its trains; and
- (ii) an explanation of Network Rail's reasons for the proposed method of implementation.

In this Condition D2.2 the expression "method of implementation" means a statement containing a programme of Restrictions of Use which would be required in order to carry out the proposed works.

2.2.2 Consultation on proposed method of implementation

Network Rail shall invite the submission of comments from each Bidder to which it has given notice under Condition D2.2.1 within such period as is reasonable in the circumstances having due regard to the likely effect of the proposed works on those Bidders and shall consult with them concerning the method of implementation for the proposed works.

2.2.3 Notice of intended method of implementation

Subject to having complied with the foregoing provisions of this Condition D2.2, Network Rail shall issue to each Bidder to which it gave notice under Condition D2.2.1 a notice of its intended method of implementation for the proposed works ('Possessions Strategy Notice'), provided that:

- (a) in deciding such intended method of implementation, Network Rail 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 and given its reasons for discounting any it has discounted.

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 intended method of implementation of the proposed works as notified by Network Rail pursuant to Condition D2.2.3 and, in particular, the application by Network Rail 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 intended method of implementation, refer the matter for determination in accordance with the ADRR.

2.2.5 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 works referred to in a Possessions Strategy Notice, 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 works 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.

2.2.6 Amendment procedure

Network Rail shall include within the Rules of the Plan a procedure to enable amendment or withdrawal of any Possession Strategy Notice (subject to Conditions D2.2.7 and D2.2.8).

2.2.7 Contents of amendment procedure

The procedure proposed by Network Rail pursuant to Condition D2.2.6:

- (a) shall provide that no amendment shall be made to a Possessions Strategy Notice unless:
 - (i) Network Rail shall have consulted, to the extent reasonably practicable, with each Bidder likely to be affected by the amendment; 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 five Working Days of the relevant procedure being sent to it, have referred any aspect of it to for determination in accordance with the ADRR and in accordance with Condition D5.

2.2.8 Priority

In the event of any inconsistency between the applicable Rules of the Route and/or the applicable Rules of the Plan for a particular Timetable Period (once finalised in accordance with Condition D2.1.5) and any Possessions Strategy Notice (or any amendment to a Possessions Strategy Notice) relating to such period, the applicable Rules of the Route and/or the applicable Rules of the Plan (as the case may be) shall prevail to the extent of such inconsistency.

CONDITION D3 - CONSULTATION PROCESS TO ESTABLISH THE FIRST WORKING TIMETABLE

3.1 Consultation

3.1.1 Following the issue of the Base Timetable:

- (a) Bidders shall hold appropriate consultation regarding proposals for development of services with the Secretary of State, the Scottish Ministers, the Welsh Assembly Government, Transport for London, Passenger Transport Executives, User Representatives and other parties with the right to be so consulted;
- (b) Network Rail shall consult with Bidders before the Priority Date to establish their aspirations for development of their services in the relevant Timetable Development Periods. Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to development of the Bidder's services; and

- (c) Network Rail 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 Network Rail in respect of the Timetable Periods commencing on the next following Principal Change Date and the next following Subsidiary Change Date of:

- (a) those Firm Rights which they intend to exercise together with (to the extent such Firm Rights are being exercised to obtain the Train Slots which are different to those in the Base Timetable), an explanation of why they wish to exercise such Firm Rights in a manner different to the Base Timetable;
- (b) those Firm Rights which they have previously exercised to obtain the Train Slots in the Base Timetable but which they do not intend to exercise;
- (c) any other rights which they intend to exercise or wish to negotiate; and
- (d) an indication of any amendments, additions or deletions they wish to make in respect of the Train Slots in the Base Timetable (pursuant to the notifications under paragraph (a), (b) or (c) above), which indication shall include the extent of their requirements (if any) as to the matters set out in Condition D3.3 in respect of each amended or additional Train Slot requested;

and:

- (i) in the case of paragraph (b) above, shall identify any Train Slots in the Base Timetable to which such Firm Rights relate and which they do not wish to operate;
- (ii) in the case of paragraph (c) above, shall distinguish between
 - (A) Train Slots (whether or not included within the Base Timetable)_for which they would be seeking priority in the Draft Timetable in accordance with Condition D3.2.3(b);
 - (B) Train Slots (whether or not included within the Base Timetable)_for which they would be seeking priority in the

Draft Timetable in accordance with Condition D3.2.3(c);
and

(C) other Train Slots (whether or not included within the Base Timetable); and

- (iii) in the case of paragraph (d) above, shall identify the rights, if any, applicable to each of the amended or additional Train Slots requested.

3.2.2 Compilation of the First Working Timetable

Network Rail, 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 Network Rail's opinion is capable of being brought into operation;
- (b) takes account of the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of Network Rail as expressed in the applicable Rules of the Route and the applicable Rules of the Plan; and
- (c) includes, in respect of the relevant Timetable Period, the Train Slots shown in the Base Timetable, together with the additions, amendments and deletions requested by Bidders in accordance with Condition D3.2.1 so far as reasonably practicable taking into account the complexity of those changes, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the Decision Criteria.

3.2.3 Priorities in compiling the First Working Timetable

Without prejudice to the exercise by Network Rail of a Flexing Right, Network Rail 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 Network Rail 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 Network Rail 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 Network Rail prior to the Capacity Request Deadline shall have force; or

- (ii) Network Rail 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 Network Rail 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 Network Rail 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 Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(c); or

- (ii) Network Rail 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 Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(c) but which are notified to Network Rail in accordance with Condition D3.2.4 or D3.2.6

provided that Network Rail shall only accord priority pursuant to paragraph (a), (b) or (c) above if the Train Slots to which the relevant Firm Rights, rights or expectations of rights relate have been notified to Network Rail on or before the Priority Date in accordance with Condition D3.2.1(d) or included in the Base Timetable.

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 Network Rail new aspirations (if any) which amend, delete or add to those requests for changes which it notified in accordance with Condition D3.2.1.
- (b) Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, 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

Network Rail 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 Network Rail in providing that information, the Draft Timetable which, as a result of notifications made to Network Rail 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 Network Rail 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 Network Rail 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 Network Rail new aspirations (if any) which amend, delete or add to those Train Slots shown in the Draft Timetable.
- (b) Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, 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

Network Rail 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 Network Rail in providing that information:

- (a) the Working Timetable which shall show:
 - (i) in respect of a Principal Change Date, those Train Slots which Network Rail 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 Network Rail has decided to include in the Working Timetable commencing on that Subsidiary Change Date; and
- (b) details of those Train Slots which Network Rail 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 10 Working Days of receipt of the notification advise Network Rail of any Train Slots which it disputes and will be the subject of a reference for determination in accordance with the ADRR. Network Rail'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 for determination in accordance with the ADRR or by the Office of Rail Regulation pursuant to Condition D5.

3.2.9 Notification of Working Timetable

As soon as possible after the expiry of the Appeal Period Network Rail shall give notice to each Bidder of the changes (if any) to the version of the Working Timetable provided under Condition D3.2.7 which it has made as a result of appeals determined pursuant to Condition D5 and/or Part M.

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;
- (j) any relevant commercial and service codes; and
- (k) the maximum train speed, maximum train weight and maximum train length.

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

3.4.1 Network Rail may, in relation to

- (a) any Train Slot included in the Base Timetable;
- (b) any request for change notified to Network Rail in accordance with Condition D3.2.1; or
- (c) any aspiration notified to Network Rail in accordance with Condition D3.2.4 or D3.2.6;

exercise a Flexing Right at any time prior to the end of the Finalisation Period, provided that:

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

3.4.2 Network Rail shall exercise a Flexing Right at any time:

- (a) in order to give effect to a decision made in accordance with the ADRR or by the Office of Rail Regulation 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 Office of Rail Regulation in the exercise of its powers under section 17, 18, 22 or 22A 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 Network Rail 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 Network Rail of a Flexing Right, Network Rail shall, in relation to any Spot Bid which falls to be considered under Condition D4.8, deal with such Spot Bid as provided for in that Condition, and in all other cases shall accord priority to Spot Bids in the order in which they are received by Network Rail.

4.4 *Flexing rights – Spot Bids*

4.4.1 *Time of exercise*

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

4.4.2 *Requirement to exercise*

Network Rail 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 made in accordance with the ADRR or by the Office of Rail Regulation 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 Office of Rail

Regulation in the exercise of its powers under section 17, 18, 22 or 22A 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, Network Rail 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) in relation to a Spot Bid received by Network Rail no later than five weeks prior to the applicable Revision Finalisation Date, no later than five Working Days after receipt of that Spot Bid;
- (b) in relation to a Spot Bid not falling within paragraph (a), by the later of:
 - (i) five Working Days after the Revision Finalisation Date in respect of the Timetable Week during which that Spot Bid would, if accepted, be planned to operate; and
 - (ii) five Working Days after receipt of that Spot Bid; or
- (c) 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
- (d) 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 (b), (c) or (d) 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

- (e) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by Network Rail of the Spot Bid,

provided that, in determining whether to accept, modify or reject a Spot Bid, Network Rail 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 Spot Bid shall include a concise explanation therefore.

4.5.2 Network Rail 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, Network Rail 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 Network Rail of its Flexing Right to accommodate the relevant Spot Bid; and
- (b) if that Train Operator gives its consent, exercise such Flexing Right.

4.5.4 A Train Operator which is consulted by Network Rail pursuant to Condition D4.5.3 shall not unreasonably withhold or delay its consent to the exercise by Network Rail 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, Network Rail 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 Network Rail 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 Network Rail of the rejection of that Spot Bid, or the exercise of a Flexing Right by Network Rail, notify Network Rail if it disputes that decision of Network Rail:

- (a) no later than five Working Days after receipt by the Bidder of such 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,

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 Network Rail in accordance with Condition D4.6.1, be deemed to have accepted the decision of Network Rail and shall not, in respect of that decision, be entitled to make a reference in accordance with the ADRR or to the Office of Rail Regulation 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, Network Rail 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 Network Rail under Condition D3.2.8 or D4.6.2 or Network Rail has accepted a Bidder's Bid in accordance with Condition D3.2.7 or D4.5, both the Bidder and Network Rail 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 Network Rail:

- (a) in accordance with the procedures provided for in Condition D2.1.10, D4.5.3 or D4.8; or
- (b) by agreement between Network Rail and the Bidder (provided that every other affected party has also agreed in writing); or
- (c) in order to give effect to a decision made in accordance with the ADRR or by the Office of Rail Regulation as provided for in Condition D5.

4.8 Supplemental Timetable Revision Process

4.8.1 Network Rail 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 Period Commencement Dates, Revision Bid Dates and Revision Finalisation Dates applicable to the Timetable Period commencing on that Passenger Change Date.

4.8.2 Network Rail shall,

- (a) on or before each Revision Period Commencement Date, provide to each Bidder its outline proposals for revision of the allocation of capacity in respect of the Timetable Week to which such Revision Period Commencement Date relates in order to enable Network Rail to take the Restrictions of Use contained in the Rules of the Route and/or Rules of the Plan applicable to that Timetable Week;
- (b) in consultation with Bidders, develop the structure of the amended train plan for the relevant Timetable Week, including any revision of the allocation of capacity, in accordance with agreed criteria, on Routes directly affected by Restrictions of Use included in the applicable Rules of the Route and/or Rules of the Plan and on diversionary routes; and
- (c) within 4 weeks of each Revision Period Commencement Date, notify each affected Bidder:
 - (i) of its capacity allocation decisions and proposed structure for the amended train plan for the relevant Timetable Week; and
 - (ii) whether Network Rail requires any Bidder to prepare a Revised Bid in respect of any Timetable Week Slot in that Timetable Week.

4.8.3 Each Bidder shall, following receipt of notification from Network Rail under Condition D4.8.2(c)(ii) 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 no later than 4 weeks prior to the applicable Revision Finalisation Date.

- 4.8.4 Network Rail in consultation with Bidders, will compile and amended timetable in respect of each Timetable Week, which is in accordance with its decisions notified under Condition D4.8.2(c)(i) and which:
- (a) in Network Rail's opinion is capable of being brought into operation;
 - (b) subject to Condition D4.8.5, takes account of any Revised Bids submitted in accordance with Condition D4.8.3; and
 - (c) takes account of any Spot Bids received no later than 4 weeks prior to the applicable Revision Finalisation Date.
- 4.8.5 Network Rail 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 D4.8.3, 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 therefore.
- 4.8.6 Network Rail shall be entitled as reasonably necessary to amend any Timetable Week Slot notified in accordance with Condition D4.8.2(c)(ii) and in relation to which no Revised Bid has been submitted to Network Rail by a Bidder in accordance with Condition D4.8.3 in order to enable Network Rail to take Restrictions of Use for the purpose of carrying out work included in the Rules of the Route and / or Rules of the Plan applicable to that Timetable Week Slot and that Bidder shall not, in respect of that decision, be entitled to make a reference to for determination in accordance with the ADRR or to the Office of Rail Regulation pursuant to Condition D5.
- 4.8.7 Network Rail shall, by no later than the Revision Finalisation Date in respect of each Timetable Week, notify each Bidder of its decisions regarding additional, amended and deleted Timetable Week Slots, including its decisions to accept, reject or modify any Revised Bid or any Spot Bid which has been submitted to it not less than 4 weeks prior to the Revision Finalisation Date in respect of the relevant Timetable Week.

- 4.8.8 The Bidder shall, following the receipt by it of notice of any decision by Network Rail pursuant to Condition D4.8.2(c) or Condition D4.8.7, notify Network Rail whether it accepts or disputes that decision of Network Rail, 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*.
- 4.8.9 Without prejudice to Conditions D4.4 and D4.7, nothing in this Condition D4.8 shall entitle Network Rail to amend any Train Slot already scheduled in the relevant Working Timetable except:
- (a) in order to take Restrictions of Use in accordance with the applicable Rules of the Route and the applicable Rules of the Plan; or
 - (b) by way of revision of the allocation of capacity on Routes directly affected by such Restrictions of Use and on diversionary routes in accordance with this Condition D4.8.

CONDITION D5 -TIMETABLE APPEAL PROCEDURE

5.1 Right of appeal to relevant ADRR Panel

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 Network Rail made under this Part D, including:

- (a) the application by Network Rail of the Decision Criteria;
- (b) the acceptance or rejection by Network Rail of any Bid;
- (c) the exercise by Network Rail of a Flexing Right; and
- (d) any decision of Network Rail which may be referred for determination in accordance with the ADRR under Condition D2.1.7, D2.1.11, D2.2.4 or D2.2.7,

it may refer the matter for determination in accordance with the ADRR.

5.1.2 Timescales for making an appeal in accordance with the ADRR

- (a) A reference for determination in accordance with the ADRR under Condition D5.1.1 shall, save as shown in paragraph (b) or (c) below, be made within five Working Days of receipt of the relevant decision from Network Rail. If Christmas Day occurs within such period of five Working Days then the period shall be lengthened to 10 Working Days.
- (b) A reference for determination in accordance with the ADRR in respect of a decision by Network Rail regarding Train Slots notified to Bidders in accordance with Condition D2A.3 or Condition D3.2.7 shall be made within 10 Working Days of receipt of the relevant decision.
- (c) A reference for determination in accordance with the ADRR pursuant to Condition D2.2.4 shall be made within 30 days of receipt of the notification referred to in Condition D2.2.3.

5.2 Right of appeal to the Office of Rail Regulation

If Network Rail or any Bidder is dissatisfied with any decision of a panel in respect of a Timetabling Dispute following a referral for determination in accordance with the ADRR under Condition D5.1, that person may, within five Working Days of receipt of the relevant written reasoned determination, refer the matter to the Office of Rail Regulation for determination under Part M. If Christmas Day occurs within such period of five Working Days then the period shall be lengthened to 10 Working Days.

5.3 Power of dispute bodies

In relation to a reference to it made pursuant to Condition D5.1 or D5.2, any dispute forum constituted or appointed under the ADRR or the Office of Rail Regulation (as the case may be) (each a “dispute body”) shall, in determining the matter in question, have the power:

5.3.1 in determining the matter in question:

- (a) to direct Network Rail to comply with directions which specify the result to be achieved but not the means by which it shall be achieved (“general directions”);

- (b) to direct the parties to accept any submissions made by Network Rail as to any Train Slots; and/or
- (c) to specify the Train Slots and other matters which Network Rail should have determined in its decision made pursuant to this Part D,

provided that a dispute forum constituted or appointed under the ADRR shall only take any action under paragraph (c) above in exceptional circumstances;

5.3.2 having given general directions, on the application of Network Rail within five Working Days (or 10 Working Days if Christmas Day falls within such period of five Working Days) of the determination of the matter in question (or such longer period as the dispute 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.

5.4 *Liability of Network Rail*

Network Rail 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 Network Rail'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) seeking consistency with any current Route Utilisation Strategy which is either (i) published by the Strategic Rail Authority or the Department for Transport before 31 May 2006, or (ii) established by Network Rail in accordance with its Network Licence;

- (c) 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 Network Rail is aware or has been informed of such contracts;
- (d) maintaining and improving the levels of service reliability;
- (e) maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (f) maintaining and improving connections between railway passenger services;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;
- (l) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services;
- (m) encouraging the efficient use of capacity by considering a Bidder's previous level of utilisation of Train Slots;
- (n) avoiding, unless absolutely necessary, changes to provisional International Paths following issue of the applicable Rules of the Plan; and
- (o) taking into account the commercial interests of Network Rail and existing and potential operators of trains in a manner compatible with the foregoing.

In its consideration of paragraph (d) of this Condition D6, Network Rail shall not be entitled to determine that its Restrictions of Use 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 Network Rail 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 Network Rail 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 Network Rail with a copy of any relevant authority for their carriage (such as a licence or certificate of registration).*
- B. *Network Rail 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 Network Rail 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 Network Rail 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, Network Rail is obliged to have due regard to certain specified criteria. Network Rail is further obliged to give notice to affected Train Operators within specified time limits of its decision and the reasons therefore. If an affected Train Operator disagrees with Network Rail's assessment, it may appeal in accordance with the ADRR.*
- 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 Network Rail or otherwise in cases of urgency, provisions exist for Network Rail to take the necessary action.*
- F. *Subject to Network Rail 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, Network Rail 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 Network Code.*

DEFINITIONS

In this Part E, unless the context otherwise requires:

"Environmental Condition"	<p>means:</p> <ul style="list-style-type: none">(a) Any Environmental Damage; or(b) Any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage <p>Which (in either case) in Network Rail's reasonable opinion could result in Network Rail 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 Network Rail with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Office of Rail Regulation pursuant to its licence authorising it to be the operator of trains.

1.2 *Network Rail's licence compliance*

Network Rail shall provide each Access Beneficiary with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Office of Rail Regulation 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 Network Rail, provide Network Rail 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 Network Rail (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 - Network Rail*

Network Rail 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 Network Rail is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage

which may affect the Train Operator. Network Rail 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 *Network Rail's assessment*

Where:

- (a) Network Rail becomes aware that, as a direct or indirect result of the activities of a Train Operator, an Environmental Condition exists or has occurred and Network Rail reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
- (b) Network Rail 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

Network Rail shall make an assessment, on the best information available to it at the relevant time, as to which of Network Rail 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, Network Rail 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 Network Rail's assessment

Within 60 days of making its assessment, Network Rail 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 Network Rail shall have used in making the assessment; and
- (e) the steps which Network Rail 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

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

2.1.5 Disagreement with Network Rail's assessment

If an affected Train Operator shall be dissatisfied with Network Rail's assessment or with any other statement or information provided by Network Rail pursuant to Condition E2.1.3, it shall be entitled to refer the matter for resolution in accordance with the ADRR. 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 Network Rail'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 Network Rail gives it notice pursuant to Condition E2.1.3(e), provided Network Rail shall have given it a reasonable opportunity to do so; and
- (b) bear the costs of taking those steps.

2.2.2 Network Rail 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, Network Rail shall provide the Train Operator with such assistance and co-operation as shall be reasonable in that respect.

2.3 Network Rail'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 Network Rail; or
- (b) in Network Rail'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,

Network Rail 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. Network Rail shall give notice to the Train Operator in question of any step taken pursuant to this Condition E2.3.

2.4 Liability of Network Rail

Where Network Rail 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 Network Rail, or any person acting on behalf of or on the instructions of Network Rail, 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 Network Rail 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 Network Rail 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, Network Rail 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, Network Rail 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 Network Rail 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 Network Rail 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 through which changes to railway vehicles, the use of which is permitted in the access contract and related safety documentation, may be assessed and implemented, Vehicle Change includes any alteration to the physical characteristics of vehicles, including but not limited to, any increase in the length of any trains beyond that permitted by the relevant access contract and supporting operational documentation 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. *The general principle is that before any Vehicle Change can be implemented:*
- (i) it must be formally proposed under Part F; and*
 - (ii) it must be accepted by Network Rail and those Access Beneficiaries whom it will affect; or*
 - (iii) to the extent that there is any dispute as to whether the change should be implemented, or the terms on which it should be implemented, such dispute must be resolved (whether by agreement or in accordance with the ADRR) in favour of the change being implemented, although any such dispute should not prevent the implementation of the Vehicle Change, if such change is safety related.*
- C. *Condition F1 imposes a general obligation on Network Rail to facilitate Vehicle Change, which includes a number of specific obligations to provide information to Access Beneficiaries and to publish documents generated under Part F on its website. Network Rail is also obliged to publish model terms and conditions which it is prepared to use in connection with the implementation of Vehicle Change proposals.*
- D. *Where an Access Beneficiary wishes to make a Vehicle Change proposal, through either the normal Vehicle Change procedure or the Expedited Procedure, the process is as follows:*
- (i) The Access Beneficiary (the "Sponsor") gives a notice of proposal to Network Rail, affected Access Beneficiaries and other relevant persons. Such notice may include an election to use the Expedited Procedure but must include sufficient information to allow Network Rail and affected Access Beneficiaries to assess the proposed change. This would include, technical compatibility with the Network, all vehicle*

characteristics required to assess the proposed change, and proposals as to how Network Rail or affected Access Beneficiaries should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change. Network Rail must then evaluate the proposal and be permitted to consult with Access Beneficiaries and other relevant persons about the effects of the proposal.

- (ii) If the Access Beneficiary elects to use the Expedited Procedure, consultees have 14 days within which to raise initial comments or concerns. A response indicating that a blocking right may apply will be treated as an objection to the use of the Expedited Procedure. All responses should be supported by reasons. If any consultee objects with a valid concern, the Vehicle Change cannot be implemented using the Expedited Procedure but this does not prevent the proposed change continuing to be considered under the normal Vehicle Change procedure. If at any time between implementation of the proposed Vehicle Change, under the Expedited Procedure, and the timescale for implementation under the full Vehicle Change procedure, a consultee raises an objection by declaring a blocking right, then the implementation of the Vehicle Change under the Expedited Procedure must be reversed and, if necessary compensation paid. However, consideration of the proposed change under the normal Vehicle Change procedure would continue unless it is withdrawn by the Sponsor.*
- (iii) Within 30 days of receiving a notice from an Access Beneficiary, Network Rail is required to give a notice setting out the Sponsor's proposal and adding further information on its own account (in particular, where it disagrees with elements of the Sponsor's proposal). The notice includes a deadline for Network Rail to respond to the Sponsor's notice of proposal, which may be adjusted in the light of consultation.*
- (iv) If the deadline for responses is 90 or more days after the date of the notice of proposal, the Sponsor may require Network Rail to submit preliminary responses or estimates of the costs, losses and expenses which it may incur as a result of the implementation of the proposed change.*
- (v) Network Rail is entitled to be reimbursed 75% of its reasonable costs of assessing a Vehicle Change proposal by the Sponsor. The Sponsor may require Network Rail to provide it with estimates of such assessment costs, or to cease incurring such costs.*
- (vi) In responding formally to a Vehicle Change proposal, Network Rail must state whether it, or another Access Beneficiary, objects to the*

proposal in principle or on the grounds that it contains insufficient information, or whether it, or another operator of railway assets, objects on compensation grounds. The benefits of the change to an Access Party and its chances of recouping its costs or losses from third parties (including passengers) are to be taken into account when determining the amount of any compensation.

- (vii) The Sponsor must then either reach agreement with Network Rail and other Access Beneficiaries to the extent that they raise objections to the proposal, refer the matters in dispute in accordance with the ADRR or abandon the proposal. Implementation will then depend on whether the ADRR proceedings result in a determination that the change should be implemented on terms which are acceptable to the Sponsor. If there are no objections to the proposal the Sponsor is entitled to implement it.*
- (viii) After a Vehicle Change has become established, the arrangements for its implementation may be varied according to the terms of any contractual variation procedure which forms part of the terms and conditions specified in the notice of proposal and/or is subsequently agreed as a result of the consultation and response process.*
- E. Condition F2.10 allows Access Beneficiaries to implement a change for safety reasons, ensuring that the Vehicle Change procedure, whilst having to be completed, does not delay such implementation. The Vehicle Change procedure must be undertaken where a Vehicle Change for safety reasons lasts for more than three months.*
- F. Where a Vehicle Change is required as a result of a Change of Law or a Direction from a Competent Authority, the normal Vehicle Change procedure will be applied. In such cases, each Access Party will be responsible for its own costs and losses.*
- G. This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

In this Part F, unless the context otherwise requires:

- “Authorised variation” means a variation to an established Vehicle Change, where:
- (a) the terms and conditions on which the Vehicle Change in question was established contain a variation procedure;
 - (b) that variation procedure has been followed in accordance with its terms; and
 - (c) the result of the operation of that variation procedure is that the established Vehicle Change has been varied;
- “established Vehicle Change” means a change which the Sponsor is entitled by this Part F to carry out, and “establish” and “establishment” of a Vehicle Change shall be construed accordingly;
- “Expedited Procedure” means the procedure set out in Condition F3.4;
- “modification” includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;
- “relevant response date” means, in relation to a proposal for a Vehicle Change under this Part F, the later of such dates as are reasonably specified by Network Rail under Condition F2.3.1(b)(i) or Condition F2.4.3 as the date on or before which Network Rail is to give notice of its response to that proposal under Condition F3.1, having regard to:
- (a) the size and complexity of the change; and
 - (b) the likely impact of the change on the operation of the Network and Access Beneficiaries,
- and which shall not be:

- (A) less than 60 days; or
- (B) unless Network Rail and the Sponsor agree otherwise in writing, more than 90 days,

from the date on which Network Rail's notice under Condition F2.3.1(c) is given;

“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;

“Sponsor” means, in relation to a proposal for a Vehicle Change under Condition F2.1, the Access Beneficiary which has made the proposal;

“variation” means any modification to the terms or conditions (including as to the specification of the works to be done, their timing, the manner of their implementation, the costs to be incurred and their sharing, and the division of risk) on which an established Vehicle Change is to be carried out, and “varied” and any other cognate words shall be construed accordingly;

“variation procedure” means, in relation to an established Vehicle Change, a procedure which:

- (a) forms part of the terms and conditions on which the Vehicle Change is established; and
- (b) provides for the established Vehicle Change itself to be varied after it has been first established; and

“Vehicle Change” means, in relation to an Access Beneficiary:

- (a) any change to Specified Equipment (or, in the case of an Access Option Holder, any change to the type or performance specification of any vehicle specifically identified within an access option) including by way of:

- (i) any alteration (not being a change within paragraph (b) below) to the physical characteristics of Specified Equipment (or, in the case of an Access Option Holder, any change to the type or performance specification of any vehicle specifically identified within an access option);
 - (ii) any increase in the length of any trains beyond that permitted by that Access Beneficiary's Access Agreement; or
 - (iii) the inclusion in Specified Equipment of any railway vehicle which is not so included; or
 - (iv) the inclusion in an access option of any vehicle which is not so included; or
- (b) any material variation to an established Vehicle Change which has yet been implemented, other than authorised variation;

which, in any case, is likely materially to affect the maintenance or operation of the Network or the operation of trains on the Network, but excluding any authorized variation.

CONDITION F1 - FACILITATION OF VEHICLE CHANGE

1.1 *Obligation to facilitate Vehicle Change*

Network Rail shall take all reasonable steps to facilitate the development, establishment and implementation of any proposal for Vehicle Change.

1.2 *Limit of obligation*

Condition F1.1 does not oblige Network Rail to do anything which it is not required to do under its network licence.

1.3 *Facilitation*

The obligation of Network Rail under Condition F1.1 includes:

- (a) the provision to an Access Beneficiary of such information concerning the condition, capacity and/or capability of the Network as:
 - (i) Network Rail is required at any time to hold or have appropriate access to under its network licence; and
 - (ii) that Access Beneficiary may reasonably request in connection with the development of a proposal for Vehicle Change (whether the proposal is made by that Access Beneficiary or another person);
- (b) the publication on its website (subject to Condition A3 of the Network Code) of:
 - (i) every proposal for Vehicle Change made by an Access Beneficiary under Condition F2.1;
 - (ii) every response to a proposal for Vehicle Change made by Network Rail under Condition F3.1;
 - (iii) every determination of matters which have been referred in accordance with the relevant ADRR under Condition F5.1;
 - (iv) every authorised variation;
 - (v) standard forms, produced after consultation with every other Access Party and approved by the Office of Rail Regulation, for the notification under this Part F of proposals for Vehicle Change, and of responses to such proposals, which:
 - (A) may include different forms for different types of Vehicle Change having regard to the size, complexity and value of the change in question; and
 - (B) shall be used by any person notifying or responding to a proposal for Vehicle Change under this Part F, unless it is not reasonably practicable for it to do so; and
 - (vi) model terms, produced after consultation with every other Access Party and approved by the Office of Rail Regulation, by

way of supplement to the terms of this Part F and on which Network Rail is prepared to contract for or in connection with the implementation of a Vehicle Change which:

- (A) shall provide appropriate and proportionate forms of contract for different types of Vehicle Change having regard to the size, complexity and value of the change;
 - (B) may include variation procedures; and
 - (C) shall, so far as reasonably practicable, form the basis of any terms and conditions relating to the implementation of a Vehicle Change which are proposed by an Access Beneficiary or under Condition F2;
- (c) the provision of a preliminary response to an Access Beneficiary's proposal for Vehicle Change under Condition F2.4;
- (d) such consultation before a notice of a proposal for a Vehicle Change is submitted by an Access Beneficiary as may reasonably be expected to enable that operator to assess the feasibility and affordability of the proposed change; and
- (e) such consultation with the persons specified in Condition F2.1(b) before a notice of a proposal for a Vehicle Change is submitted by an Access Beneficiary as:
- (i) Network Rail considers reasonably necessary; and
 - (ii) any such person may reasonably request,
- to enable the proposal to be developed in an efficient and economical manner; and
- (f) If requested, provision of the names and contact details of each Access Beneficiary which Network Rail considers may be affected by the implementation of the proposed Vehicle Change.

CONDITION F2 - INITIATION OF VEHICLE CHANGE PROCEDURE

2.1 *Submission of proposal*

If an Access Beneficiary wishes to make a Vehicle Change, it shall:

- (a) submit to Network Rail and each Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change as advised by Network Rail to the Access Beneficiary under Condition F1.3(f) or which has notified the Access Beneficiary that it may be so affected, a proposal for such change;
- (b) indicate to Network Rail and each Access Beneficiary referred to under Condition F2.1 (a) whether it wishes to implement the proposed change using the Expedited Procedure;
- (c) provide details to Network Rail of all Access Beneficiaries to which the proposal for change has been submitted under Condition F2.1 (a);
- (d) notify:
 - (i) the Secretary of State;
 - (ii) the Office of Rail Regulation; and
 - (iii) each Passenger Transport Executive, Transport for London, the Scottish Ministers, and the Welsh Assembly Government if such bodies may be affected by the implementation of the proposed Vehicle Change;

that it has submitted a proposal for Vehicle Change to Network Rail;
and

- (e) permit Network Rail to consult with the persons specified in Condition F2.1(d) to the extent provided for under Condition F2.3 subject to such requirements as to confidentiality as are reasonable.

2.2 Content of Sponsor's notice of proposal

A notice of proposal for Vehicle Change given by a Sponsor under Condition F2.1 shall:

- (a) state:
 - (i) the reasons why it is proposed to make the change;

- (ii) the nature of the change, including:
 - (A) any material change which the Sponsor proposes to make to the physical characteristics of any vehicle which is already included within the Specified Equipment; and
 - (B) a description of any vehicle which is not already included within the Specified Equipment, but which the Sponsor proposes to include within the Specified Equipment;
- (iii) in the case of any vehicle of the kind referred to in Condition F 2.2(a)(ii)(A):
 - (A) whether it is proposed to operate it on any part of the Network on which it does not already operate; and
 - (B) whether it is proposed to operate it at higher speeds or tonnages or to a larger gauge than it has previously been operated over any part of the Network on which such a vehicle already operates;
- (iv) in the case of any vehicle of the kind referred to in Condition F2.2(a)(ii)(B), over what parts of the Network, and at what speeds, it proposes to operate such vehicles;
- (v) the proposed timetable for the implementation of the change, including whether it intends to implement the change using the Expedited Procedure;
- (vi) the Sponsor's proposals (if any) for the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to any Access Party in respect of the change; and
- (vii) any additional terms and conditions which the Sponsor proposes should apply to the change, including any proposed variation procedure; and

- (b) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition F2.1(b), to enable:

- (i) Network Rail; and

- (ii) any persons specified in Condition F2.1(b),

to assess the likely effect of the proposed change on its business, its assets and its performance of any obligations or the exercise of any rights or discretions which it has in relation to railway services.

2.3 Evaluation of proposal and consultation

2.3.1 If Network Rail receives a proposal for Vehicle Change under Condition F2.1, it shall:

- (a) evaluate and discuss that proposal with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed Vehicle Change on either or both of Network Rail and other operators of trains;
- (b) within 30 days of the date on which the Sponsor's notice under Condition F2.1 was given, give a notice to the persons specified in Conditions F2.1 (a) (with the exception of Network Rail) and (d), with a copy to the Sponsor, inviting them to submit comments on the proposed Vehicle Change by a specified date, which shall not be earlier than 10, or later than 7 days before the relevant response date, stating:
 - (i) the relevant response date and the obligations of Access Parties under Conditions F2 and F3;
 - (ii) Network Rail's estimate of the likely impact of the change on the operation and performance of the Network; and
 - (iii) Network Rail's own proposals as to:
 - (A) the arrangements for, and any proposed terms applicable to, the implementation of the change;

- (B) the arrangements for determining and paying any compensation in respect of the change;
 - (C) the timetable for implementation of the change;
 - (D) the division of the costs of carrying out the change; and
 - (E) the additional terms and conditions (if any) which should apply to the change, including any variation procedure;
- (c) send the proposal for Vehicle Change to any Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change if the Sponsor has not already done so in accordance with Condition F2.1 (a); and
 - (d) provide details to the Sponsor of all Access Beneficiaries (if any) to which Network Rail has sent the proposal for Vehicle Change under Condition F2.3.1 (c).

2.3.2 In preparing a notice under Condition F2.3.1, Network Rail:

- (a) shall comply with the standards specified in Condition F2.2(b); and
- (b) in respect of each of the matters specified in Condition F2.3.1(b)(iii):
 - (i) shall have regard to any relevant statements and proposals contained in the Sponsor's notice under Condition F2.1;
 - (ii) shall give reasons for any differences between those statements and proposals and its own proposals under Condition F2.3.1(b)(iii); and
 - (iii) may annex to its notice any proposal contained in the Sponsor's notice under Condition F2.1 with which it agrees, stating its agreement, and, where appropriate, that it has no proposals of its own on the matter concerned.

- 2.3.3 If an Access Beneficiary receives a proposal for Vehicle Change under Condition F2.1 or Condition F2.3.1 (c), it shall evaluate and discuss the proposal with Network Rail for such period as is reasonable having due regard to the likely impact of the proposed Vehicle Change on that Access Beneficiary.

2.4 *Preliminary response and estimate*

- 2.4.1 Except in the circumstances and to the extent specified in Condition F2.4.2, Network Rail shall, when consulted by the Sponsor, take all reasonable steps to comply with any request of the Sponsor to provide the Sponsor, within a reasonable period of time, and at no cost to the Sponsor:
- (a) a preliminary estimate of those costs, losses and expenses referred to in Condition F3.2 which may be incurred by Network Rail; or
 - (b) a preliminary written response in respect of a proposed Vehicle Change, which shall:
 - (i) be binding on Network Rail, unless Network Rail indicates otherwise; and
 - (ii) if it is negative, include reasons.
- 2.4.2 Network Rail shall not be obliged to comply with a request from the Sponsor under Condition F2.4.1:
- (a) unless:
 - (i) the relevant response date is 90 or more days after the date on which Network Rail's notice under Condition F2.3.1(b) was given; and
 - (ii) the request is made within 7 days of the Sponsor receiving Network Rail's notice under Condition F2.3.1(b); or
 - (b) to the extent that Network Rail is unable to comply with such a request, having regard to the information reasonably available to it.

- 2.4.3 After consultation with the Sponsor Network Rail may notify a later relevant response date to the Sponsor and the persons to whom it gave its notice under Condition F2.3.1(b).

2.5 *Reimbursement of costs*

Subject to Conditions F2.4 and F3, Network Rail shall be entitled to reimbursement by the Sponsor of 75% of all costs incurred by Network Rail in assessing any Vehicle Change proposed by the Sponsor. Those costs shall be the minimum reasonably necessary for Network Rail to carry out that assessment.

2.6 *Provision of estimate of costs by Network Rail*

Network Rail shall, upon request from the Sponsor from time to time, provide the Sponsor with written estimates of the costs of assessing a proposal for Vehicle Change submitted by the Sponsor (as referred to in Condition F2.5) 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 evaluation before commencing such work; and
- (b) upon request from the Sponsor from time to time, provide the Sponsor or its agents with such information as may be reasonably necessary to enable the Sponsor to assess the reasonableness of any estimate.

2.7 *Accuracy of estimates*

Network Rail 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.

2.8 *Obligation to incur no further costs*

Network Rail shall, if requested by the Sponsor 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 the Sponsor.

2.9 *Relationship with Network Change*

If the implementation of a proposed Vehicle Change also requires the implementation of a Network Change, the Sponsor 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.

2.10 *Vehicle Change for safety reasons*

To the extent that a Vehicle Change is required to be made by an Access Beneficiary for safety reasons, the Access Beneficiary shall not be obliged to implement the procedure set out in this Part F in relation to that change until the change has lasted for three months (or such longer period as may be specified in the relevant Access Beneficiary's Access Agreement). Upon expiry of the relevant period, the Access Beneficiary shall promptly commence implementing and thereafter comply with the procedure set out in this Part F as if the relevant Vehicle Change were a Vehicle Change proposed by the Access Beneficiary.

CONDITION F3 - RESPONSE TO VEHICLE CHANGE PROPOSAL

3.1 *Obligation to give notice of response*

Network Rail shall give notice to the Sponsor, 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 Network Rail breaching any access contract (other than an access contract to which the Sponsor is a party);
 - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition F2.2 provided that Network Rail 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 Access Beneficiary shall have given notice to Network Rail 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 either
 - (i) in accordance with compensation terms proposed under Condition F2,
 - (ii) in the absence of any compensation terms proposed under Condition F2, or
 - (iii) on compensation terms other than those proposed under Condition F2; and/or
- (d) any other operator of railway assets shall have given notice to Network Rail that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either
 - (i) in accordance with compensation terms proposed under Condition F2,
 - (ii) in the absence of any compensation terms proposed under Condition F2, or
 - (iii) on compensation terms other than those proposed under Condition F2.

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 Network Rail 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 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 Network Rail or any other operator of trains as a result of the proposed Vehicle Change; and
- (b) the ability or likely future ability of Network Rail 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 under the Expedited Procedure*

3.4.1 If

- (a) the Sponsor has elected under Condition F2.1 (b) to use the Expedited Procedure; and
- (b) within 14 days of the date of the notice in question:
 - (i) the Sponsor's notice under Condition F2.1; or, if later
 - (ii) within 14 days of Network Rail sending the Sponsor's proposal to any Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change in accordance with Condition F2.3.1 (c),

an Access Party gives notice to the Sponsor that it considers that any of the conditions specified in Condition F3.1(a) may be satisfied, which notice has

not been withdrawn, the proposed Vehicle Change shall not be implemented using the Expedited Procedure.

In any other case and subject to the other provisions of the Network Code and the remainder of this Condition F3.4, the Sponsor shall be entitled for the purposes of the Network Code (but subject to any such other authorisations, approvals, consents and certifications as may be required) to implement the proposed change.

- 3.4.2 The Sponsor shall be liable to pay compensation (if any) to each person specified in Condition F2.1 (b) calculated in accordance with the relevant provisions of Condition F3.
- 3.4.3 If, at any time between the implementation of the change and the relevant response date, an Access Beneficiary gives notice to the Sponsor and Network Rail as appropriate that it considers that any of the conditions specified in Condition F3.1(a) have been satisfied, the Sponsor shall, as soon as reasonably practicable take all action necessary to reverse the implementation of the Vehicle Change.
- 3.4.4 All notices served by an Access Party under Conditions F3.4.1 and F3.4.3 shall specify the reasons why that Access Party believes that any of the conditions specified in Conditions F3.1(a) have been satisfied.
- 3.4.5 If a Vehicle Change is not implemented in accordance with the Expedited Procedure or the implementation of the Vehicle Change is reversed in accordance with Condition F3.4.3, unless the change proposal is withdrawn by the Sponsor, the change proposal shall be treated as a proposal for change where the Sponsor has not elected under Condition F2.1 (b) to use the Expedited Procedure.

CONDITION F4 - CHANGES IMPOSED BY COMPETENT AUTHORITIES

Where an Access Beneficiary is required (other than at the request or instigation of the Access Beneficiary) to implement a Vehicle Change as a result of any Change of Law or any Direction of any Competent Authority other than the Office of Rail Regulation exercising any of its functions which do not fall within the definition of 'safety functions' as defined in section 4 of the Act:

- (a) each Access Party shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1, F2.2

and F2.3 (other than Conditions F2.2(a)(vi) and F2.3.1(b)(iii)(B) and (D)) in respect of that Vehicle Change;

- (b) Network Rail 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 G1.1 and G1.2 (other than Condition G1.2(c)(iv)); and
- (c) each Access Party shall bear its own costs and losses arising out of the implementation of the Vehicle Change and the consequences thereof.

CONDITION F5 - APPEAL PROCEDURE

5.1 *Right of appeal in accordance with the ADRR*

If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure set out in this Part F;
- (b) the contents of any notice given by Network Rail under Condition F3.1 (and, in particular, the amount of any compensation referred to in that Condition); or
- (c) any estimate referred to in Condition F2.6,

it may refer the matter for determination in accordance with the ADRR.

CONDITION F6 - ESTABLISHMENT AND IMPLEMENTATION

6.1 Implementation of a proposed Vehicle Change

6.1.1 With the exception of any Vehicle Change implemented under Conditions F2.10 and F3.4, the Sponsor shall be entitled to implement a proposed Vehicle Change if:

- (a) Network Rail has not given notice under Condition F3.1 by the relevant response date; or

- (b) Network Rail has given notice by the relevant response date under Condition F3.1 (c) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5; or
- (c) Network Rail has received notice from an Access Beneficiary under Condition F3.1(d) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5; and
- (d) there is no other unresolved dispute under this Part F (whether under this Condition F6 or otherwise) as regards the proposed change between the Sponsor and Network Rail or any Access Beneficiary.

6.1.2 The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition F6.1.1 has been satisfied, instruct Network Rail to issue a notice to all affected Access Beneficiaries when the Sponsor reasonably believes that it is entitled to implement a proposed Vehicle Change and Network Rail shall then serve such a notice within 7 days of the instruction.

6.1.3 The Sponsor's entitlement to implement a proposed Vehicle Change shall be treated as confirmed 35 days after Network Rail has served a notice in respect of that Vehicle Change in accordance with Condition F6.1.2 unless:

- (a) Network Rail gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons; or
- (b) Network Rail receives notice from an Access Beneficiary within 21 days of the notice served by Network Rail disputing the Sponsor's entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons.

6.1.4 If the Sponsor does not agree with the contents of a notice served by Network Rail or an affected Access Beneficiary in accordance with Condition F6.1.3, the Sponsor may:

- (a) refer the matter for determination in accordance with the ADRR and Condition F5 shall apply; or
- (b) withdraw the proposed Vehicle Change.

6.2 When a Vehicle Change may not be Implemented

6.2.1 The Sponsor shall not be entitled to implement a proposed Vehicle Change unless it is so entitled to do so under Condition F6.1.1.

6.2.2 For the purposes of the Condition F6.1.1, unresolved disputes shall include:

- (a) a notice has been served under Condition F3.1(a) or (b) which has not been withdrawn, resolved under Condition F5 or agreed not to apply; and
- (b) a notice has been served under Condition F3.1(c) or (d) which has not been agreed or resolved as referred to in Condition F6.1.1 (b) or (c) or otherwise agreed, resolved or withdrawn.

Part G - Network Change

Explanatory Note

- A. *Part G is concerned with the procedures which Access Parties must go through when certain types of change to the Network (defined as “Network Change”) occur or are proposed.*
- B. *The definition of “Network Change” is broad, and much of it is expressed in non-exhaustive terms (i.e. after some general words of definition, Network Change is said to “include” certain specific things by way of illustration or example, but that does not necessarily mean that other things are excluded). The definition should always be considered carefully and in its entirety before any decision is made as to whether a particular change falls within the scope of Part G (see generally the Rail Regulator’s judgment in Network Rail Infrastructure Limited v Great North Eastern Railway Limited [2003] RR 2). The following specific points should also be noted:*
- (i) only changes which are likely to have a material effect on the operation of the Network or of trains operated on the Network are Network Changes;*
 - (ii) Network Changes can either be physical (e.g. changes to the layout, configuration or condition of the Network) or operational (e.g. the introduction of a speed restriction on a section of track, a change to the way Network Rail maintains track or a change to the monitoring points used in the application of Schedule 8 of the Track Access Agreements), but operational changes are only Network Changes if they last, or are likely to last, for more than six months;*
 - (iii) the definition of Network Change includes changes which will generally be seen in a positive light (e.g. enlargement of capacity on a stretch of track) as well as changes which are more likely to be characterised as having a negative impact (e.g. reduction of capacity or deterioration in condition);*
 - (iv) closures of lines which are covered by the statutory procedures under the Act (i.e. lines which are, or have in the preceding five years been, used for passenger services) and changes made under the Systems Code are not Network Changes; and*
 - (v) closures of lines which are not covered by the statutory procedures under the Act (i.e. lines which are, or have in the preceding five years, been used only for freight services) are Network Changes.*
- C. *From a procedural point of view, Part G divides Network Changes into two categories: those proposed by Network Rail and those proposed by an Access Beneficiary. All Network Changes, whether proposed by Network Rail or by an Access Beneficiary, are implemented by Network Rail.*

- D. *The general principle is that before any Network Change can be implemented:*
- (i) it must be formally proposed under Part G; and*
 - (ii) it must be accepted by those Access Beneficiaries whom it will affect (and, where the change is proposed by an Access Beneficiary, by Network Rail); or*
 - (iii) to the extent that there is any dispute as to whether the change should be implemented, or the terms on which it should be implemented, such dispute must be resolved (whether by agreement or in accordance with the ADRR) in favour of the change being implemented.*
- E. *However, it is recognised that:*
- (i) safety considerations will sometimes dictate that Network Rail must make a Network Change very quickly, without recourse to all the procedures under Part G. In such cases, Network Rail's obligations under Part G may be subordinated to the interests of safety to a greater or lesser extent, depending on the circumstances (see further Condition G1.10); and*
 - (ii) where a Network Change is required to be made as a result of a Change of Law or a Direction of a Competent Authority, most of the normal obligations of Access Parties under Part G do not apply (see further Condition G9).*
- F. *Condition GA imposes a general obligation on Network Rail to facilitate Network Change, which includes a number of specific obligations to provide information to Access Beneficiaries and to publish documents generated under Part G on its website. Network Rail is also obliged to publish model terms and conditions which it is prepared to use in connection with the implementation of Network Change proposals.*
- G. *Conditions G1 and G2 are concerned with proposals made by Network Rail. Conditions G3 and G4 are concerned with proposals made by Access Beneficiaries. Conditions G5 to G7 inclusive are concerned with proposals made by Network Rail using the Complex Projects Procedure. Condition G8 is concerned with the expiry and reversal process of a Short Term Network Change. G9 is concerned with mandatory changes (resulting from a Change of Law or a Direction of a Competent Authority). Condition G10 is concerned with the processes that may be adopted for establishing and implementing Network Changes. Condition G11 is concerned with dispute resolution in connection with Network Change proposals.*
- H. *Except where it elects to follow the Complex Projects Procedure (see note J below for guidance), where Network Rail wishes to make a Network Change proposal the procedure is as follows:*
- (i) Network Rail gives a notice of proposal and sets a deadline for Access Beneficiaries to respond to it. Conditions G1.1 and G1.2 specify the persons to whom the notice must be given and what it must contain. In particular, the notice is to contain information on the likely material effects of*

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the Network Change and the reasons for its proposal and proposals as to how affected Access Beneficiaries should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change.

- (ii) Network Rail consults with operators of railway assets likely to be affected by the proposed change and may adjust the deadline for responses in the light of consultation.*
 - (iii) If the deadline for responses is 60 or more days after the date of Network Rail's notice, Network Rail may require Access Beneficiaries to submit preliminary responses or estimates of the costs, losses and expenses which they may incur as a result of the implementation of the proposed change.*
 - (iv) Access Beneficiaries are entitled to be reimbursed 75% of their reasonable costs of assessing a Network Change proposal by Network Rail. Network Rail may require Access Beneficiaries to provide it with estimates of such assessment costs, or to cease incurring such costs.*
 - (v) In responding formally to a Network Change proposal, an Access Beneficiary must either accept the proposal in its entirety or object to it on one or more of the grounds specified in Condition G2.1.1(a). Grounds for objection fall into four categories: objections to the proposed change because it would breach the Access Beneficiary's access contract; objections to the change proposal on the grounds that it does not contain sufficient information to allow the Access Beneficiary to make an informed response; objections to the proposed change on the grounds that it would result in a material deterioration in performance that could not adequately be compensated; and objections to the proposed change because it does not take into account the reasonable expectations of the Access Beneficiary in relation to the future use of the part of the Network in question. When making a claim for compensation for costs, losses and expenses which it may incur as a result of the proposed change, an Access Beneficiary must state on what terms it believes such compensation should be paid. The benefits of the change to the Access Beneficiary and its chances of recouping its costs or losses from third parties (including passengers) are to be taken into account when determining the amount of such compensation.*
 - (vi) Network Rail must then either reach agreement with any objecting Access Beneficiaries, refer the matters in dispute in accordance with the ADRR or abandon the proposal. Implementation will then depend on whether the ADRR proceedings result in a determination that the change should be implemented on terms which are acceptable to Network Rail. If no Access Beneficiary objects to a Network Change proposal, Network Rail is entitled to implement following the procedure set out in Condition G10.*
- I. The Short Term Network Change process allows Network Rail to propose to maintain any part of the Network at less than the published capability for a specified period. Condition G8 provides Access Beneficiaries with the ability to request, at Network Rail's cost, the reversal of any such change should they have*

a reasonable expectation as to the future use of the relevant part of the Network before the expiry of the specified period.

J. Where Network Rail wishes to make a Network Change proposal using the Complex Projects Procedure, this should be carried out as follows:

- (i) Before giving formal notice of a proposal for a Network Change which it intends to progress using the Complex Projects Procedure, Network Rail must advise all affected Access Beneficiaries that it intends to initiate that procedure. The information provided must include details of the proposed change, the reasons for it being progressed and a draft plan setting out the intended stages and timetable for the procedure. Network Rail must also include a draft Scope of the proposal.*
- (ii) Network Rail must consult with all affected Access Beneficiaries on the information it has provided. Access Beneficiaries must take all reasonable steps to supply any information that Network Rail has requested to enable it to develop its proposal, and to provide a response to Network Rail within 30 days (or such longer period as Network Rail may specify) of receiving the consultation information. Due consideration must be given to the views contained in all responses and where Network Rail disagrees with the views of any Access Beneficiary, it must send a written explanatory response to that Access Beneficiary.*
- (iii) Once the consultation process outlined above has been completed, Network Rail may, if it wishes to proceed with the proposed Network Change, issue a notice of intended Scope to each affected Access Beneficiary.*
- (iv) Upon receipt of a notice of intended Scope, each Access Beneficiary must within 30 days (or longer if specified by Network Rail) respond in writing to Network Rail stating whether it agrees to the Scope. It can only refuse to agree if it believes that if the Scope were to be proposed as a Network Change at least one of the 'normal' reasons for rejection of a Network Change proposal, set out in Condition G2.1.1(a), would apply (see note H(v) above). Access Beneficiaries who do not respond within the specified timescales, e.g. 30 days, are deemed to have agreed to the Scope.*
- (v) If the Scope cannot be agreed by Network Rail and an affected Access Beneficiary, either party can refer the matter to dispute (using the process set out in Condition G11).*
- (vi) Access Beneficiaries are entitled to be reimbursed 100% of their minimum reasonable costs of assessing Network Rail's notice of proposed Scope. Network Rail may require Access Beneficiaries to provide it with accurate estimates of such assessment costs to enable it to assess whether they are reasonable, or if necessary to cease incurring any further costs.*

- (vii) *At any time before a Network Change notice is issued, Network Rail may issue further notices of intended Scope to consult about the inclusion of further elements which it would like to form part of the Scope.*
 - (viii) *If Network Rail chooses to proceed with a Network Change using the Complex Projects Procedure it may issue a Network Change notice or notices (using the process in Condition G1) to consult on the implementation of Preparatory Works to facilitate the development of the project. Access Beneficiaries must take all reasonable steps to facilitate such works, although they have the same rejection or acceptance rights as they would if the Preparatory Works were issued as a Network Change proposal in their own right.*
 - (ix) *Once the Scope has been agreed by an Access Beneficiary, Network Rail may issue a Network Change notice to consult on the implementation of the proposed change. An Access Beneficiary cannot reject elements of the Scope which are included in such a proposal for Network Change, unless the Scope has changed from that which was agreed such that it is likely materially to affect that Access Beneficiary. If an Access Beneficiary is thus prevented from rejecting the Network Change proposal under normal grounds but would otherwise have been able to do so, it can reject the proposal if it believes the proposal for Network Change is not to the benefit of the industry as a whole.*
- K. *Where an Access Beneficiary wishes to make a Network Change proposal, the procedure is as follows:*
- (i) *The Access Beneficiary ("Sponsor") gives a notice of proposal to Network Rail. Condition G3.2 prescribes the contents of such a notice. In particular, the notice is to contain information on the likely material effects of the Network Change and the reasons for its proposal and proposals as to how Network Rail and affected Access Beneficiaries should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change. Network Rail must then evaluate the proposal and be permitted to consult with Access Beneficiaries and other relevant persons about the effects of the proposal.*
 - (ii) *Within 30 days of receiving the Sponsor's notice, Network Rail gives a notice setting out the Sponsor's proposal and adding further information on its own account (in particular, where it disagrees with elements of the Sponsor's proposal). The notice includes a deadline for Network Rail to respond to the Sponsor's notice of proposal, which may be adjusted in the light of consultation.*
 - (iii) *If the deadline for responses is 90 or more days after the date of Network Rail's notice, the Sponsor may require Network Rail to submit preliminary responses or estimates of the costs, losses and expenses which it may incur as a result of the implementation of the proposed change.*

- (iv) *Network Rail is entitled to be reimbursed 75% of its reasonable costs of assessing a Network Change proposal by the Sponsor. The Sponsor may require Network Rail to provide it with estimates of such assessment costs, or to cease incurring such costs.*
- (v) *In responding formally to a Network Change proposal, Network Rail must state on its own behalf and on behalf of any other Access Beneficiary, whether the proposal is accepted in its entirety or objected to on one or more of the grounds specified in Condition G4.1.1(a) or (b). If a Network Change proposal is accepted and Network Rail and/or an affected Access Beneficiary make a claim for compensation for costs, losses and expenses which it may incur as a result of the proposed change, Network Rail must state on what terms it (or another Access Beneficiary) believes such compensation should be paid. The benefits of the change to Network Rail or any other Access Beneficiary and their chances of recouping their costs or losses from third parties (including passengers) are to be taken into account when determining the amount of any compensation.*
- (vi) *The Sponsor must then either reach agreement with Network Rail and other Access Beneficiaries to the extent that they raise objections to the proposal, refer the matters in dispute for determination in accordance with the ADRR or abandon the proposal. Implementation will then depend on whether the ADRR proceedings (see further Condition G10) result in a determination that the change should be implemented. If there are no objections to the proposal the Sponsor is entitled to require Network Rail to implement it following the procedure set out in Condition G9.*
- (vii) *Where a proposal for Network Change proposed by an Access Beneficiary requires the implementation of a Vehicle Change, that Access Beneficiary must follow the required procedures under Part F as well as those under Part G.*

L. *This Explanatory Note does not form part of the Network Code.*

Revised Part G

DEFINITIONS

In this Part G, unless the context otherwise requires:

“authorised variation”	means a variation to an established Network Change, where: <ul style="list-style-type: none">(a) the terms and conditions on which the Network Change in question was established contain a variation procedure;(b) that variation procedure has been followed in accordance with its terms; and(c) the result of the operation of that variation procedure is that the established Network Change has been varied;
“change”	includes: <ul style="list-style-type: none">(a) improvement or deterioration, enlargement or reduction; and(b) for the purposes of paragraph (b) of the definition of Network Change, a series of changes;
“Complex Projects Procedure”	means the procedure set out in Conditions G5 to G7;
“Effective Date”	means the date specified in a notice of proposal of a Short Term Network Change upon which the Short Term Network Change is proposed to become effective;
“Established Date”	means the first date upon which a Short Term Network Change can be implemented in accordance with Condition G10, whether or not the change is implemented on that day;
“established Network Change”	means a change falling within the definition of “Network Change” and which:

- (a) in the case of a Network Change proposed by Network Rail, Network Rail is entitled to carry out having complied with the procedural and other requirements of this Part G; and
- (b) in the case of a Network Change proposed by an Access Beneficiary, Network Rail is required by this Part G to carry out,

and “establish” and “establishment” of a Network Change shall be construed accordingly;

“Expiry Date” means the date specified in a notice of proposal in relation to a Short Term Network Change which shall not be more than two years, or such longer period as is agreed between Network Rail and each Access Beneficiary that may be affected by the implementation of the proposed Short Term Network Change or determined in accordance with Condition G11, from the later of the Effective Date and the Established Date;

“Governmental Body” 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 Office of Rail Regulation);

“method of delivery” includes the means of securing access to an operational document and the ability to make use of the data contained in an operational document;

“modification” includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

“Network Change” means, in relation to an Access Beneficiary:

- (a) any change in or to any part of the Network (including its layout, configuration or condition) which is likely materially to affect the operation of:
 - (i) the Network; or
 - (ii) trains operated by, or anticipated as being operated in accordance with the terms of any

access option, by or on behalf of that Access Beneficiary on the Network; or

- (b) any change to the operation of the Network (being a change which does not fall within paragraph (a) above) which:
 - (i) is likely materially to affect the operation of trains operated by, or anticipated as being operated in accordance with the terms of any access option, by or on behalf of that Access Beneficiary on the Network; and
 - (ii) has lasted or is likely to last for more than six months,

including

- (x) a temporary speed restriction;
 - (y) a material change to the location of any of the specified points referred to in Condition B1.1(a); or
 - (z) a change to the method of delivery of any operational documentation (other than Railway Group Standards) owned or used by an Access Party; or
- (c) any material variation to an established Network Change, other than an authorised variation,

but does not include a closure (as defined in the Railways Act 2005) or a change made under the Systems Code;

“Preparatory Works” means testing, trials, pilot activities, surveys and all other activities reasonably necessary to develop the proposed Network Change;

“Relevant Costs” means, in respect of any Network Change implemented in accordance with Condition G9:

- (a) in respect of Network Rail, all costs, direct losses and expenses (including loss of revenue and liabilities to other Access Beneficiaries but excluding

liabilities under any Access Beneficiary's Access Agreement as a consequence of any Restriction of Use in connection with the implementation of that Network Change) incurred by Network Rail as a consequence of the implementation of that Network Change;

- (b) in respect of any Access Beneficiary, the amounts which would otherwise be due under that Access Beneficiary's Access Agreement as a consequence of any Restriction of Use in connection with the implementation of that Network Change;

“relevant response date” means:

- (a) in relation to a proposal for a Network Change under Condition G1, the later of such dates as are reasonably specified by Network Rail under Condition G1.2(a) and Condition G1.3.2 as the date on or before which an Access Beneficiary is to give notice of its response to that proposal under Condition G2.1, having regard to:
 - (i) the size and complexity of the change; and
 - (ii) the likely impact of the change on the Access Beneficiary,

and which shall not be less than 30 days from the date on which the notice of the proposal for change is given; and

- (b) in relation to a proposal for a Network Change under Condition G3, the later of such dates as are reasonably specified by Network Rail under Condition G3.3.1(c)(i) and Condition G3.4.3 as the date on or before which it is to give notice of its response to that proposal under Condition G4.1, having regard to:
 - (i) the size and complexity of the change; and
 - (ii) the likely impact of the change on Access

Beneficiaries,

and which shall not be:

- (A) less than 60 days; or
- (B) unless Network Rail and the Sponsor agree otherwise in writing, more than 90 days,

from the date on which Network Rail's notice under Condition G3.3.1(c) is given;

"Scope"	means those elements of the scope of a proposed Network Change that are set out in a notice issued by Network Rail under Condition G5.4;
"Short Term Network Change"	means a Network Change which Network Rail specifies as such in any proposal made under Condition G1, being a Network Change which involves only a temporary reduction in the capability of the Network for a defined period of time during which there is no reasonable expectation of a requirement for the capability being temporarily withdrawn;
"Sponsor"	means, in relation to a proposal for a Network Change under Condition G3.1, the Access Beneficiary which has made the proposal;
"variation"	means any modification to the terms or conditions (including as to the specification of the works to be done, their timing, the manner of their implementation, the costs to be incurred and their sharing, and the division of risk) on which an established Network Change is to be carried out, and "varied" and any other cognate words shall be construed accordingly; and
"variation procedure"	<p>means, in relation to an established Network Change, a procedure which:</p> <ul style="list-style-type: none">(a) forms part of the terms and conditions on which the Network Change is established; and(b) provides for the established Network Change itself to be varied after it has been first established.

CONDITION GA - FACILITATION OF NETWORK CHANGE

A1 *Obligation to facilitate Network Change*

Network Rail shall take all reasonable steps to facilitate the development, establishment and implementation of any proposal for Network Change.

A2 *Limit of obligation*

Condition GA1 does not oblige Network Rail to do anything which it is not required to do under its network licence.

A3 *Facilitation*

The obligation of Network Rail under Condition GA1 includes:

- (a) the provision to an Access Beneficiary of such information concerning the condition, capacity and/or capability of the Network as:
 - (i) Network Rail is required at any time to hold or have appropriate access to under its network licence; and
 - (ii) that Access Beneficiary may reasonably request in connection with the development of a proposal for Network Change (whether the proposal is made by that Access Beneficiary or another person);
- (b) the publication on its website (subject to Condition A3 of the Network Code) of:
 - (i) every proposal for Network Change made by Network Rail under Condition G1.1 or by an Access Beneficiary under Condition G3.1;
 - (ii) every response to a proposal for Network Change made by an Access Beneficiary under Condition G2.1 or by Network Rail under Condition G4.1;
 - (iii) the determinations of matters which have been referred for determination in accordance with the ADRR under Condition G11.1 and which fall to be published in accordance with the ADRR;
 - (iv) every authorised variation;
 - (v) standard forms, produced after consultation with every other Access Party and approved by the Office of Rail Regulation, for the

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notification under this Part G of proposals for Network Change, and of responses to such proposals, which:

- (A) may include different forms for different types of Network Change having regard to the size, complexity and value of the change in question; and
 - (B) shall be used by any person notifying or responding to a proposal for Network Change under this Part G, unless it is not reasonably practicable for it to do so; and
- (vi) model terms and conditions, produced after consultation with every other Access Party and approved by the Office of Rail Regulation, by way of supplement to the terms of this Part G and on which Network Rail is prepared to contract for or in connection with the implementation of a Network Change which:
 - (A) shall provide appropriate and proportionate forms of contract for different types of Network Change having regard to the size, complexity and value of the change in question;
 - (B) may include variation procedures; and
 - (C) shall, so far as reasonably practicable, form the basis of any terms and conditions relating to the implementation of a Network Change which are proposed by Network Rail under Condition G1 or by an Access Beneficiary under Condition G3;
- (c) the provision of a preliminary response to a proposal for Network Change by an Access Beneficiary under Condition G3.4;
- (d) such consultation before a notice of a proposal for a Network Change is submitted by an Access Beneficiary as may reasonably be expected to enable that Access Beneficiary to assess the feasibility and affordability of the proposed change; and
- (e) such consultation with the persons specified in Condition G1.1(a) and G3.1(b) before a notice of a proposal for a Network Change is given by Network Rail or submitted by an Access Beneficiary as:
 - (i) Network Rail considers reasonably necessary; and
 - (ii) any person specified in Condition G1.1(a) and G3.1(b) may reasonably request,

to enable the proposal to be developed in an efficient and economical manner.

CONDITION G1 - NETWORK CHANGE PROPOSAL BY NETWORK RAIL

1.1 *Notice of proposal*

Subject to Conditions G1.9 and G1.10, if Network Rail wishes to make a Network Change, it shall:

- (a) give notice of its proposal for Network Change to:
 - (i) each Access Beneficiary that may be affected by the implementation of the proposed Network Change;
 - (ii) the Secretary of State, and Scottish Ministers if they may be affected by the implementation of the proposed Network Change;
 - (iii) the Office of Rail Regulation; and
 - (iv) each Passenger Transport Executive that may be affected, Transport for London if it may be affected and the Welsh Assembly Government if it may be affected, by the implementation of the proposed Network Change; and
- (b) without delay publish on its website a summary of its proposal for Network Change.

1.2 *Content of notice of proposed Network Change*

A notice of a proposed Network Change given by Network Rail under Condition G1.1 shall:

- (a) state the relevant response date and the obligations of Access Parties under Conditions G1 and G2;
- (b) indicate whether and to what extent the proposed Network Change has been progressed using the Complex Projects Procedure;
- (c) indicate whether the proposed Network Change is a Short Term Network Change;
- (d) invite the persons specified in Condition G1.1(a)(ii)-(iv) to submit comments by the relevant response date;
- (e) contain:

- (i) the reasons why it is proposed to make the change, including the effects it is intended or may reasonably be expected to have on the operation of the Network or on trains operated on the Network;
- (ii) a specification of the works to be done (including a plan showing where the work is to be done and the parts of the Network and associated railway assets likely to be affected);
- (iii) the proposed times within which the works are to be done and when they are intended or may reasonably be expected to be begun and completed;
- (iv) Network Rail's proposals (if any) for the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to Access Beneficiaries in respect of the change;
- (v) in the case of a Short Term Network Change:
 - (A) Network Rail's proposals as to the Effective Date;
 - (B) Network Rail's proposals as to the Expiry Date;
 - (C) the estimated timescale in which the change could reasonably be reversed if so requested by an Access Beneficiary based on its reasonable expectations as to future use of the Network; and
 - (D) the capability of the relevant section of the Network before the proposed Short Term Network Change (and any Short Term Network Change which it succeeds) and the proposed reduction to that capability;
- (vi) any additional terms and conditions which Network Rail proposes should apply to the change, including any proposed variation procedure;
- (vii) the results of any consultation undertaken in accordance with Condition G5; and
- (viii) the results of any Preparatory Works undertaken in accordance with Condition G6; and
- (f) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to

be expected of the persons specified in Condition G1.1(a), to enable any such person to assess the likely effect of the proposed change on its business and its performance of any obligations or the exercise of any discretions which it has in relation to railway services.

1.3 Consultation

1.3.1 Network Rail shall, after giving notice of any proposal for Network Change under Condition G1.1, consult with each operator 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.

1.3.2 After consultation under this Condition G1.3, Network Rail may notify a later relevant response date to the persons to whom the notice of proposal for Network Change was given.

1.4 Obligations on Access Beneficiaries to facilitate Network Change

1.4.1 Except in the circumstances and to the extent specified in Condition G1.4.2, an Access Beneficiary shall, when consulted by Network Rail under Condition G1.3, take all reasonable steps to comply with any written request of Network Rail to provide Network Rail, within a reasonable period of time and at no cost to Network Rail, with:

- (a) a preliminary estimate of those costs, losses and expenses referred to in Condition G2.2; or
- (b) a preliminary written response in respect of the proposed Network Change, which shall:
 - (i) be binding on the Access Beneficiary, unless the Access Beneficiary indicates otherwise; and
 - (ii) if it is negative, include reasons.

1.4.2 An Access Beneficiary shall not be obliged to comply with a request from Network Rail under Condition G1.4.1:

- (a) unless:
 - (i) the relevant response date is 60 or more days after the date on which the proposal for Network Change was given; and

- (ii) the request is made at the same time as Network Rail gives its notice under Condition G1.1; or
- (b) to the extent that the Access Beneficiary is unable to comply with such a request, having regard to the information reasonably available to it.

1.5 *Reimbursement of costs*

Subject to Conditions G1.4 and G2, each Access Beneficiary shall be entitled to reimbursement by Network Rail of 75% of all costs incurred by that Access Beneficiary in assessing any Network Change proposed by Network Rail. Those costs shall be the minimum reasonably necessary for that Access Beneficiary to carry out that assessment.

1.6 *Further information regarding costs*

Each Access Beneficiary shall, upon request from Network Rail from time to time, provide Network Rail with written estimates of the costs of assessing a proposal for Network Change proposed by Network Rail (as referred to in Condition G1.5) 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 evaluation before commencing such work; and
- (b) upon request from Network Rail from time to time, provide Network Rail with such information as may be reasonably necessary to enable Network Rail to assess the reasonableness of any estimate.

1.7 *Accuracy of estimates*

Each Access Beneficiary 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.

1.8 *Obligation to incur no further costs*

An Access Beneficiary shall, if requested by Network Rail 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 Network Rail.

1.9 *Changes to the operation of the Network*

In the case of a Network Change within the meaning of paragraph (b) of that term's definition, Network Rail may commence implementing the procedure set out in this Part G and shall, upon notice being given by the relevant Access Beneficiary to Network Rail 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 Network Rail.

1.10 *Network Change for safety reasons*

To the extent that a Network Change within the meaning of paragraph (a) of that term's definition is required to be made by Network Rail for safety reasons, Network Rail 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. Upon expiry of the relevant period, Network Rail 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 Network Rail.

CONDITION G2 - RESPONSE BY ACCESS BENEFICIARY TO NETWORK CHANGE PROPOSAL

2.1 *Obligation to give notice of response*

2.1.1 The Access Beneficiary shall give notice to Network Rail if it considers that:

- (a) one or more of the following conditions has been satisfied:
 - (i) the implementation of the proposed change would necessarily result in Network Rail breaching an access contract to which that Access Beneficiary is a party;
 - (ii) Network Rail has failed, in respect of the proposed change, to provide sufficient particulars to that Access Beneficiary under Condition G1.2;
 - (iii) the implementation of the proposed change would result in a material deterioration in the performance of that Access Beneficiary's trains which cannot adequately be compensated under this Condition G2 or (where that Access Beneficiary is a Train Operator) in respect of a Restriction of Use in connection with the implementation of the proposed change under that Train Operator's Access Agreement; or

- (iv) the proposed change does not adequately take account of the reasonable expectations of the Access Beneficiary as to the future use of the relevant part of the Network; and/or
 - (b) one or more of the conditions set out in Condition G2.1.1(a) has been satisfied but it is prevented by Condition G5.7 from objecting to the proposed Network Change and the proposed Network Change is not, on the basis of the available evidence and taking account of the alternative solutions available and the progress made with the proposed Network Change, to the benefit of the industry as a whole; and/or
 - (c) it should be entitled to compensation from Network Rail for the consequences of the implementation of the change either:
 - (i) in accordance with compensation terms proposed under Condition G1; or
 - (ii) on terms other than those proposed (if any) under Condition G1.
- 2.1.2 Any notice of the kind referred to in Condition G2.1.1(a) above shall include the reasons for the Access Beneficiary's opinion. Any notice of the kind mentioned in Condition G2.1.1(c)(ii) above shall include the reasons why the Access Beneficiary considers that any compensation terms proposed under Condition G1 are inappropriate and shall detail:
- (a) the amount of compensation required and the methodology used to calculate the amount of compensation required; or
 - (b) if the Access Beneficiary is not reasonably able to provide details of the amount of compensation required, the methodology to be used to calculate the amount of compensation required; and in either case
 - (c) the means by which the compensation should be paid, including any security or other assurances of payment which Network Rail should provide.

The notice referred to above shall contain such detail as is reasonable to enable Network Rail to assess the merits of the Access Beneficiary's decision.

2.2 Amount of compensation

Subject to Condition G2.3 and Condition G2.4.1, 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 are reasonably incurred or can reasonably be expected to be incurred by

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the Access Beneficiary 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 G2.2:

- (a) subject to Condition G2.4.2, the benefit (if any) to be obtained or likely in the future to be obtained by the Access Beneficiary as a consequence of the proposed Network Change; and
- (b) the ability or likely future ability of the Access Beneficiary to recoup any costs, losses and expenses from third parties including passengers and customers.

2.4 *Restrictions of Use*

- 2.4.1 The amount of the compensation referred to in Condition G2.2 shall exclude the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed change.
- 2.4.2 The benefits taken into account in determining the amount of the compensation for the proposed change under Condition G2.3 shall exclude the benefit (if any) to be obtained or likely in the future to be obtained by the Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed change (with that exclusion including any compensation payable to that Train Operator in respect of that Restriction of Use under its Access Agreement).

CONDITION G3 - NETWORK CHANGE PROPOSAL BY ACCESS BENEFICIARY

3.1 *Notice of proposal*

An Access Beneficiary shall, if it wishes Network Rail to make a Network Change:

- (a) submit to Network Rail a proposal for such change; and
- (b) permit Network Rail to consult with:
 - (i) each Access Beneficiary that may be affected by the implementation of the proposed Network Change;

- (ii) the Secretary of State, and Scottish Ministers if they may be affected by the implementation of the proposed Network Change;
- (iii) the Office of Rail Regulation; and
- (iv) each Passenger Transport Executive that may be affected, Transport for London if it may be affected and the Welsh Assembly Government if it may be affected, by the implementation of the proposed Network Change,

to the extent provided for under Condition G3.3.1(b), subject to such requirements as to confidentiality as are reasonable.

3.2 *Content of Sponsor's notice of proposal*

A notice of a proposed Network Change given by the Sponsor under Condition G3.1 shall:

- (a) contain:
 - (i) the reasons why it is proposed to make the change, including the effects it is intended or expected to have on the operation of the Network or on trains operated on the Network;
 - (ii) a specification of the works to be done (including a plan or plans showing where the work is to be done and the parts of the Network and associated railway assets likely to be affected);
 - (iii) the proposed times within which the works are to be done and when they are intended or expected to be begun and completed;
 - (iv) the Sponsor's proposals (if any) for the division of the costs of carrying out the change including any proposals in relation to the calculation or payment of compensation to Network Rail or any Access Beneficiary in respect of the change; and
 - (v) the additional terms and conditions (if any) which the Sponsor proposes should apply to the change, including any variation procedure; and
- (b) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition G3.1(b), to enable:
 - (i) Network Rail; and

- (ii) any person specified in Condition G3.1(b),

to assess the likely effect of the proposed change on its business and its performance of any obligations or exercise of any discretions which it has in relation to railway services.

3.3 *Evaluation of proposal and consultation*

3.3.1 If Network Rail receives a proposal for Network Change under Condition G3.1, it shall:

- (a) evaluate and discuss the proposal for change with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed Network Change on either or both of Network Rail and other operators of trains;
- (b) consult with each person specified in Condition G3.1(b) 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; and
- (c) for the purpose of the consultation under Condition G3.3.1(b), within 30 days of the date on which the Sponsor's notice under Condition G3.1 was given, give a notice to the persons specified in Condition G3.1(b), with a copy to the Sponsor, inviting them to submit comments by the relevant response date and stating:
 - (i) the relevant response date and the obligations of Access Parties under Conditions G3 and G4;
 - (ii) the reasons given by the Sponsor under Condition G3.2(a)(i) for proposing to make the change;
 - (iii) Network Rail's estimate of the likely impact of the change on the operation and performance of the Network; and
 - (iv) Network Rail's own proposals as to:
 - (A) the arrangements for, and any proposed terms applicable to, the implementation of the change;
 - (B) the specification of the works to be done (including a plan or plans showing where the work is to be done and the

parts of the Network and associated railway assets likely to be affected);

- (C) the times within which the works are to be done and when they are intended or expected to be begun and completed;
- (D) the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to Access Beneficiaries in respect of the change; and
- (E) any additional terms and conditions which should apply to the change, including any proposed variation procedure.

3.3.2 In preparing a notice under Condition G3.3.1(c), Network Rail:

- (a) shall comply with the standard specified in Condition G3.2(b); and
- (b) in respect of each of the matters specified in Condition G3.3.1(c)(iv):
 - (i) shall have regard to any relevant statements and proposals contained in the Sponsor's notice under Condition G3.1;
 - (ii) shall give reasons for any differences between those statements and proposals and its own proposals under Condition G3.3.1(c)(iv); and
 - (iii) may annex to its notice any proposal contained in the Sponsor's notice under Condition G3.1 with which it agrees, stating its agreement, and, where appropriate, that it has no proposals of its own on the matter concerned.

3.4 *Facilitation of Network Change by Network Rail*

3.4.1 Except in the circumstances and to the extent specified in Condition G3.4.2, Network Rail shall, when consulted by the Sponsor, take all reasonable steps to comply with any written request of the Sponsor to provide the Sponsor, within a reasonable period of time, and at no cost to the Sponsor, with:

- (a) a preliminary estimate of those costs, losses and expenses referred to in Condition G4.2 which may be incurred by Network Rail; and/or
- (b) a preliminary written response in respect of the proposed Network Change, which shall:

- (i) be binding on Network Rail, unless Network Rail indicates otherwise; and
- (ii) if it is negative, include reasons.

3.4.2 Network Rail shall not be obliged to comply with a request from the Sponsor under Condition G3.4.1:

(a) unless:

- (i) the relevant response date is 90 or more days after the date on which Network Rail's notice under Condition G3.3.1(c) was given; and
- (ii) the request is made within 7 days of the Sponsor receiving Network Rail's notice under Condition G3.3.1(c); or

(b) to the extent that Network Rail is unable to comply with such a request, having regard to the information reasonably available to it.

3.4.3 After consultation with the Sponsor and under Condition G3.3.1(b), Network Rail may notify a later relevant response date to the Sponsor and the persons to whom it gave its notice under Condition G3.3.1(c).

3.5 *Reimbursement of costs*

Subject to Conditions G3.4 and G4, Network Rail shall be entitled to reimbursement by the Sponsor of 75% of all costs incurred by Network Rail in assessing any Network Change proposed by the Sponsor. Those costs shall be the minimum reasonably necessary for Network Rail to carry out that assessment.

3.6 *Provision of estimate of costs by Network Rail*

Network Rail shall, upon request from the Sponsor from time to time, provide the Sponsor with written estimates of the costs of assessing a proposal for Network Change submitted by the Sponsor (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 Sponsor from time to time provide the Sponsor or its agents with such information as may be reasonably necessary to enable the Sponsor to assess the reasonableness of any estimate.

3.7 *Accuracy of estimates*

Network Rail 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*

Network Rail shall, if requested by the Sponsor 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 the Sponsor.

3.9 *Relationship with Vehicle Change*

If the implementation of a Network Change proposed by the Sponsor also requires the implementation of a Vehicle Change in respect of the trains operated by the Sponsor, the Sponsor 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 NETWORK RAIL TO NETWORK CHANGE PROPOSAL

4.1 *Obligation to give notice of response*

4.1.1 Network Rail shall give notice to the Sponsor if:

- (a) it considers that one or more of the following conditions has been satisfied:
 - (i) the implementation of the proposed change would necessarily result in Network Rail breaching any access contract (other than an access contract to which the Sponsor is a party);
 - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition G3.2 provided that Network Rail shall first have given the Sponsor a reasonable opportunity to remedy that failure;
 - (iii) the implementation of the proposed 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 in respect of a Restriction of Use in connection with the implementation of the proposed change under the relevant Train Operator's Access Agreement; or

- (iv) the proposed change does not adequately take account of the reasonable expectations of an Access Party (other than the Sponsor) as to the future use of the relevant part of the Network;
 - (b) any Access Beneficiary shall have given notice to Network Rail 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 either:
 - (i) in accordance with compensation terms proposed under Condition G3; or
 - (ii) on terms other than those proposed (if any) under Condition G3; and/or
 - (d) any Access Beneficiary shall have given notice to Network Rail that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either:
 - (i) in accordance with compensation terms proposed under Condition G3; or
 - (ii) on terms other than those proposed (if any) under Condition G3.
- 4.1.2 Any notice of the kind referred to in Conditions G4.1.1(a) and (b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in Conditions G4.1.1(c)(ii) and (d)(ii) above shall include the reasons why Network Rail or the relevant Access Beneficiary considers that any compensation terms proposed under Condition G3 are inappropriate and shall detail:
- (a) the amount of compensation required and the methodology used to calculate the amount of compensation required; or
 - (b) if Network Rail or the relevant Access Beneficiary is not reasonably able to provide details of the amount of compensation required, the

methodology to be used to calculate the amount of compensation required; and in either case

- (c) the means by which the compensation should be paid, including any security or other assurances of payment which the Sponsor should provide.

The notice referred to above shall contain such detail as is reasonable to enable the Sponsor to assess the merits of Network Rail or the relevant Access Beneficiary's decision.

4.2 *Amount of compensation*

Subject to Condition G4.3, the aggregate of the amount of the compensation referred to in Condition G4.1 shall be:

- (a) subject to Condition G4.4.1 an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by Network Rail or the relevant Access Beneficiary 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 improving its ability to compete with other operators of railway assets; and
- (b) an amount equal to the amount of costs, direct losses or expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by Network Rail as consequence of implementing a Network Change including the recovery of any payments made by Network Rail to the relevant Train Operator under that Train Operator's Access Agreement for the relevant Restriction(s) of Use.

4.3 *Benefits to be taken into account*

There shall be taken into account in determining the amount of compensation referred to in Condition G4.2:

- (a) subject to Condition G4.4.2 the benefit (if any) to be obtained or likely in the future to be obtained by Network Rail or the relevant Access Beneficiary as a consequence of the implementation of the proposed change; and

- (b) the ability or likely future ability of Network Rail or the relevant Access Beneficiary to recoup any costs, losses and expenses from third parties including passengers and customers.

4.4 *Restrictions of Use*

- 4.4.1 The amount of the compensation referred to in Condition G4.2 shall in respect of any Train Operator exclude the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by that Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed change.
- 4.4.2 The benefits taken into account in determining the amount of the compensation for the proposed change under Condition G4.3 shall in respect of any Train Operator exclude the benefit (if any) to be obtained or likely in the future to be obtained by that Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed change (with that exclusion including any compensation payable to that Train Operator in respect of that Restriction of Use under its Access Agreement).

CONDITION G5 - SCOPE OF COMPLEX PROJECTS

5.1 *Consultation prior to making a proposal for Network Change using the Complex Projects Procedure*

Before submitting a proposal for Network Change which Network Rail intends to establish using the Complex Projects Procedure, Network Rail shall provide the following information to each Access Beneficiary which it considers may be affected by the implementation of the proposed Network Change:

- (a) that Network Rail intends to initiate the Complex Projects Procedure in respect of the proposed Network Change;
- (b) the details of the proposed Network Change which Network Rail can reasonably make available;
- (c) the reasons why Network Rail believes that the proposed Network Change is required including the effects it is intended or may reasonably be expected to have on the operation of the Network or on trains operated on the Network;

- (d) the reasons why Network Rail believes that the proposed Network Change should be established in accordance with the Complex Projects Procedure;
- (e) any other information Network Rail reasonably believes an affected Access Beneficiary may reasonably require to understand the proposed Network Change;
- (f) a draft plan setting out the intended stages and timetable for the Complex Projects Procedure; and
- (g) the Scope that Network Rail intends to propose under Condition G5.4.

5.2 Consultation with affected Access Beneficiaries

Network Rail shall, having provided the information set out in Condition G5.1, consult with each Access Beneficiary which it considers may be affected by the proposed change. During the consultation process Network Rail shall give due consideration to the views of each Access Beneficiary and, where Network Rail disagrees with the views of an Access Beneficiary, shall provide that Access Beneficiary with a written response setting out the reasons why Network Rail disagrees with the views of that Access Beneficiary.

5.3 Facilitation by Access Beneficiaries

Access Beneficiaries consulted under Condition G5.2 shall take all reasonable steps to make the consultation process effective, including:

- (a) the taking of all reasonable steps to provide Network Rail with such information as Network Rail reasonably requests in connection with the development of the proposal for Network Change under Condition G5.1; and
- (b) the provision to Network Rail of a response to Network Rail's consultation under Condition G5.2 in relation to the proposed Network Change within 30 days of being consulted by Network Rail, or such longer period as Network Rail may specify.

5.4 Notice of intended Scope

Once the consultation procedure set out in Conditions G5.2 and G5.3 has concluded, Network Rail may, if it wishes to proceed with the proposed Network Change using the Complex Projects Procedure, issue a notice of intended Scope to each Access Beneficiary which it considers may be affected.

5.5 *Response to notice of intended Scope*

Each Access Beneficiary that receives a notice of intended Scope from Network Rail under Condition G5.4 shall, within 30 days, or such longer period as Network Rail specifies, of the receipt of such notice, respond to Network Rail in writing stating either that it:

- (a) agrees to the Scope set out in the notice; or
- (b) does not agree to the Scope set out in the notice and it considers that there is a reasonable likelihood that, if the Scope were to be proposed as part of a Network Change under Condition G1, the Access Beneficiary would be likely to succeed in preventing the Network Change being established solely due to it being entitled to give notice under Condition G2.1.1(a).

Any notice under (b) above that an affected Access Beneficiary does not agree to the Scope set out by Network Rail in the notice of intended Scope shall include the reasons why the affected Access Beneficiary does not so agree.

If an Access Beneficiary receives a notice of intended Scope from Network Rail under Condition G5.4 and fails to respond to Network Rail in writing within 30 days, or such longer period as Network Rail specifies, of the receipt of such notice, the affected Access Beneficiary shall be deemed to have agreed to the Scope as if the affected Access Beneficiary had given notice to Network Rail under Condition G5.5(a).

5.6 *Failure to agree Scope*

If an Access Beneficiary does not agree to the Scope under Condition G5.5(b), then Network Rail and the Access Beneficiary may enter into discussions with a view to agreeing the Scope, including any changes to the Scope which may be appropriate. At any time after an Access Beneficiary serves a notice under Condition G5.5(b) any Access Party may refer the issue in accordance with the ADRR for determination in accordance with Condition G11.

5.7 *Effect of agreement of Scope*

Once the relevant Scope of the proposed Network Change has been agreed under Conditions G5.5 or G5.6 or determined under Condition G5.6 with an Access Beneficiary, that Access Beneficiary shall not be entitled to give notice to Network Rail subsequently under Condition G2.1.1(a) to challenge any elements of the Network Change to the extent included in the Scope except where there is a change to the Scope which is likely materially to affect the Access Beneficiary since the Scope was agreed under Conditions G5.5 or G5.6 or determined under Condition G5.6.

5.8 *Costs incurred by Access Beneficiaries due to the consultation process*

An Access Beneficiary shall be entitled to reimbursement by Network Rail of 100% of all costs reasonably incurred by that Access Beneficiary in complying with its obligations under Conditions G5.3 and G5.5. The costs shall be the minimum reasonably necessary for that Access Beneficiary to carry out the assessment.

5.9 *Further information regarding costs*

Each Access Beneficiary shall, upon request from Network Rail from time to time, provide Network Rail with written estimates of the costs of complying with its obligations under Conditions G5.3 and G5.5 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 evaluation before commencing such work; and
- (b) upon request from Network Rail from time to time, provide Network Rail with such information as may be reasonably necessary to enable Network Rail to assess the reasonableness of any estimate.

5.10 *Accuracy of estimates*

Each Access Beneficiary 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.

5.11 *Obligation to incur no further costs*

An Access Beneficiary shall, if requested by Network Rail at any time, incur no further costs (except any costs which cannot reasonably be avoided) in respect of any consultation in respect of a proposed Network Change to which this Condition G5 applies.

5.12 Further agreement of Scope

If, at any time before Network Rail issues a notice of proposed change under Condition G1.1, Network Rail wishes to agree further elements of the proposed Network Change to be included in the Scope, Network Rail may issue further notices of intended Scope in respect of such further elements in accordance with Conditions G5.1 to G5.11 and once agreed or determined in accordance with Conditions G5.5 or G5.6 such further elements will be included in and form part of the Scope.

CONDITION G6 - PREPARATORY WORKS

6.1 Network Rail's obligations in relation to Preparatory Works

Network Rail may, if it wishes to proceed with a proposed Network Change using the Complex Projects Procedure, make proposals for the implementation of Preparatory Works under Condition G1, and except as provided in this Condition G6, Access Beneficiaries shall have the same rights in respect of such proposals as if each proposal of Preparatory Works was a separate Network Change proposal.

6.2 Obligations of Access Beneficiaries in relation to Preparatory Works

Each Access Beneficiary which is likely to be affected by the Preparatory Works shall take all reasonable steps to facilitate the Preparatory Works which are undertaken by Network Rail including by the taking of all reasonable steps to provide Network Rail with such information as Network Rail reasonably requests in connection with the development of the Preparatory Works.

6.3 Further Preparatory Works

If at any time Network Rail is reasonably of the view that further Preparatory Works are required, Network Rail shall propose such further Preparatory Works in accordance with this Condition G6.

CONDITION G7 - COMPLEX PROJECTS NETWORK CHANGE

If, having previously agreed or determined the Scope in accordance with Conditions G5.5 or G5.6, Network Rail wishes to implement a Network Change which it has progressed using the Complex Projects Procedure, it shall propose the Network Change in accordance with Condition G1.

CONDITION G8 - SHORT TERM NETWORK CHANGE

8.1 Reversal of a Short Term Network Change

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- 8.1.1 An Access Beneficiary may request in writing that Network Rail reverse the effect of a Short Term Network Change before its Expiry Date if the effect of the Short Term Network Change would prevent the Access Beneficiary using the Network in a manner consistent with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the Network.
- 8.1.2 The Access Beneficiary shall include with any notice requesting the reversal of the effect of a Short Term Network Change served under Condition G8.1.1 evidence to support the Access Beneficiary's claim of reasonable expectations as to the future use of the relevant part of the Network which requires that reversal.
- 8.1.3 The Access Beneficiary shall provide Network Rail with such further information as Network Rail may reasonably require to enable Network Rail to assess the reasonableness of the Access Beneficiary's request to reverse the effect of a Short Term Network Change.
- 8.1.4 Upon receipt of a notice to reverse the effect of a Short Term Network Change served under Condition G8.1.1, Network Rail shall:
- (a) reverse the effect of the Short Term Network Change at its own cost by the later of the following:
 - (i) the earlier of:
 - (A) the estimated timescale for reversal set out in the notice of proposed Network Change served under Condition G1.1; and
 - (B) the timescale within which Network Rail can complete the reversal without incurring any greater cost than would have reasonably been incurred by Network Rail had the effect of the Short Term Network Change been reversed in accordance with the estimated timescale for reversal set out in the notice of proposed Network Change served under Condition G1.1; or
 - (ii) the earliest use for which the Access Beneficiary can demonstrate a reasonable expectation as to future use; or
 - (b) respond to the Access Beneficiary in writing within 30 days stating that Network Rail does not believe that the effect of the Short Term Network Change is preventing the Access Beneficiary using the Network in accordance with the reasonable expectations of that Access Beneficiary

as to the future use of the relevant part of the Network and giving reasons for its decision.

Network Rail shall not be liable to any Access Beneficiary if and to the extent that the date of the requested reversal is earlier than the date by which Network Rail must reverse the effect of the Short Term Network Change as calculated under Condition G8.1.4(a).

8.2 *Expiry of a Short Term Network Change*

Network Rail shall restore at its own cost any part of the Network which has been subject to a Short Term Network Change to its original capability as set out in the notice of proposal for the Short Term Network Change by the Expiry Date unless and to the extent that:

- (a) a Network Change has been implemented in place of the Short Term Network Change; or
- (b) a further Short Term Network Change has been implemented.

8.3 *Notification of reversal of a Short Term Network Change prior to the Expiry Date*

Network Rail shall publish details of each Short Term Network Change which is reversed prior to the Expiry Date.

CONDITION G9 - CHANGES IMPOSED BY COMPETENT AUTHORITIES

Where Network Rail 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 Office of Rail Regulation exercising any of its functions which do not fall within the definition of 'safety functions' as defined in section 4 of the Act:

- (a) Network Rail 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 Condition G1.2(e)(iv)) in respect of that Network Change;
- (b) each Access Beneficiary 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 F2.1, F2.2 and F2.3 (other than Conditions F2.2(a)(vi) and F2.3.1(c)(v)(B) and (D));

- (c) subject to Condition G9(d), each Access Party shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof;
- (d) where Network Rail recovers compensation in respect of that Network Change from a Competent Authority or some other Governmental Body, it shall pay to Access Beneficiaries:
 - (i) where any compensation paid to Network Rail in relation to that Network Change is sufficient to cover the Relevant Costs of the Access Beneficiary and of Network Rail, the Relevant Costs of the Access Beneficiary; and
 - (ii) where such compensation is not so sufficient, such proportion of that compensation as the Access Beneficiary's Relevant Costs bears to the sum of Network Rail's Relevant Costs and all the Access Beneficiary's Relevant Costs in respect of that Network Change; and
- (e) Network Rail shall use reasonable endeavours to negotiate with the relevant Competent Authority or Governmental Body (as applicable) a level of compensation in respect of that Network Change which is sufficient to ensure that the Access Beneficiary receives compensation for all of its Relevant Costs. Network Rail shall from time to time consult with the Access Beneficiary and keep the Access Beneficiary informed in reasonable detail of the progress of such negotiations.

CONDITION G10 - ESTABLISHMENT AND IMPLEMENTATION

10.1 *Implementation of a Network Rail proposed Network Change*

10.1.1 Network Rail shall be entitled to implement a proposed Network Change if:

- (a) it has not received a notice from any Access Beneficiary under Condition G2.1 by the relevant response date; or
- (b) it has received notice by the relevant response date from an Access Beneficiary under Condition G2.1(c) and either the amount of any compensation referred to in Condition G2.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11; and
- (c) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed change between Network Rail and any affected Access Beneficiary.

10.1.2 Network Rail may, if it considers it expedient to do so in order to confirm whether or not Condition G10.1.1 has been satisfied, issue a notice to all affected Access Beneficiaries when it reasonably believes it is entitled to implement a proposed Network Change.

10.1.3 Network Rail's entitlement to implement a proposed Network Change shall be treated as confirmed 21 days after it has served a notice in respect of that Network Change in accordance with Condition G10.1.2 unless it receives notice from an Access Beneficiary within those 21 days disputing Network Rail's entitlement to implement that proposed Network Change under Condition G10.1.1 and giving full particulars of its reasons.

10.1.4 If Network Rail does not agree with the contents of a notice served by an affected Access Beneficiary in accordance with Condition G10.1.3, Network Rail may:

- (a) refer the matter for determination in accordance with the ADRR and Condition G11 shall apply; or
- (b) withdraw the proposed Network Change.

10.2 *Implementation of a Sponsor proposed Network Change*

10.2.1 The Sponsor shall be entitled to instruct Network Rail to implement a proposed Network Change if:

- (a) Network Rail has not given notice under Condition G4.1 by the relevant response date; or
- (b) Network Rail has given notice by the relevant response date under Condition G4.1.1(c) and either the amount of any compensation referred to in Condition G4.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11; or
- (c) Network Rail has received notice from an Access Beneficiary under Condition G4.1.1(d) and either the amount of any compensation referred to in Condition G4.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11; and
- (d) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed change between the Sponsor and any Access Party.

10.2.2 The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition G10.2.1 has been satisfied, instruct Network Rail to issue a notice to all affected Access Beneficiaries when the Sponsor reasonably believes that it is entitled to instruct Network Rail to implement a proposed Network Change and Network Rail shall then serve such a notice within 7 days of the instruction.

10.2.3 The Sponsor's entitlement to instruct Network Rail to implement a proposed Network Change shall be treated as confirmed 35 days after Network Rail has served a notice in respect of that Network Change in accordance with Condition G10.2.2 unless:

- (a) Network Rail gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G10.2.1 and giving full particulars of its reasons; or
- (b) Network Rail receives notice from an Access Beneficiary within 21 days of the notice served by Network Rail disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G10.2.1 and giving full particulars of its reasons.

10.2.4 If the Sponsor does not agree with the contents of a notice served by Network Rail or an affected Access Beneficiary in accordance with Condition G10.2.3, the Sponsor may:

- (a) refer the matter for determination in accordance with the ADRR and Condition G11 shall apply; or
- (b) withdraw the proposed Network Change.

10.3 *When a Network Change may not be implemented*

10.3.1 Network Rail shall not be entitled, and a Sponsor shall not be entitled to require Network Rail, to implement a proposed Network Change unless it is so entitled to implement, or require the implementation of that Network Change under Condition G10.1.1 or Condition G10.2.1.

10.3.2 For the purposes of the Conditions G10.1.1 and G10.2.1, unresolved disputes shall include:

- (a) a notice has been served under Condition G2.1.1(a) or (b) or Condition G4.1.1(a) or (b) which has not been withdrawn, resolved under Condition G11 or agreed not to apply; and

- (b) a notice has been served under Condition G2.1.1(c) or Condition G4.1.1(c) or (d) which has not been agreed or resolved as referred to in Condition G10.1.1(b) or G10.2.1(b) or (c) or otherwise agreed, resolved or withdrawn.

CONDITION G11 - APPEAL PROCEDURE

11.1 *Right of referral in accordance with the ADRR*

If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure in this Part G;
- (b) the contents of any notice given under Condition G2.1, G4.1, G5.5, G8.1.1 or G10 (and, in particular, the amount of any compensation referred to in those Conditions);
- (c) any estimate referred to in Condition G1.6 or G3.6;
- (d) the:
 - (i) proposed Expiry Date; or
 - (ii) estimated timescale in which a Short Term Network Change can be reasonably reversed,

in a notice of proposed Network Change given under Condition G1.1; or

- (e) the reasons given by Network Rail as to why it does not believe that the effect of the Short Term Network Change is preventing the Access Beneficiary using the Network in accordance with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the Network under Condition G8.1.4(b),

that Access Party may refer the matter for determination in accordance with the ADRR.

Part H – Railway Operational Code

Explanatory Note

- A. *Part H sets out a requirement for Network Rail, in consultation with the industry, to establish a Railway Operational Code (the “ROC”). The ROC has the objective of sustaining operation of train services on the network in accordance with the working timetable, as well as where necessary restoring operation in accordance with the working timetable, having regard to the needs of passengers and freight customers; the interests of safety and security; the efficient and economical operation of the network and of trains operating on it; and criteria published by the Office of Rail Regulation.*
- B. *The ROC is to be kept under regular review, and covers such issues as notification of disruptive events; contingency plans; clearance of track blockages and assistance to failed trains; emergency timetabling procedures; control arrangements; train regulation; seasonal-preparedness; and other matters necessary or expedient to achieve its objective.*
- C. *Part H also sets out a procedure for varying the ROC, which includes all ROC Sections and Subsidiary Documentation. A ROC Section may also set out its own procedure for varying the ROC Section in question or Subsidiary Documentation produced under that ROC Section. Subsidiary Documentation may itself also contain procedures governing its own variation which are additional to or are intended to replace the procedures set out in Part H.*
- D. *Guidance on the management of operational disruption is now contained in the ROC, which can be found on Network Rail’s website.*
- E. *This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

In this Part H, unless the context otherwise requires:

“appeal” means, in relation to a ROC Section, the exercise by a person of a right under this Part H to make a reference in that respect in accordance with the ADRR;

“Appeal Body” means the dispute resolution forum from time to time constituted under or appointed to make the decision in accordance with the ADRR;

“Disruptive Event” means any event or circumstance which materially prevents or materially disrupts the operation of trains or any part of the Network in accordance with the Working Timetable;

“established” means, in relation to a ROC Section, or a variation to a ROC Section, as the case may be, that the ROC Section or the variation has come into effect whether:

- (a) following publication of the ROC Section or the variation (or if publication is not required notification of the ROC Section or the variation to affected Train Operators) with no appeal being lodged within the time limit for such appeal or, if such an appeal has been lodged, it has not been proceeded with; or
- (b) following any interim or final determination of an appeal in that respect if an appeal is lodged and proceeded with,

and subject always to:

- (i) adjustment following final determination of an appeal under Condition H4; or
- (ii) variation under Condition H5,

and “establish” and “establishment” shall be construed accordingly;

“Extended Disruption”	means a Disruptive Event which is likely to be of sufficient duration as to make it practicable to adopt a revised timetable;
“Objective”	means the objective of the Railway Operational Code specified in Condition H1.2;
“ORR ROC Criteria”	means any document published by the Office of Rail Regulation from time to time specifying the matters to which the Office of Rail Regulation will expect to have regard and the relative weight which it will expect to be placed on such matters when any reference made under Condition HA7 is considered by an Appeal Body;
“Permitted Exemptions”	has the meaning ascribed to it in Condition H3.3;
“Railway Operational Code”	has the meaning ascribed to it in Condition H1.1;
“ROC Plan”	<p>means a plan for the establishment of the Railway Operational Code which shall:</p> <ul style="list-style-type: none"> (a) comply in all respects with this Part H; (b) be consistent with the ORR ROC Criteria; (c) specify a clear and achievable timetable for the establishment of each ROC Section and the full Railway Operational Code; and (d) show in reasonable detail the proposed organisation of the Railway Operational Code; and
“ROC Section”	means a section of the Railway Operational Code covering one or more of the matters specified in Condition H3 or any part of them.
“Subsidiary Documentation”	means all plans, procedures and documents which are required to be produced under one or

more ROC Sections and designated as
Subsidiary Documentation under them.

H1 *Railway Operational Code and its Objective*

H1.1 *Railway Operational Code*

The Railway Operational Code is a code established under this Part H and references to the Railway Operational Code include each ROC Section when it is established and all Subsidiary Documentation.

H1.2 *Objective*

The objective of the Railway Operational Code is to sustain and, where necessary, restore expeditiously the operation of Services in accordance with the Working Timetable and in a manner consistent with the ORR ROC Criteria, having regard to:

- (a) the needs of passengers and freight customers;
- (b) the interests of safety and security; and
- (c) the efficient and economical operation of the Network and of trains operating on it.

H1.3 *Relationship to the Network Code*

The Railway Operational Code:

- (a) may only be varied under Part H of the Network Code; and
- (b) does not form part of the Network Code.

H2 *Obligation to observe the Railway Operational Code*

Network Rail and each Train Operator shall comply with the Railway Operational Code.

H3 *Scope of Railway Operational Code*

H3.1 The Railway Operational Code contains:

- (a) a specification of the procedures and policies by which Network Rail, in cooperation with Train Operators, will promote achievement of the Objective, including:
 - (i) a procedure for notification of, and communication in relation to, Disruptive Events or reasonably foreseeable Disruptive Events;
 - (ii) train regulation policies;
 - (iii) an emergency timetable procedure in the event of Extended Disruption;
 - (iv) arrangements for clearance of track blockages and assistance for failed trains;
 - (v) arrangements for:
 - (A) the provision of equipment to deal with adverse weather conditions; and
 - (B) the preparation for and response to seasonal disruptions;
 - (vi) control arrangements; and
 - (vii) other matters which it is necessary or expedient should be covered in order to promote achievement of the Objective;
- (b) procedures for reviewing and monitoring the effectiveness of the Railway Operational Code; and
- (c) procedures for the production, review, approval and publication of Subsidiary Documentation.

H3.2 *Publication*

The ROC shall be published on its website by Network Rail subject to:

- (a) Condition A3 of the Network Code; and
- (b) Permitted Exemptions.

H3.3 *Permitted Exemptions*

Permitted Exemptions are any matters contained in a ROC Section in respect of which the ORR ROC Criteria provide that general publication under Condition H3.2 is not required.

H3.4 *Subsidiary Documentation*

All Subsidiary Documentation shall:

- (a) be of a standard which is consistent with promoting the achievement of the Objective and the requirement for compliance under Condition H2; and
- (b) be subject to procedures for review and (where applicable) approval which are in accordance with the ORR ROC Criteria.

H4 *Appeals*

H4.1 *Right of appeal in accordance with the ADRR*

Subject to Condition H4.3, if any Train Operator is dissatisfied as to any matter concerning or in connection with:

- (a) any variation of a ROC Section issued under Condition H5; or
- (b) any decision by Network Rail not to implement a variation proposed by a Train Operator under Condition H5.2,

the Train Operator may refer the matter for determination in accordance with the ADRR (as supplemented or varied by this Condition H4).

H4.2 *Time limits for appeal*

A Train Operator's right of appeal under Condition H4.1 shall lapse if the relevant matter is not referred in accordance with the ADRR in the case of a variation under Condition HA5:

- (a) if Condition H5.5(a) applies, within 30 days of the later of the date on which it is published and the date on which it is notified to that Train Operator under Condition H5.9, or
- (b) if Condition H5.5(b) applies, within the period specified for such appeal in the relevant ROC Section.

H4.3 *Information to be sent in relation to the appeal*

Without prejudice to Condition H4.6, if there has been a reference for determination in accordance with the ADRR under Condition H4.1:

- (a) in the case of a referral under Condition H4.1, Network Rail shall provide the Train Operator and the Secretary with the name and address of every other Train Operator who Network Rail reasonably considers may be affected by the ROC Section variation within 7 days of the making of the reference; and
- (b) the person making the reference shall:
 - (i) include with his reference a statement in reasonable detail as to the matter in question and his reasons for making the reference; and
 - (ii) within 14 days of the reference Network Rail shall publish a copy of the reference and the statement specified in Condition H4.4(b)(i).

H4.4 *Criteria for appeal*

Any matter referred under Condition H4.1 shall be determined by reference to the most effective manner of promoting the achievement of the Objective.

H4.5 *Issue of adjusted ROC Section*

When any appeal brought under this Condition H4 has been finally concluded, Network Rail shall promptly publish on its website and, if the outcome of the appeal is the adjustment of the ROC Section, send to each affected Train Operator and any other person who notified Network Rail that it wished to be consulted under Condition H5.6(c) and the Office of Rail Regulation) the ROC Section as adjusted by the outcome of such appeal.

H5 *Variations to Railway Operational Code*

Conditions H5.1 to Conditions H5.4 inclusive apply to all variations to the Railway Operational Code including all Subsidiary Documentation. Notwithstanding the provisions of Conditions H5.1 to H5.4 inclusive:

- (a) additional procedures for varying Subsidiary Documentation may be contained in and required by a ROC Section or the Subsidiary Documentation itself, and
- (b) procedures for varying Subsidiary Documentation in substitution for those under all or any of Conditions H5.1 to H5.4 inclusive may also be contained in and required by the relevant Subsidiary Documentation itself.

Conditions H5.5 and H5.9 apply only to variations to ROC Sections.

H5.1 *Mandatory Variations*

Network Rail shall propose variations to the Railway Operational Code:

- (a) at any time if it reasonably considers that this is necessary in order better to promote the achievement of the Objective, striking a balance between:

- (i) the need for Network Rail and Train Operators to be able to plan their businesses with a reasonable degree of assurance; and
 - (ii) the need for flexibility to address new requirements, including new timetables, introduction of new rolling stock and changes to the infrastructure and traffic patterns; and
- (b) at any time, whether or not paragraph (a) above applies, if required to do so by notice from the Office of Rail Regulation.

H5.2 *Variations proposed by a Train Operator*

A Train Operator may propose to Network Rail variations to the Railway Operational Code if it reasonably considers that this is necessary in order better to promote the achievement of the Objective and any such proposal shall include:

- (a) the reasons why it is proposed to make the variation; and
- (b) details of the proposed variation.

H5.3 *Procedure for variations proposed by a Train Operator*

Following receipt of a proposed variation to the Railway Operational Code from a Train Operator under Condition H5.2 Network Rail shall:

- (a) evaluate and discuss the proposed variation with that Train Operator for such period as is reasonable having due regard to the likely impact of the proposed variation on either or both of Network Rail and other operators of trains; and
- (b) following the evaluation and discussion;
 - (i) implement the variation under Condition H5.4; or
 - (ii) propose a variation under Condition H5.1 to implement the proposed variation; or

- (iii) inform the Train Operator that Network Rail does not propose to implement the proposed variation, giving reasons for its decision.

H5.4 *Variations by agreement*

- (a) Subject to the provisions of Condition H5.4(b), if Network Rail and any relevant Train Operator agree a variation to the Railway Operational Code which affects only that Train Operator:
 - (i) Network Rail shall notify the Office of Rail Regulation of the proposed variation; and
 - (ii) the variation shall become effective on the date agreed for its implementation (which shall be not less than 7 days from the date of Network Rail's notice under Condition H5.4(a)(i));
- (b) If Network Rail and any relevant Train Operator agree a variation to the Railway Operational Code which affects only that Train Operator and is a variation to Subsidiary Documentation only, the variation shall become effective on the date agreed for its implementation and Condition H5.4(a)(i) and (ii) shall not apply.

H5.5 *Variations proposed by Network Rail*

Where any change to the Railway Operational Code under Condition H5.1 is a change to a ROC Section, Network Rail shall:

- (a) follow the procedure for establishing the variation under Conditions H5.6, H5.7 and H5.8; or
- (b) if the proposed variation falls within any modification procedure contained in the relevant ROC Section as established, Network Rail shall follow that procedure provided that such modification procedure contains:
 - (i) a right of appeal for any Train Operator who is dissatisfied as to any matter concerning or in connection with the variation and a time limit for bringing that appeal; and

- (ii) a mechanism for establishing the variation,

and in either case, Network Rail shall specify the reason for the variation and the timing for implementing the variation (which shall not be less than 30 days from the date of notification of the proposed variation in accordance with the relevant procedure).

H5.6 *Consultation on a ROC Section variation*

Where Condition H5.5(a) applies, Network Rail shall:

- (a) publish and send details of the proposed variation to each affected Train Operator, the Secretary of State, the Office of Rail Regulation, any Passenger Transport Executive, the Scottish Ministers, Transport for London and the Welsh Assembly Government;
- (b) consult each Train Operator likely to be affected by the proposed variation, and invite the submission to it of representations or objections within a period or not less than 30 Working Days from the date of notification; and
- (c) if the Secretary of State, the Office of Rail Regulation, any Passenger Transport Executive, the Scottish Ministers, Transport for London or the Welsh Assembly Government gives notice to Network Rail that it wishes to be consulted on any matter concerning the ROC Section, consult with that party.

H5.7 Each Train Operator or other party consulted under H5.6 shall:

- (a) consider the matters on which Network Rail has consulted it; and
- (b) give notice to Network Rail of any representations or objections it wishes to make in relation to the consultation no later than the date for concluding the consultation specified under Condition H5.6(b).

H5.8 Following consideration of all representations and objections received under Condition H5.7, Network Rail shall consider whether the proposed variation should be implemented and if it concludes that it should, then

Network Rail shall act in accordance with Condition H5.9 and thereby, subject to Condition H4, establish the variation.

H5.9 *Issue of varied ROC Section*

Network Rail shall publish on its website in accordance with Condition H3.2 any variation to a ROC Section, and send a copy of the revised ROC Section to each affected Train Operator, the Office of Rail Regulation and any other person who notified Network Rail that it wished to be consulted under Condition H5.6(c).

H5.10 *Consequential changes to ROC Sections*

Where any changes are made to this Part H that require consequential changes to be made to any ROC Section, those consequential changes shall be made and be effective from the date on which the relevant change to Part H is established. Network Rail shall, within 30 Working Days of the establishment of the revised Part H, make any necessary changes to the Railway Operational Code and publish and issue any revised ROC Sections in accordance with Condition H5.9.

Part J – Changes to Access Rights

Explanatory Note

- A. *Part J provides a number of mechanisms by which a Train Operator's track access rights can be changed, either at the Train Operator's instigation or in circumstances where the Train Operator would prefer to retain the rights concerned. The processes relating to each mechanism are illustrated in the flow charts appended to this Explanatory Note. Before any of the mechanisms are activated, parties are encouraged to enter into informal discussions to consider the most appropriate manner to address specific issues.*
- B. *Condition J2 sets out a process by which a Train Operator can request information about the voluntary surrender or adjustment of its access rights and, if it wishes to take up that opportunity, can secure the surrender or adjustment.*
- C. *Condition J3 is intended to ensure that confidential information relating to a proposed surrender or adjustment of access rights is dealt with in a way that protects the interests of all parties where disclosure would or might, in Network Rail's reasonable opinion, seriously and prejudicially affect the interests of that Train Operator.*
- D. *Conditions J4 and J5 form the use it or lose it (UIOLI) mechanism in Part J. Condition J4 empowers Network Rail to initiate a process leading to the loss of a Train Operator's rights, but does not require Network Rail to do so. Condition J5 deals with circumstances where a third party Train Operator wishes to use capacity on the Network which it considers the Train Operator is not using and where the third party Train Operator cannot otherwise gain the access it wishes.*
- E. *Condition J6 provides for the reduction of the Incumbent's cordon cap where it loses rights under the UIOLI mechanism. This is necessary because cordon caps are not in themselves rights, or characteristics of rights, but are a restriction on the Train Operator's use of a right¹. Condition J6.1 provides that Condition J6 cannot apply in isolation from*

¹ A cordon cap is the maximum number of train slots per day in a given direction in respect of a service to which a Level Two Right applies which is planned to go via a named cordon on the Network. Cordon caps are used for parts of the Network where capacity is constrained, allowing for other operators' firm rights and in some cases a margin of unused capacity for other potential operators or short term spot bidding. Without the cordon caps, Network Rail would be required to include more train slots in the working timetable than the Network could accommodate.

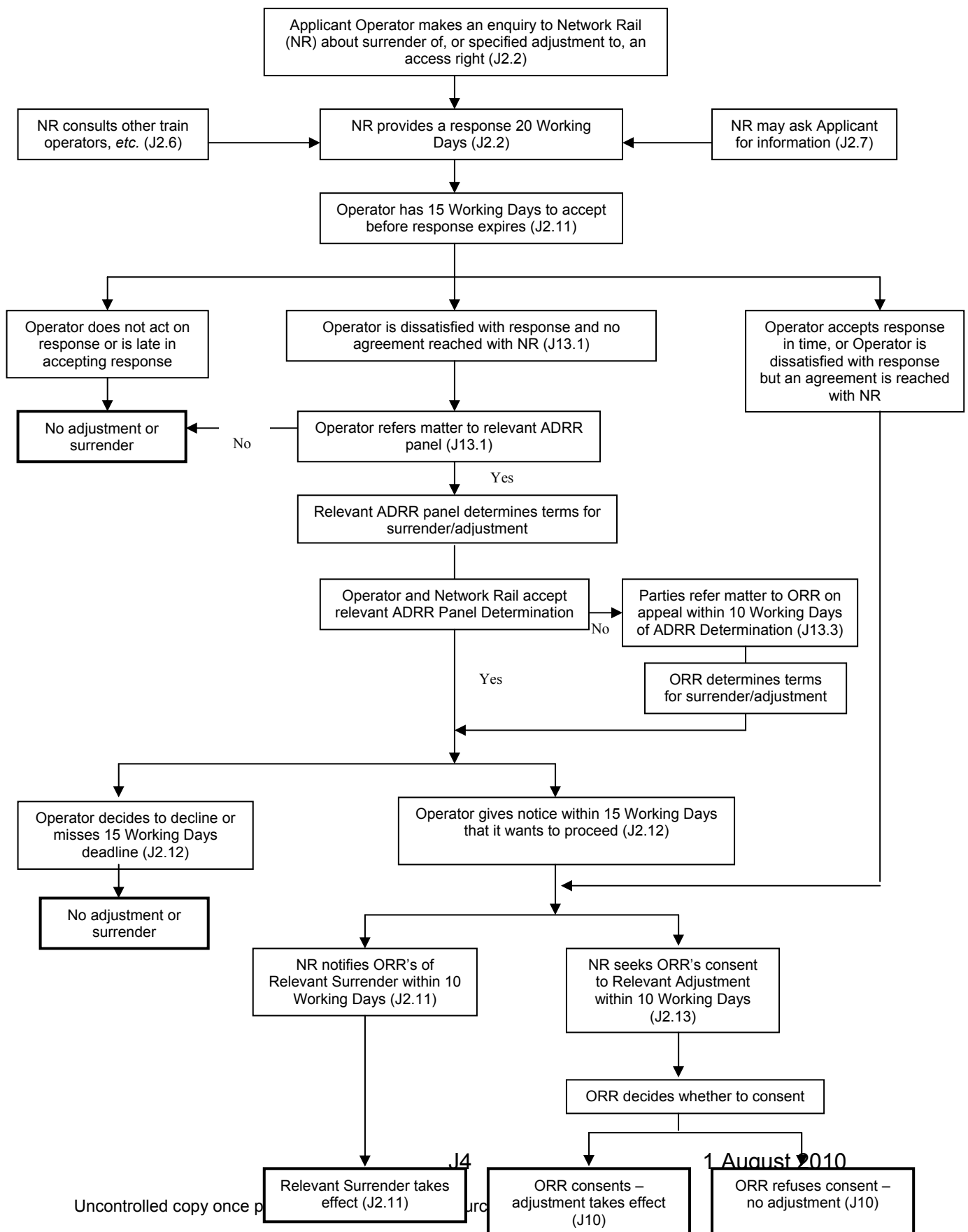
the UIOLI mechanism. So, for example, if Network Rail initiates the UIOLI mechanism in respect of Level Two Rights and the Train Operator succeeds in retaining those rights, Network Rail cannot continue the process under Condition J6 in order to reduce the Train Operator's cordon cap in respect of those rights.

- F. Condition J7 applies only to freight Train Operators. The purpose of the mechanism is to ensure the smooth transfer of rights where a Train Operator wins existing freight traffic from an incumbent freight Train Operator.*
- G. The transfer of any Restrictive Provisions associated with access rights transferred under Condition J7 (as referred to under Condition J7.9(a)) is necessary to ensure that the Applicant is not granted a greater commercial advantage to that previously enjoyed by the incumbent freight Train Operator. Restrictive Provisions could encompass, amongst other things, defeasance, West Coast Route Modernisation provisions, Crossrail Modifications, and specific timings relating to the transferred access rights.*
- H. With effect from the date of transfer of any access rights under either Condition J5 or J7, the Applicant is entitled to Spot Bid for the corresponding Train Slot to be included on a short term basis in the Working Timetable in accordance with the provisions of Part D.*
- I. Condition J8 is akin to Condition J6 in that it deals with reductions to cordon caps as part of the freight transfer mechanism in Condition J7 in the same way that Condition J6 deals with reductions in cordon caps associated with the UIOLI mechanism. Condition J8.1 ensures that the mechanism for adjusting cordon caps must be associated with the transfer mechanism and that it cannot be used in isolation (e.g. if the Applicant fails to secure the transfer of a right under the transfer mechanism, it cannot require the reduction of the Incumbent's associated cordon cap). The Office of Rail Regulation's consent is required to give effect to an adjustment of cordon caps under Condition J8, whereas it is not required to the transfer of the associated rights under Condition J7. This recognises that there is a significant degree of discretion required as to the appropriate adjustment in the level of cordon caps associated with the transfer of rights. The Office of Rail Regulation can elect to determine the appropriate adjustment of cordon caps, after consultation with the parties, rather than give its consent to, or reject, the adjustment submitted to it.*
- J. Condition J9 is confined to freight Train Operators. It sets out a process by which Network Rail and the Train Operator will hold six-monthly rights review meetings at which they will consider whether the Train Operator has rights for which it no longer has a reasonable on-going commercial need. A rights review meeting will also consider*

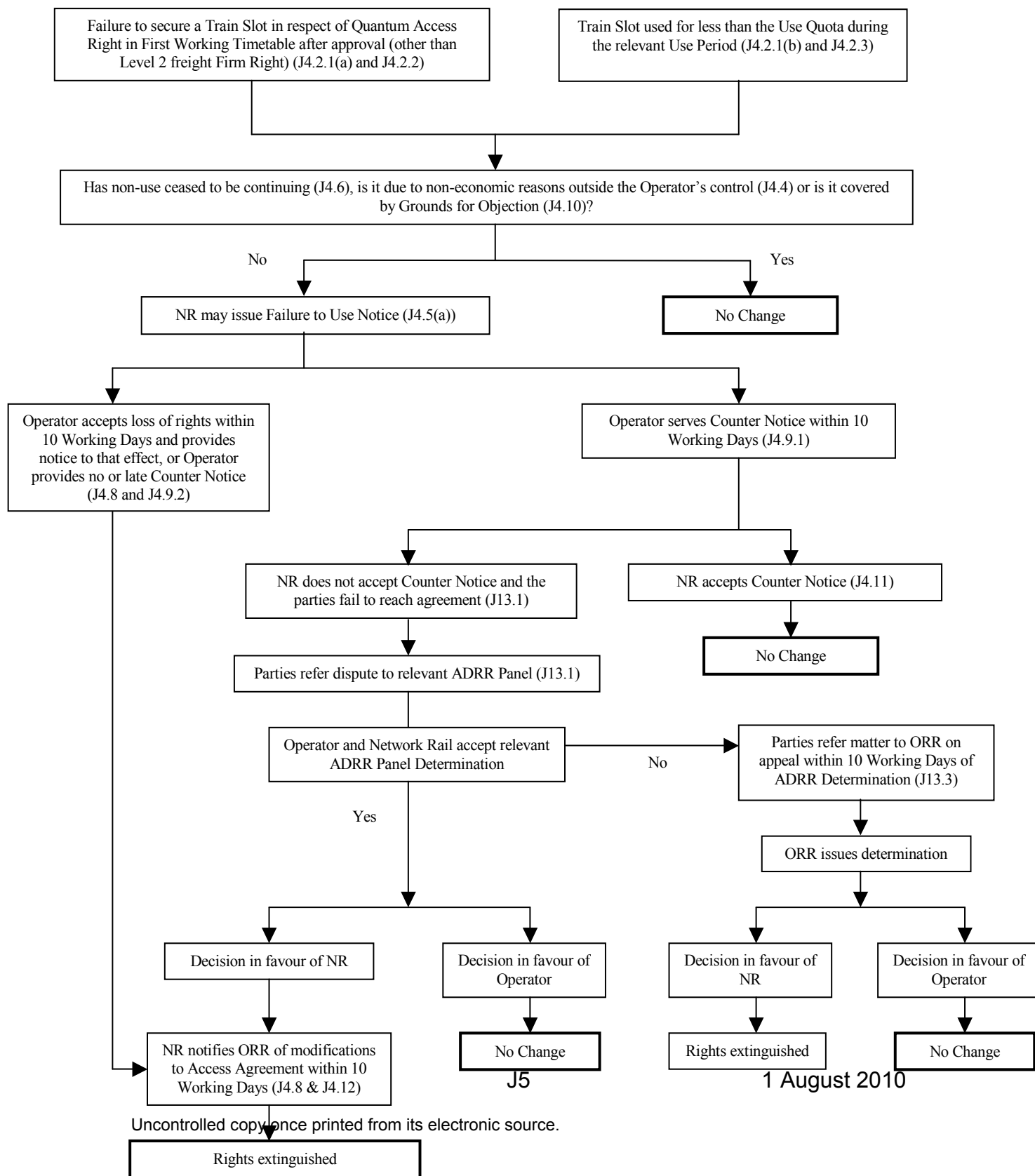
whether there should be any reduction in the Train Operator's cordon caps. If Network Rail fails to schedule rights review meetings at six-monthly intervals with a Train Operator, any Train Operator may issue a notice to Network Rail requiring Network Rail to schedule a rights review meeting within 10 Working Days of receipt of such notice. The rights review meeting does not have to be scheduled to be actually held within the 10 Working Day period.

- K. Condition J10 provides that the Office of Rail Regulation can elect: (a) to give its consent to the adjustment of part only of the rights for which its consent is sought under Condition J2; and (b) to determine itself the cordon cap adjustment for which its consent is sought under Condition J8, following consultation with the parties. It also provides that the modifications to which the Office of Rail Regulation gives its consent or which it determines have effect from the date specified in the relevant notice.*
- L. Condition J12 provides for rules or criteria to be established on the interpretation of the expression "reasonable on-going commercial need", which is used in several of the mechanisms in Part J as they affect freight Train Operators. The rules or criteria should be determined and published by Network Rail, following consultation with the appropriate franchising authority and freight Train Operators and after approval by the Office of Rail Regulation.*
- M. In accordance with Clause 18.2.4 of both the Passenger and Freight Model Contracts, Network Rail should produce and send to the Office of Rail Regulation and the relevant Train Operator a conformed copy of any Access Agreement within 28 days of the making of any amendment or modification to it under this Part J.*
- N. This Explanatory Note does not form part of the Network Code.*

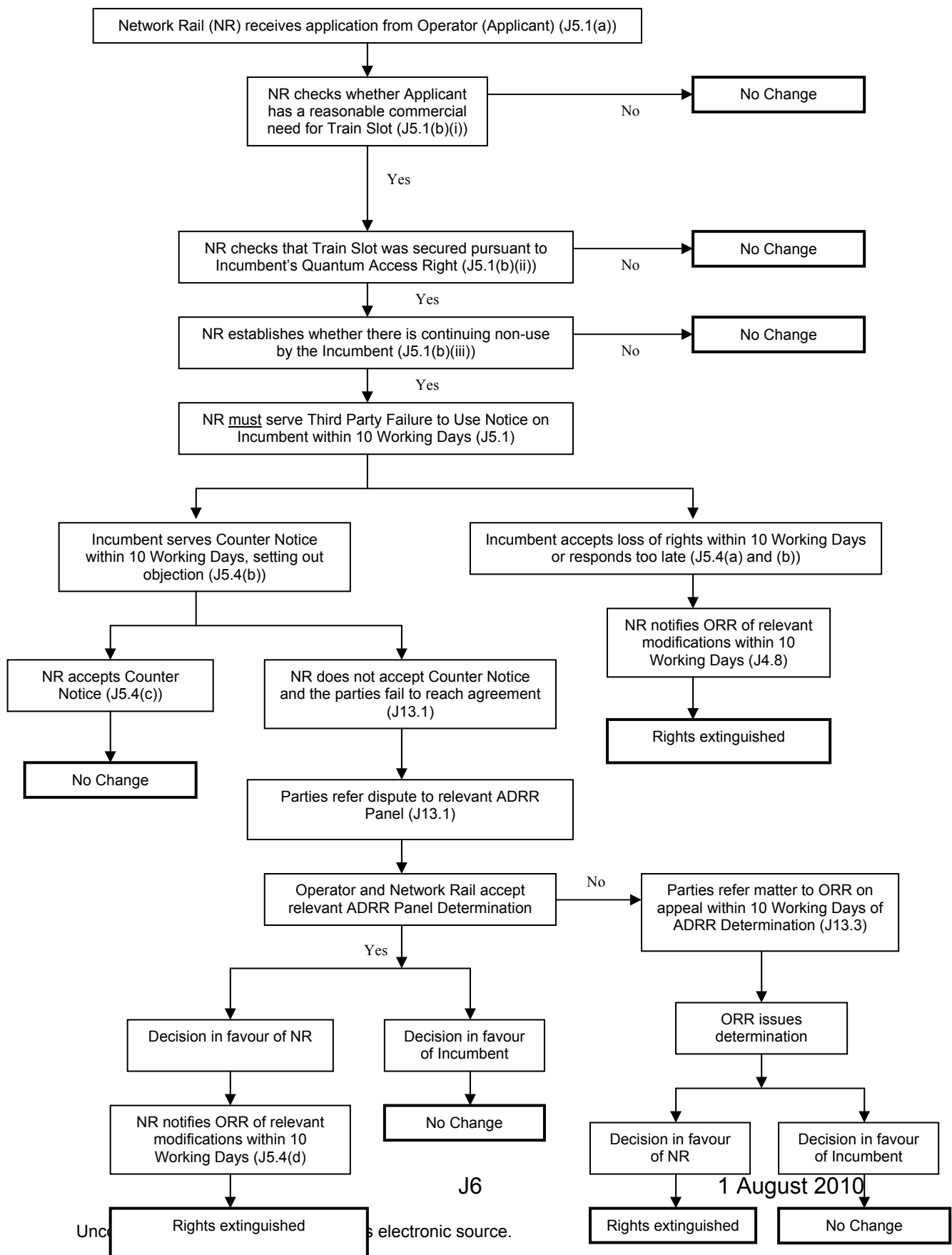
Appendix 1: Condition J2 process for voluntary surrender or adjustment of rights



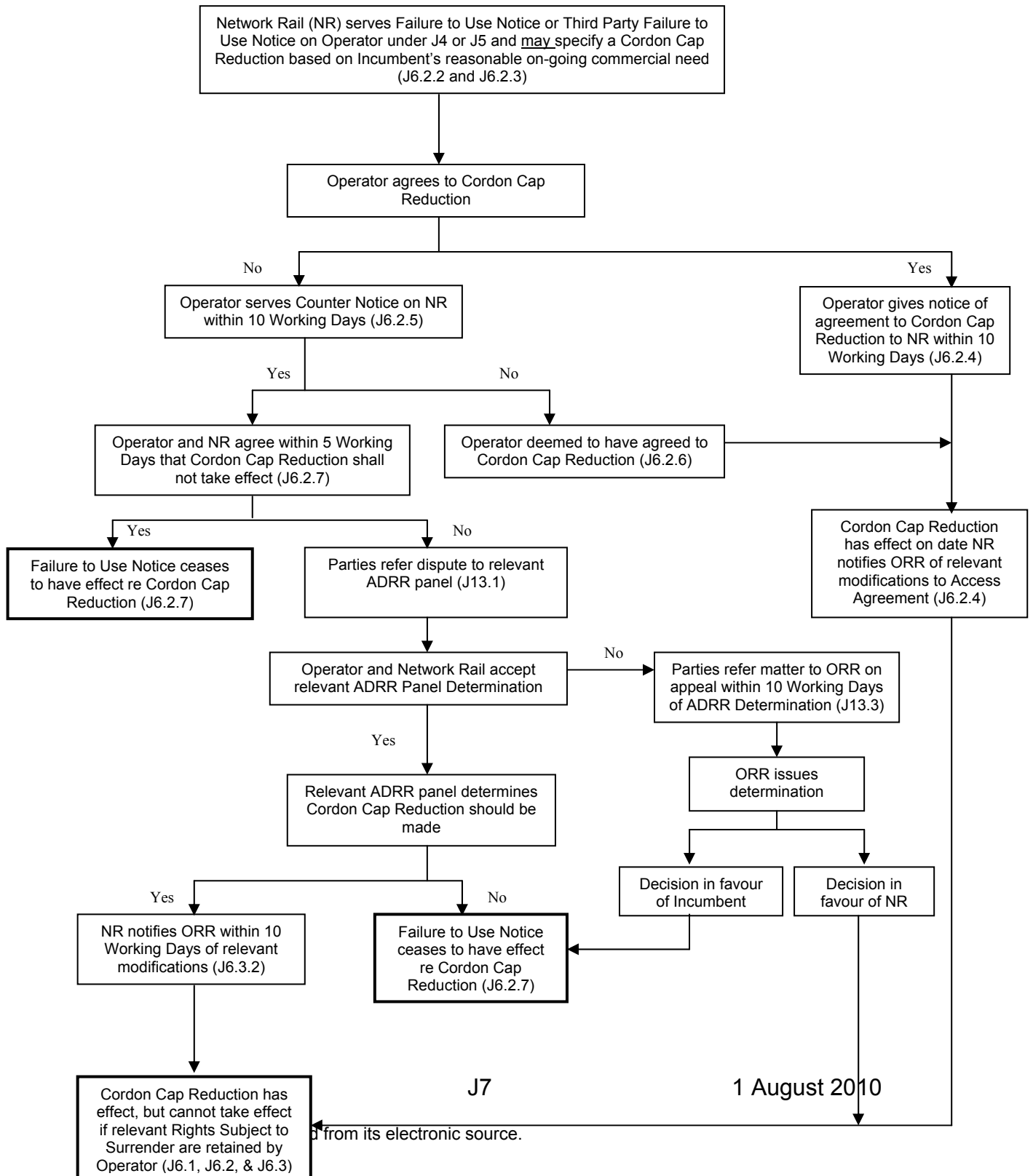
Appendix 2: Condition J4 UIOLI process for unused rights or where slots are not sought by another operator



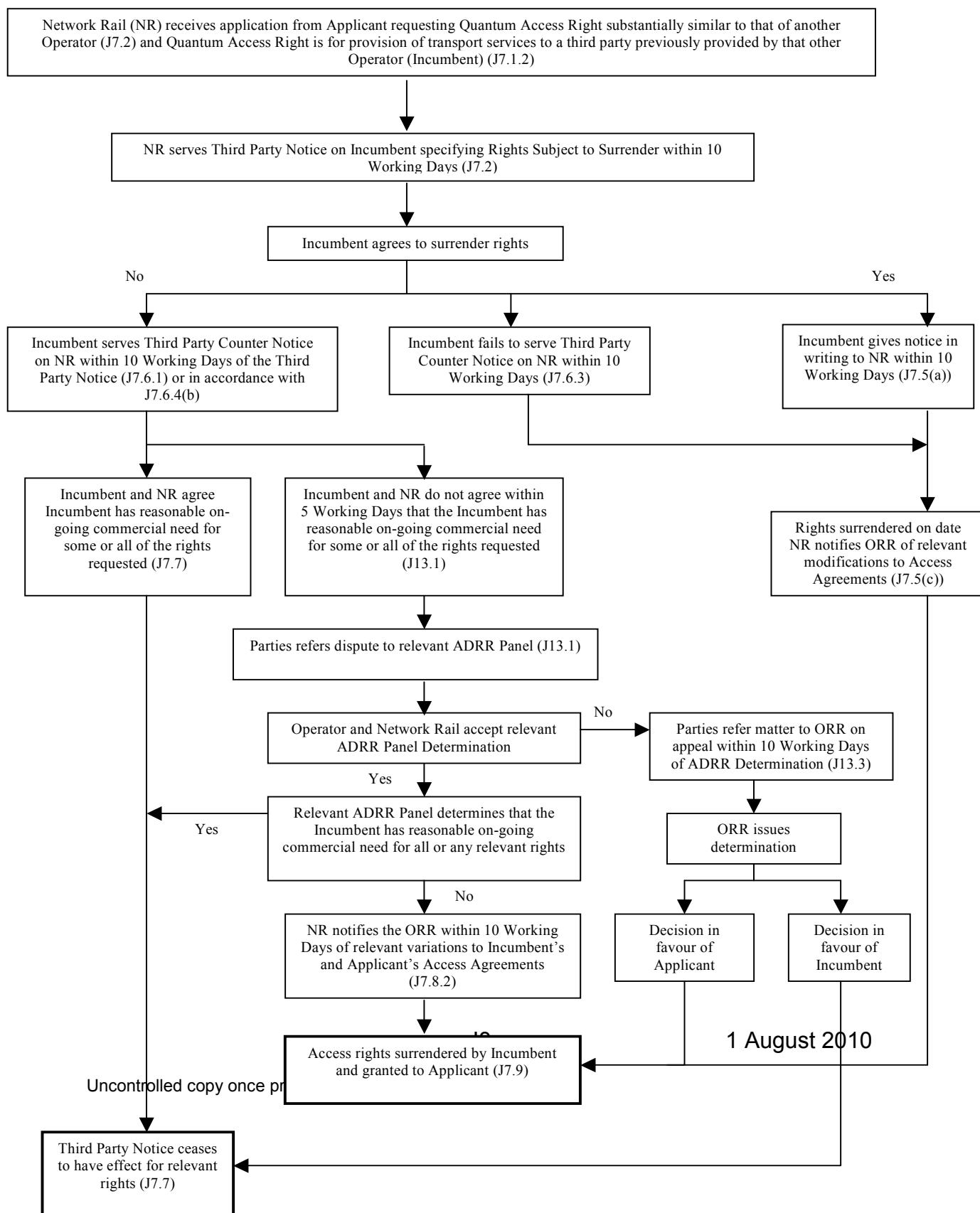
Appendix 3: Condition J5 UIOLI process where slots are sought by another operator



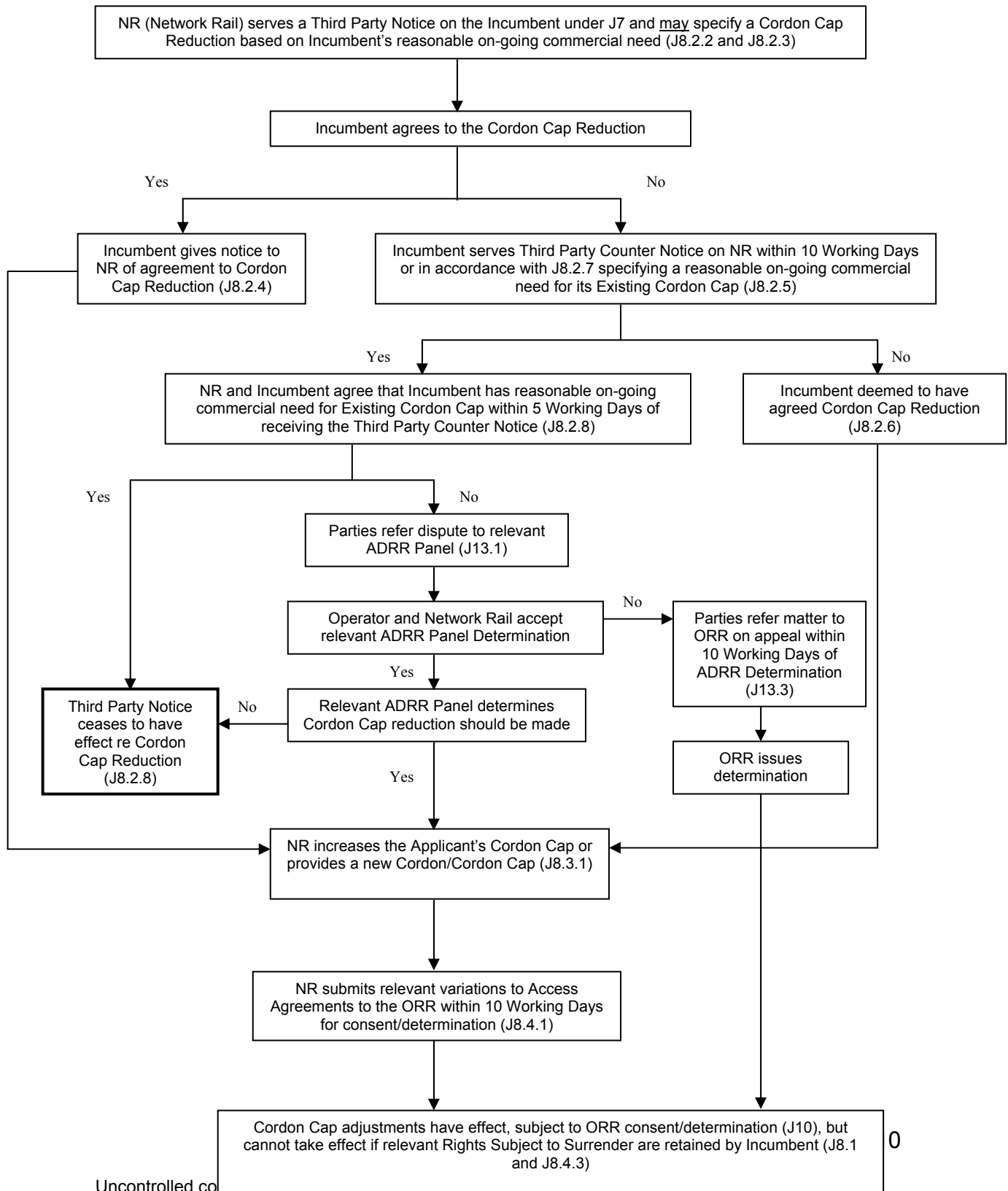
Appendix 4: Condition J6 process for reducing cordon caps under UIOLI mechanism



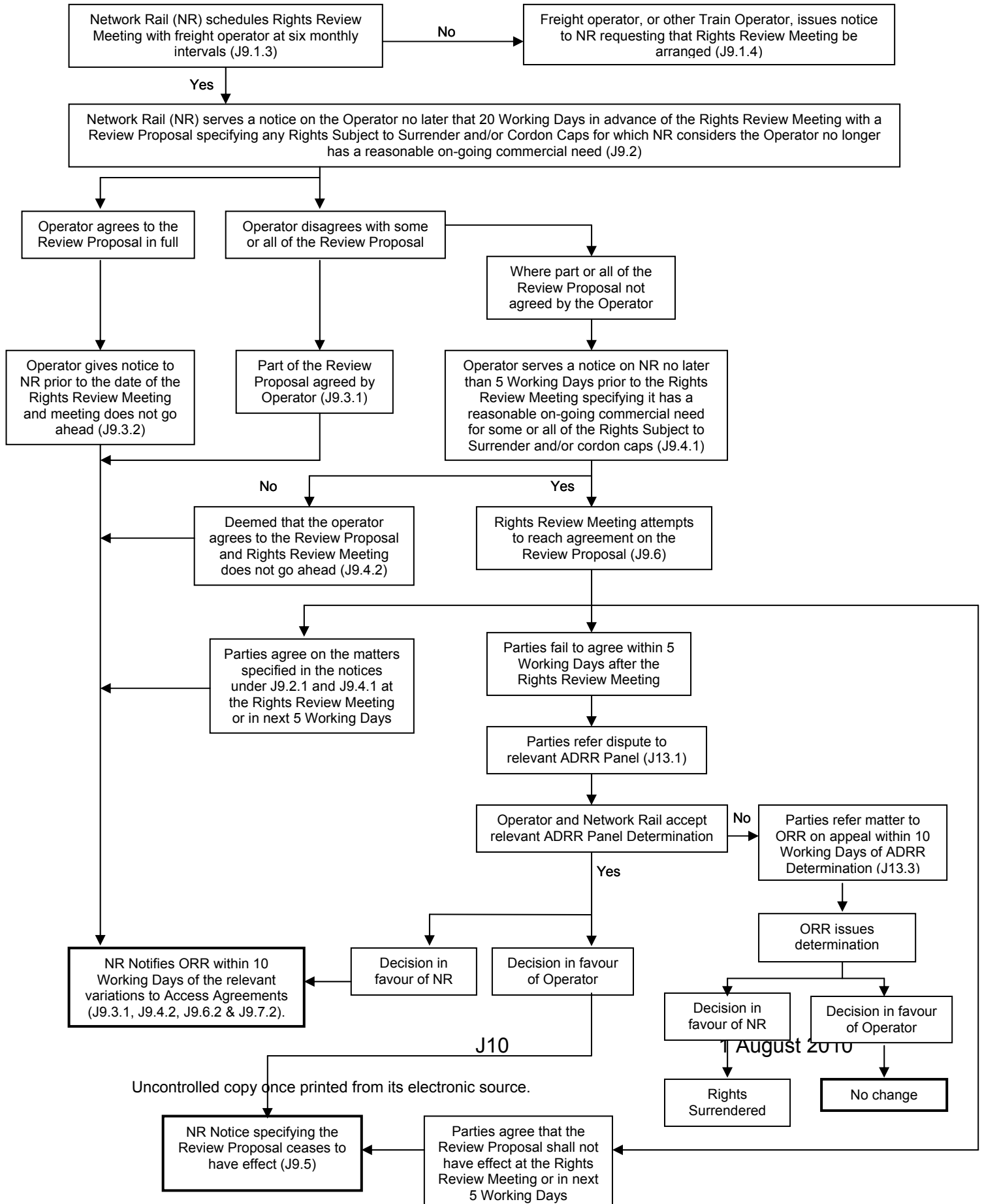
Appendix 5: Condition J7 freight transfer mechanism



Appendix 6: Condition J8 process for adjusting cordon caps under the freight transfer mechanism



Appendix 7: Condition J9 process for rights review meetings



Definitions

In this Part J, unless the context otherwise requires:

“ADRR Determination”	means a determination made in accordance with the ADRR following a reference made under either Condition J13.1 or J14.1, where such determination has not been referred to the Office of Rail Regulation under either Condition J13.3 or J14.2 within the time limit for such referral;
“Access Right”	means, in relation to an Access Agreement, permission to use track for the purpose of the operation of trains on that track by a beneficiary and rights ancillary thereto which are provided or charged for in the Access Agreement in question;
“Affected Person”	means, in relation to Qualifying Information, the person to whose affairs the information relates;
“Allocation Chair”	has the meaning ascribed to it in the ADRR;
“Ancillary Movements”	has the meaning ascribed to it in Part D;
“Applicant”	has the meaning ascribed to it in: (a) Condition J5.1(a); or (b) Condition J7.2, as applicable;
“beneficiary”	has the meaning ascribed to it in section 17(7) of the Act;
“Bid”	has the meaning ascribed to it in Part D;
“Commencement Date”	means the date on which the relevant Quantum Access Right takes effect in accordance with the Train Operator’s Access

Agreement;

“Confidentiality Direction”	has the meaning ascribed to it in Condition J3.8.1;
“Confidentiality Undertaking”	has the meaning ascribed to it in Condition J3.16.1;
“Contingent Right”	has the meaning ascribed to it, if any, in the relevant Access Agreement;
“Cordon Cap Increase”	has the meaning ascribed to it in Condition J8.3.1;
“Cordon Cap Reduction”	has the meaning ascribed to it in: (a) Condition J6.2.2; or (b) Condition J8.2.2, as applicable;
“Counter Notice”	means a notice given by the Train Operator to Network Rail under Condition J4.9, J5.4(b), J6.2.5 or J8.3.2;
“Determination”	means an ADRR Determination or an Office of Rail Regulation Determination, as the case may be and “Determined” (and cognate expressions) shall be construed accordingly;
“Disputes Chairman”	has the meaning ascribed to it in the Access Dispute Resolution Rules;
“Existing Cordon Cap”	means, in relation to an Access Agreement, a cordon cap specified in that Access Agreement concerning a location to which any Rights Subject to Surrender which are Level Two Rights under that Access Agreement relate;
“Failure to Use”	has the meaning ascribed to it in Condition J4.2.1;
“Failure to Use Notice”	means a notice given by Network Rail to a Train Operator under Condition J4.5(a);
“Firm Right”	has the meaning ascribed to it in the relevant

	Access Agreement, and any reference in an Access Agreement to “Firm Contractual Right” shall be deemed to be a reference to a “Firm Right”;
“Funder”	means the appropriate franchising authority, each Passenger Transport Executive and any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) or other person which provides money by way of grant or loan with the primary purpose of securing the provision of services relating to railways;
“Grounds for Objection”	means the grounds set out in Condition J4.10;
“Incumbent”	has the meaning ascribed to it in: <ul style="list-style-type: none"> (a) Condition J5.1(b)(ii); or (b) Condition J7.2, as applicable;
“Level Three Right”	has the meaning ascribed to it, if any, in the relevant Access Agreement;
“Level Two Right”	has the meaning ascribed to it, if any, in the relevant Access Agreement;
“network statement”	has the meaning ascribed to it in regulation 11 of the Railways Infrastructure (Access and Management) Regulations 2005;
“Notice of Objection”	means a notice given by an Affected Person to Network Rail of the kind referred to in Condition J3.5(b);
“Office of Rail Regulation Determination”	means a determination made by the Office of Rail Regulation following a reference made under either Condition J13.3 or J14.2;
“Office of Rail Regulation’s Model Passenger Track Access Contract”	means the model passenger track access contract published by the Office of Rail Regulation under section 21 of the Act, as amended from time to time;
“Office of Rail	means the model freight track access contract

Regulation's Model Freight Track Access Contract"	published by the Office of Rail Regulation under section 21 of the Act, as amended from time to time;
"Period for Objections"	means the period specified in Condition J3.5(b);
"protected right"	has the meaning ascribed to it in Condition C8.3.3;
"Qualifying Information"	means information which Network Rail has acquired in relation to the affairs of any Affected Person under an Access Agreement between Network Rail and that person;
"Quality Adjustment"	means the alteration of any aspect of the Access Rights of the Train Operator (whether in relation to performance, the quality or condition of the Network, the liability of any person to any other person, or in any other respect) other than a Quantum Adjustment in a manner which is not inconsistent with this code;
"Quantum Access Right"	means a Firm Right, any Contingent Right or any Level Three Right as such under an Access Agreement in respect of a number (or quantum) of Train Slots in any specified period (including rights to Train Slots in respect of additional trains or relief services), and includes part of such a Firm Right, Contingent Right or Level Three Right;
"Quantum Adjustment"	means the surrender of any Access Right of the Train Operator in question and the grant to it of any other Access Right;
"reasonable on-going commercial need"	is interpreted as set out in Condition J12.1;
"relate" and "in respect of"	in relation to a Train Slot and a Quantum Access Right where these terms are used together, means that the Train Slot in question has been secured by the Train Operator in accordance with Part D in the exercise of that Quantum Access Right;

“Released Capacity”	means track capacity made available to Network Rail as a consequence of the making of a Specified Relevant Surrender or a Specified Relevant Adjustment, and “release of capacity” shall be construed accordingly;
“Relevant Adjustment”	means a Quality Adjustment or a Quantum Adjustment, and “adjust” shall be construed accordingly;
“Relevant Enquiry”	means an enquiry made of Network Rail by the Train Operator under Condition J2;
“Relevant Financial Consequences”	means the cost savings or costs incurred referred to in Condition J2.4(a);
“Relevant Information”	means information which complies with the provisions of Condition J2.4;
“Relevant Response”	means Network Rail’s answer to a Relevant Enquiry under Condition J2;
“Relevant Surrender”	means the surrender to Network Rail of Access Rights possessed by the Train Operator;
“Restrictive Provisions”	means any provisions in the Incumbent’s Access Agreement that restrict the operation of the transferring access right, and specific timings relating to the transferring access right;
“Review Proposal”	means a surrender or reduction in the Train Operator’s Rights Subject to Surrender and/or Existing Cordon Caps specified by Network Rail in a notice served under Condition J9.2.1;
“Review Operator”	has the meaning ascribed to it in Condition J9.1.4;
“Rights Review Meeting”	means a meeting held between the Train Operator and Network Rail pursuant to Condition J9;
“Rights Subject to Surrender”	means, in relation to:

- (a) a Failure to Use Notice;
- (b) a Third Party Failure to Use Notice;
- (c) a Third Party Notice; or
- (d) a notice under Condition J9.2.1,

as applicable, the Quantum Access Right to which such notice refers and:

- (i) any Train Slot or part of it in the Working Timetable which relates to that Quantum Access Right;
- (ii) any Ancillary Movements and Stabling that Network Rail determines:
 - (A) are directly associated with the relevant Quantum Access Right; and
 - (B) will no longer be required by the relevant Train Operator following the surrender or reduction of the Quantum Access Right, as applicable; and
- (iii) any Bid relating to any such Quantum Access Right;

“Service Characteristics”	for the purposes of a right surrendered under Condition J7.8, has the meaning ascribed to it in the Incumbent’s Access Agreement;
“Specified Relevant Adjustment”	means a Relevant Adjustment specified in a Relevant Enquiry;
“Specified Relevant Surrender”	means a Relevant Surrender specified in a Relevant Enquiry;
“Stabling”	has the meaning ascribed to it in the relevant Access Agreement;
“Third Party Counter Notice”	means a notice given by the Incumbent to Network Rail under Condition J7.6.1 or Condition J8.2.5;

“Third Party Failure to Use Notice”	means a notice given by Network Rail to a Train Operator under Condition J5.1;
“Third Party Notice ”	means a notice given by Network Rail to the Incumbent under Condition J7.2;
“Train Slot”	has the meaning ascribed to it in Part D;
“Use Period”	means, in relation to any Use Quota, the period of time during which the Use Quota is to be satisfied, as published by Network Rail in accordance with Condition J4.3;
“Use Quota”	means the minimum expected quota for use of a Train Slot, as published by Network Rail in accordance with Condition J4.3; and

1. NOT USED

2. Adjustment of Access Rights

2.1 *Obligation of Train Operators to surrender Access Rights*

2.1.1 Without prejudice to the rest of this Part J, a Train Operator shall voluntarily and in good faith surrender those Access Rights or part or parts of such Access Rights in respect of which it has no current or foreseeable reasonable on-going commercial need.

2.1.2 If a Train Operator wishes to make a Relevant Surrender pursuant to Condition J2.1.1, it shall give Network Rail notice to that effect. The Relevant Surrender shall have effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J2.1.3.

2.1.3 Network Rail shall notify the Office of Rail Regulation of the relevant modification to the Train Operator’s Access Agreement no more than 10 Working Days after the date on which the Train Operator gives notice to Network Rail agreeing to the Relevant Surrender pursuant to Condition J2.1.2.

2.2 *Obligation of Network Rail to answer Train Operator’s Relevant Enquiries*

Network Rail shall provide the Train Operator with a Relevant Response within 30 Working Days of the making of a Relevant Enquiry.

2.3 *Contents of Relevant Enquiries*

Each Relevant Enquiry shall contain:

- (a) a specification of the Access Rights (if any) which the Train Operator, at that time, is aware that it may be willing to surrender to Network Rail;
- (b) a specification of the Access Rights (if any) which the Train Operator, at that time, is aware that it may be willing to adjust;
- (c) a request that Network Rail provides the Train Operator with Relevant Information in relation to:
 - (i) any Specified Relevant Surrender; and
 - (ii) any Specified Relevant Adjustment;
- (d) a specification of the dates with effect from which the Specified Relevant Surrender or Specified Relevant Adjustment may be expected to take place;
- (e) a statement whether or not any Specified Relevant Surrender or Specified Relevant Adjustment is to be temporary; and
- (f) in the case of a temporary Specified Relevant Surrender or Specified Relevant Adjustment, a specification of the date on which the temporary Specified Relevant Surrender or Specified Relevant Adjustment shall cease to have effect, being no later than the second anniversary of the date when it is to take effect.

2.4 *Information to be provided by Network Rail*

Subject to Condition J3, the Relevant Information which Network Rail shall provide in each Relevant Response shall be a statement of:

- (a) the costs which Network Rail may reasonably expect to save or incur if any Specified Relevant Surrender or Specified Relevant Adjustment is made;
- (b) the times at which and the periods over which the Relevant Financial Consequences will have effect;

- (c) the steps which Network Rail would expect to take to achieve the Relevant Financial Consequences within the times referred to in Condition J2.4(b) and the opportunities which Network Rail has to accelerate or postpone the effect of the Relevant Financial Consequences;
- (d) the extent to which any Released Capacity may reasonably be expected to be used:
 - (i) by any other operator of trains; and
 - (ii) in relation to the maintenance, re-alignment, re-configuration, repair or renewal of any part of the Network;
- (e) the reasonably foreseeable financial effects on Network Rail of the release of capacity;
- (f) Network Rail's proposals as to the amounts (if any) which should be payable by or to the Train Operator under the Access Agreement as a consequence of the making of any Specified Relevant Surrender or Specified Relevant Adjustment and its reasons for them, including in relation to the sharing between Network Rail and the Train Operator of the Relevant Financial Consequences; and
- (g) whether any other person has made an enquiry of Network Rail pursuant to an agreement between that person and Network Rail in relation to the surrender or adjustment of Access Rights under that agreement which, if made, might reasonably be expected to affect the interests of the Train Operator in relation to the Specified Relevant Surrender or Specified Relevant Adjustment in question,

together with such other information as the Train Operator reasonably requests, in each case in a form and amount of detail which is sufficient to enable the Train Operator to make a proper assessment of the effect of the making of the Specified Relevant Surrender or Specified Relevant Adjustment in question.

2.5 *Pre-existing obligations of confidence*

Nothing in this Condition J2 shall require Network Rail to break an obligation of confidence which arose before 1 April 1994.

2.6 *Consultation by Network Rail*

In preparing each Relevant Response, Network Rail shall:

(a) except to the extent otherwise requested by the Train Operator and in accordance with such (if any) conditions as the Train Operator shall specify; and

(b) subject to Condition J3,

carry out such consultation of:

(i) other operators of trains and persons whom it has reason to believe intend to become operators of trains; and

(ii) any Funders which may be directly affected and of which Network Rail is aware, or ought reasonably to have been aware,

as shall be necessary or expedient so as to enable Network Rail properly to inform itself of the effects on the capacity of the track in question which the Specified Relevant Surrender or Specified Relevant Adjustment in question, if made, is likely to have.

2.7 *Obligation to co-operate*

2.7.1 If:

(a) Network Rail has made any enquiry of a Train Operator in relation to a Relevant Enquiry made by that Train Operator or any other Train Operator under this Condition J2; and

(b) the enquiry is one which the Train Operator may reasonably be expected to answer,

the Train Operator shall provide Network Rail with a response to the enquiry to the extent and in the amount of detail which is reasonable in the circumstances.

2.7.2 Information provided in any response under Condition J2.7.1 shall be treated as Qualifying Information and Condition J3 shall apply accordingly.

2.8 *Estimated costs of providing Relevant Response*

Network Rail:

(a) shall provide the Train Operator, if so requested by it and as soon as reasonably practicable after the request, with:

(i) its best estimate of its costs of providing a Relevant Response; and

- (ii) having provided such an estimate, its best estimate of the costs which it has incurred in preparing the Relevant Response in question up to the date of the request or any other date specified in the request; and
- (b) shall not, in preparing a Relevant Response, exceed the amount of the estimate without first notifying and obtaining the consent of the Train Operator.

2.9 *Payments of costs of Relevant Responses*

The Train Operator shall:

- (a) be entitled to make any request of the kind referred to in Condition J2.8 at the time of making the Relevant Enquiry in question and at any time and from time to time thereafter, and the failure of the Train Operator to make any such request on any occasion shall not prejudice its right to make such a request on a later occasion;
- (b) pay to Network Rail an amount calculated pursuant to Condition J2.10; and
- (c) be entitled to receive from Network Rail, on request, a certificate from its auditors verifying that the costs referred to in Condition J2.10 have been incurred in providing the Relevant Response.

2.10 *Division and payments of costs*

2.10.1 The amount referred to in Condition J2.9(b) shall be an amount equal to 75 per cent of the amount of Network Rail's reasonable costs of providing the Relevant Response which exceed £1,000 (excluding VAT). Such amount shall be payable not later than 20 Working Days after the later of:

- (a) the date upon which the Relevant Response shall be provided; and
- (b) the date upon which Network Rail requests payment of the amount in question in an invoice which is sufficient for the purposes of Value Added Tax.

2.10.2 For the purposes of this Condition J2, Network Rail's costs shall include a fair allocation of its administrative and other regional and national costs of carrying on its business.

2.11 *Right to elect to surrender or adjust Access Rights*

2.11.1 If, following receipt of a Relevant Response, the Train Operator:

- (a) wishes to have a Specified Relevant Adjustment effected; and
- (b) accepts any amounts payable and sharing of any Relevant Financial Consequences proposed by Network Rail in the Relevant Response,

it shall be entitled to do so after giving to Network Rail and the Office of Rail Regulation a notice to that effect within 15 Working Days after the date upon which it receives the Relevant Response in question. The Specified Relevant Adjustment shall have effect from the date the Office of Rail Regulation gives its consent to the making of the Relevant Adjustment in question in accordance with Condition J2.13.

2.11.2 If, following receipt of a Relevant Response, the Train Operator:

- (a) wishes to make a Specified Relevant Surrender; and
- (b) accepts any amounts payable and sharing of any Relevant Financial Consequences proposed by Network Rail in the Relevant Response,

it shall give Network Rail notice to that effect within 15 Working Days after the date upon which it receives the Relevant Response in question. The Specified Relevant Surrender shall have effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J2.11.3.

2.11.3 Network Rail shall notify the Office of Rail Regulation of the relevant modification to the Train Operator's Access Agreement no more than 10 Working Days after the date on which the Train Operator gives notice to Network Rail agreeing to the Specified Relevant Surrender pursuant to Condition J2.11.2.

2.12 Right of Train Operator to have Access Rights adjusted

2.12.1 If it is Determined that the Train Operator should be entitled to make any Relevant Surrender or have any Relevant Adjustment given effect, the Train Operator shall give notice to Network Rail as to whether it elects to exercise that entitlement. If the Train Operator does not give notice to Network Rail within 15 Working Days of the date of the Determination, the Train Operator shall lose the entitlement in question.

2.12.2 If the Train Operator gives notice pursuant to Condition J2.12.1 of an election to exercise an entitlement to make a Relevant Surrender, Network Rail shall notify the Office of Rail Regulation of the relevant

modifications to the Train Operator's Access Agreement no more than 10 Working Days after the date of such notice. Network Rail shall include a copy of the relevant ADRR Determination, if applicable, with the notification.

2.12.3 Any Relevant Surrender shall have effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J2.12.2.

2.13 *Office of Rail Regulation's consent to adjustment of Access Rights*

2.13.1 Subject to Condition J2.13.4, a Relevant Adjustment shall have effect only with, and from the date specified in, the Office of Rail Regulation's consent in accordance with Condition J10.

2.13.2 Network Rail shall submit the relevant modifications to the Access Agreement to the Office of Rail Regulation for consent within 10 Working Days of:

- (a) the Train Operator's election to have a Specified Relevant Adjustment effected under Condition J2.11; or
- (b) the Train Operator's election to have a Relevant Adjustment effected under Condition J2.12.

2.13.3 Network Rail and the Train Operator shall use all reasonable endeavours to procure that the Office of Rail Regulation is furnished with sufficient information and evidence as it requires to determine:

- (a) whether or not to give its consent to the making of the Relevant Adjustment in question; and
- (b) the date from which the Relevant Adjustment shall have effect.

2.13.4 The Office of Rail Regulation's consent is not required in respect of a Relevant Adjustment where the Relevant Adjustment has been Determined by the Office of Rail Regulation in accordance with Condition J13.

3. Confidentiality

3.1 *Affected Persons and their interests*

If, having received a Relevant Enquiry, Network Rail has reasonable grounds for believing that, in order to provide the Relevant Response:

- (a) it is necessary for it to disclose to the Train Operator any Qualifying Information; and

- (b) such disclosure would or might, in Network Rail's reasonable opinion, seriously and prejudicially affect the interests of the Affected Person,

Network Rail shall give notice to that effect to the Train Operator.

3.2 *Train Operator's right to elect for Relevant Response without Qualifying Information*

3.2.1 Having received a notice from Network Rail pursuant to Condition J3.1, the Train Operator shall be entitled, by notice given to Network Rail, to elect either:

- (a) that the Relevant Response be provided to it without the Qualifying Information; or
- (b) that Network Rail should give notice to the Affected Person in question pursuant to Condition J3.4 and thereafter comply with the procedures established in this Condition J3.

3.2.2 Network Rail shall not proceed with its preparation of the Relevant Response until the Train Operator has made its election.

3.3 *Relevant Response without Qualifying Information*

3.3.1 If the Train Operator makes an election pursuant to Condition J3.2.1(a):

- (a) Network Rail shall proceed to prepare and provide the Relevant Response so as to omit the Qualifying Information; and
- (b) if, having received a Relevant Response of the kind referred to in Condition J3.3.1(a), the Train Operator wishes Network Rail to revise it so as to include any Qualifying Information, it shall be entitled to do so by notice to Network Rail.

3.3.2 If the Train Operator gives notice to Network Rail pursuant to Condition J3.3.1(b), Network Rail shall proceed to give notice to the Affected Person in question pursuant to Condition J3.4 and thereafter comply with the procedures established in this Condition J3.

3.4 *Relevant Response with Qualifying Information*

If the Train Operator makes an election pursuant to Condition J3.2.1(b), Network Rail shall give notice to the Affected Person that it has grounds for a belief of the kind referred to in Condition J3.1.

3.5 *Contents of notice to Affected Person*

The notice given to the Affected Person pursuant to Condition J3.4 shall be accompanied by:

- (a) a statement of the information which Network Rail considers it necessary to disclose; and
- (b) a statement to the effect that, unless the Affected Person gives notice to Network Rail within 15 Working Days of his receipt of the notice that he objects to the disclosure in question, that person shall have lost the right to object to its disclosure.

3.6 *Entitlement of Network Rail to include Qualifying Information if no Notice of Objection*

Subject to Condition J2.5, if no Notice of Objection has been given to Network Rail within the Period for Objections, Network Rail shall be entitled to include the Qualifying Information in the Relevant Response.

3.7 *Discretion of Allocation Chair to order confidentiality*

3.7.1 If Network Rail has received a Notice of Objection within the Period for Objections, it shall immediately give notice of that fact to the Train Operator and the Secretary who shall pass that notice to the Allocation Chair.

3.7.2 The notice given to the Train Operator pursuant to Condition J3.7.1 shall not contain any indication as to the identity of the Affected Person, whether by stating its name, the nature of its business or any information which may enable the Train Operator to determine its identity.

3.7.3 The notice given to the Secretary shall be accompanied by:

- (a) a copy of the Notice of Objection;
- (b) an explanation by Network Rail as to its reasons for the belief referred to in Condition J3.1; and
- (c) a request for directions of the kind referred to in Condition J3.7.4.

3.7.4 The parties shall comply with such directions which the Allocation Chair gives them in relation to the preservation of the positions of the parties (including the Affected Person) and the confidentiality of the Qualifying Information pending the determination of the matter. No such directions shall have effect for a period which is longer than 90 days without being renewed by the Allocation Chair.

3.8 *Allocation Chair's directions as to preservation of confidentiality of Qualifying Information*

3.8.1 In a case to which Condition J3.7 applies, and subject to Condition J2.5, Network Rail shall be entitled to include Qualifying Information in a Relevant Response except where directed not to do so by the Allocation Chair, to the extent stated and subject to such conditions (if any) as shall be specified in the direction (a "Confidentiality Direction").

3.8.2 No Relevant Response containing Qualifying Information shall be given until after the expiry of the period specified by the Allocation Chair in any directions of the kind referred to in Condition J3.7.4.

3.9 *Grounds on which the Allocation Chair may order confidentiality*

A Confidentiality Direction shall only have effect if:

- (a) it is stated by the Allocation Chair to have been given on the grounds that:
 - (i) the disclosure to the Train Operator of the Qualifying Information in question would or might seriously and prejudicially affect the interests of the Affected Person; and
 - (ii) such prejudice outweighs or is likely to outweigh the interests of operators and potential operators of railway assets on the part of the Network in question in its disclosure to the Train Operator, having due regard to the matters about which duties are imposed on the Office of Rail Regulation by section 4 of the Act; and
- (b) the Allocation Chair has complied with the requirements specified in Conditions J3.11 and J3.12.

3.10 *Opportunity to make representations to the Allocation Chair*

3.10.1 Within 20 Working Days of the Allocation Chair's receipt of a notice pursuant to Condition J3.7.1 (or such longer period as the Office of Rail Regulation may allow), each of Network Rail, the Train Operator and the Affected Person shall be entitled to make representations to the Allocation Chair:

- (a) as to whether it considers that the Allocation Chair should exercise his discretion to give a Confidentiality Direction; and, if so
- (b) the extent and conditions of the Confidentiality Direction.

3.10.2 Any such representations shall be accompanied by the reasons why the person in question believes the Allocation Chair should or should not (as the case may be) give a Confidentiality Direction.

3.11 *Hearing on confidentiality representations*

If he has received any representations of the kind contemplated by Condition J3.10, the Allocation Chair shall be entitled to hear the parties on the matter. The Allocation Chair has an absolute discretion as to the procedure to be followed in any such hearing, and may at any time amend it if he considers it necessary to do so for the fair resolution of the matter.

3.12 *Written reasons for decision*

If any representations have been made to him pursuant to Condition J3.10, unless the parties concerned otherwise agree, the Allocation Chair shall provide them with his reasons for his determination. Such reasons shall be given in writing.

3.13 *Appeal against the Allocation Chair's determination*

If Network Rail, the Train Operator or the Affected Person is dissatisfied with the Allocation Chair's determination, it may refer the matter to the Office of Rail Regulation under Part M.

3.14 *Immunity of the Allocation Chair and Office of Rail Regulation*

3.14.1 Neither the Allocation Chair nor the Office of Rail Regulation shall be liable in damages or otherwise for any act or omission to act on their part (including negligence) in relation to any reference to them under this Condition J3.

3.14.2 Each of the Train Operator and Network Rail shall:

- (a) indemnify and hold harmless the Allocation Chair, the Office of Rail Regulation and each other against every claim which may be made against any of them in relation to any of the matters referred to in Condition J3.14.1; and
- (b) to the extent that it is the creditor in the indemnity in Condition J3.14.2(a), hold the benefit of that indemnity upon trust as bare trustee for the benefit of the Allocation Chair and the Office of Rail Regulation.

3.14.3 No provision of the Access Agreement which operates so as to exclude or restrict the liability of either party shall apply to the obligations of the parties under this Condition J3.14.

3.15 *Preservation of confidentiality of Qualifying Information pending determination*

3.15.1 In making any determination of the kind contemplated by this Condition J3, the remit of the Allocation Chair and the Office of Rail Regulation shall include a requirement that:

- (a) any hearing of the kind contemplated by Condition J3.11 shall be conducted in such a way as not to disclose any part of the Qualifying Information; and
- (b) the reasons for the Allocation Chair's determination shall, if given to the parties, not disclose to the Train Operator any part of the Qualifying Information.

3.15.2 If a reference has been made to the Office of Rail Regulation pursuant to Condition J3.13, the Allocation Chair shall be required by the parties to provide to the Office of Rail Regulation all Relevant Information in relation to his decision, including his reasons, without any omissions which may have been necessary in order to comply with Condition J3.15.1(b)

3.16 *Obligation to provide Confidentiality Undertaking*

3.16.1 If:

- (a) an Affected Person has given notice to Network Rail that it does not propose to give a Notice of Objection within the Period for Objections; or
- (b) the Allocation Chair has determined that no Confidentiality Direction shall be given in relation to Qualifying Information; or
- (c) the Office of Rail Regulation has determined that a determination of the Allocation Chair of the kind referred to in Condition J3.16.1(b) shall be confirmed in whole or in part; or
- (d) the Office of Rail Regulation has determined that a Confidentiality Direction shall not be confirmed in whole or in part; and
- (e) the Affected Person requires Network Rail to procure that the Train Operator gives a Confidentiality Undertaking for the benefit of the Affected Person,

the Train Operator shall deliver to Network Rail an undertaking of strict confidentiality in relation to the Qualifying Information (a "Confidentiality Undertaking").

3.16.2 A Confidentiality Undertaking shall:

- (a) contain an undertaking that the person giving it will hold the Qualifying Information disclosed to it strictly confidential and will not, without the consent of the Affected Person, disclose it to any person except in any of the circumstances referred to in Clause 14.2(a)-(k) (entitlement to divulge) of Office of Rail Regulation's Model Passenger and Model Freight Track Access Contracts, subject to the conditions which apply to such disclosures under that Clause;
- (b) contain no limitations on the liability of the person who gives it in the case of its breach; and
- (c) in every other respect, be unqualified.

3.16.3 A Confidentiality Undertaking shall be:

- (a) given to Network Rail by the Train Operator as soon as reasonably practicable after Network Rail has requested the Train Operator to provide it; and
- (b) held by Network Rail upon trust for the Affected Person.

3.16.4 If the Train Operator fails to comply with its obligations under this Condition J3.16, Network Rail shall not include the Qualifying Information in its Relevant Response.

4. Failure to Use

4.1 Application of Conditions J4 and J5

Conditions J4 and J5 shall apply to a Failure to Use where the condition in Condition J4.2.1 is satisfied in whole or in part before the date on which these Conditions take effect.

4.2 Failure to Use

4.2.1 Subject to Conditions J4.2.2, J4.2.3 and J4.4, a Failure to Use in relation to a Quantum Access Right occurs if:

- (a) in any First Working Timetable (as defined in Part D) established by Network Rail after the Commencement Date, the Train Operator fails to secure one or more Train Slots in respect of that Quantum Access Right; or

- (b) the Train Operator fails to make use of a Train Slot which has been included in the Working Timetable and which relates to that Quantum Access Right.

4.2.2 Condition J4.2.1(a) shall not apply to Level Two Rights, Contingent Rights or Level Three Rights where Network Rail has been unable to accommodate the Train Operator's Bid into the First Working Timetable.

4.2.3 For the purposes of Condition J4.2.1(b), the Train Operator fails to make use of a Train Slot if it uses the Train Slot for less than the Use Quota during the relevant Use Period.

4.3 *Use Quota and Use Period*

4.3.1 The Use Quota and Use Period:

- (a) shall be as determined, and revised from time to time, by the Office of Rail Regulation for the purpose of this Condition J4.3 following such consultation as the Office of Rail Regulation may consider appropriate; and
- (b) following such determination or revision, shall be published by Network Rail in its network statement, and on its website.

4.3.2 The Office of Rail Regulation may:

- (a) determine different Use Quotas and/or different Use Periods for different categories of services for the carriage of:
 - (i) passengers by railway; and
 - (ii) goods by railway;
- (b) specify the characteristics of train movements that will count or will not count, as applicable, toward any Use Quota; and
- (c) specify such other matters as the Office of Rail Regulation considers are necessary or expedient to give effect to any Use Quota and any Use Period.

4.4 *Certain periods to be disregarded*

Any period of non-use shall be disregarded for the purpose of determining whether a Failure to Use has occurred under Condition J4.2.1(a) or (b) if, and to the extent that, such non-use is attributable to non-economic reasons beyond the Train Operator's control.

4.5 *Service of Failure to Use Notice*

If Network Rail considers there is a Failure to Use by a Train Operator and that Failure to Use is continuing:

- (a) it may serve a Failure to Use Notice on the Train Operator requiring the Train Operator to surrender Rights Subject to Surrender; and
- (b) if it does so, it shall send a copy of the notice to the Office of Rail Regulation.

4.6 *Cessation of Failure to Use*

A Failure to Use shall cease to be continuing for the purpose of Condition J4.5 if:

- (a) in relation to a Failure to Use under Condition J4.2.1(a):
 - (i) the Train Operator Bids for a Train Slot in respect of the relevant Quantum Access Right before the compilation of a subsequent First Working Timetable; and
 - (ii) Network Rail has not served a Failure to Use Notice before the Bid under Condition J4.6(a)(i) is made; and
- (b) in relation to a Failure to Use under Condition J4.2.1(b), the Train Operator makes use of a relevant Train Slot such that the Use Quota is met.

4.7 *Contents of a Failure to Use Notice*

A Failure to Use Notice shall specify:

- (a) the Failure to Use which Network Rail considers has occurred; and
- (b) the Rights Subject to Surrender which Network Rail requires the Train Operator to surrender.

4.8 *Acceptance of surrender*

If the Train Operator agrees to the surrender specified in the Failure to Use Notice then:

- (a) it shall, within 10 Working Days, give notice to that effect to Network Rail and the Office of Rail Regulation;

- (b) the Rights Subject to Surrender shall be surrendered with effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J4.8(c); and
- (c) Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after the date on which the Train Operator agrees to the surrender pursuant to Condition J4.8(a).

4.9 *Counter Notice*

4.9.1 The Train Operator may, within 10 Working Days of receipt of a Failure to Use Notice, serve a Counter Notice on Network Rail stating that:

- (a) it considers the Failure to Use Notice to be invalid;
- (b) there has been no Failure to Use or that the Failure to Use was not continuing at the date of the service of the Failure to Use Notice; and/or
- (c) any Ancillary Movements and/or Stabling specified in the Failure to Use Notice as being Rights Subject to Surrender:
 - (i) are not directly associated with the relevant Quantum Access Right; and/or
 - (ii) would still be required by the Train Operator following the surrender of the relevant Quantum Access Right; and/or
- (d) there are Grounds for Objection to the proposed surrender within Condition J4.10, detailing the Grounds for Objection on which it relies,

and must provide evidence with the Counter Notice in support of its contentions. The Train Operator shall send a copy of any Counter Notice and such evidence to the Office of Rail Regulation.

4.9.2 If no Counter Notice is served within 10 Working Days of receipt of a Failure to Use Notice:

- (a) the Train Operator will be deemed to have agreed to the surrender specified in the Failure to Use Notice;
- (b) the Rights Subject to Surrender shall be surrendered with effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J4.9.2(c); and

- (c) Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after the date on which the Train Operator is deemed to have agreed to the surrender pursuant to Condition J4.9.2(a).

4.10 *Grounds for Objection*

4.10.1 The Train Operator may object to a surrender specified in a Failure to Use Notice relating to services for the carriage of passengers by railway on the grounds that:

- (a) the Rights Subject to Surrender are essential for the fulfilment of the Train Operator's Franchised Services; or
- (b) the Rights Subject to Surrender relate to an enhancement of the Network for which the Train Operator is contracted to pay through access charges.

4.10.2 The Train Operator may object to a surrender specified in a Failure to Use Notice relating to services for the carriage of goods by railway on the grounds:

- (a) set out in Condition J4.10.1(b); or
- (b) that it has a reasonable on-going commercial need in respect of any or all of the Rights Subject to Surrender.

4.11 *Cessation of notice*

If the Train Operator and Network Rail agree or it is Determined:

- (a) that the matters set out in Condition J4.9.1(a), (b) or (c) have been substantiated; or
- (b) that the Train Operator's Grounds for Objection have been substantiated in respect of any or all of the Rights Subject to Surrender,

the Failure to Use Notice shall cease to have effect to the extent so agreed or Determined.

4.12 *Surrender of Access Rights*

4.12.1 If it is Determined that the Train Operator has no Grounds for Objection in respect of all or any of the Rights Subject to Surrender, then the rights that are to be surrendered will be surrendered, and

removed in their entirety from the Train Operator's Access Agreement, from the date:

- (a) on which notice is given to the Office of Rail Regulation pursuant to Condition J4.12.2, in the event of an ADRR Determination; or
- (b) specified in the Office of Rail Regulation Determination, if applicable.

4.12.2 In the event of an ADRR Determination in accordance with Condition J4.12.1, Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after the date of that ADRR Determination and shall include a copy of the relevant ADRR Determination with such notice.

4.13 *Bids*

Where any Rights Subject to Surrender surrendered under this Condition J4 include the surrender of a Bid, Network Rail's obligations under Condition D4.7.1 shall cease to have effect in respect of that Bid as from the date the surrender takes effect in accordance with this Condition J4.

5. Failure to Use: third party application

5.1 *Third Party Failure to Use Notices*

If:

- (a) Network Rail receives an application from a Train Operator (the "Applicant") for a Quantum Access Right to a Train Slot; and
- (b) the Train Slot:
 - (i) is one in respect of which the Applicant can demonstrate a reasonable commercial need; and
 - (ii) was secured in exercise of a Quantum Access Right of another Train Operator (the "Incumbent"); and
 - (iii) is one in respect of which there is a continuing Failure to Use by the Incumbent,

then within 10 Working Days following receipt of the Applicant's application Network Rail shall serve a Third Party Failure to Use Notice on the Incumbent and send a copy of the notice to the Office of Rail

Regulation. If the Applicant's application does not comply with this Condition J5.1, then within 10 Working Days following receipt of the Applicant's application Network Rail shall serve a notice on the Applicant rejecting its application and setting out its reasons for rejecting the application.

5.2 Cessation of Failure to Use

For the purposes of Condition J5.1(b)(iii), whether a Failure to Use has ceased to be continuing shall be determined in accordance with Condition J4.6.

5.3 Contents of a Third Party Failure to Use Notice

A Third Party Failure to Use Notice shall specify:

- (a) the Failure to Use which Network Rail considers has occurred;
- (b) the Rights Subject to Surrender, which Network Rail requires the Incumbent to surrender; and
- (c) the date on which the surrender is intended to take effect.

5.4 Application of Conditions

The following Conditions shall apply following service on the Incumbent of a Third Party Failure to Use Notice as they apply to a Failure to Use Notice:

- (a) J4.8 (Acceptance of surrender);
- (b) J4.9 (Counter Notice);
- (c) J4.11 (Cessation of notice);
- (d) J4.12 (Surrender of Access Rights), where in respect of this Condition J5, any relevant Determination will be between Network Rail and the Incumbent, and the Applicant shall accept that the Determination will dispose of the matter as between the Applicant and Network Rail; and
- (e) J4.13 (Bids), as if that Condition referred to a surrender under this Condition J5.

5.5 Counter Notice

Subject to the redaction of any commercially sensitive information, the Incumbent shall send a copy of any Counter Notice issued under Condition J5.4(b) to the Applicant.

6. Cordon Cap Reduction (Failure to Use)

6.1 *Application of this Condition J6*

This Condition J6 shall not apply if, in accordance with Conditions J4 or J5, the Train Operator and Network Rail agree or it is Determined that in relation to the relevant Failure to Use there are no Rights Subject to Surrender.

6.2 *Cordon Cap Reduction procedure*

6.2.1 Where any Rights Subject to Surrender specified by Network Rail in a Failure to Use Notice or a Third Party Failure to Use Notice, as applicable, relate to Level Two Rights and concern a location where the Train Operator on whom the notice has been served has an Existing Cordon Cap, the provisions of this Condition J6 will apply in addition to Conditions J4 or J5.

6.2.2 The Failure to Use Notice or the Third Party Failure to Use Notice, as applicable, in addition to the matters set out in Condition J4.7 or J5.3, as applicable, may specify any reduction to an Existing Cordon Cap (the "Cordon Cap Reduction") that Network Rail considers should be made if Rights Subject to Surrender were surrendered by the Train Operator under Conditions J4 or J5, as applicable.

6.2.3 The Cordon Cap Reduction shall be based on Network Rail's assessment of the Train Operator's reasonable on-going commercial need for its Existing Cordon Cap, having had regard to any rules or criteria as determined and published from time to time under Condition J12.

6.2.4 If the Train Operator agrees to the Cordon Cap Reduction:

- (a) it shall give notice to that effect to Network Rail, served in accordance with Condition J4.8(a) or J5.4(a), as applicable;
- (b) Network Rail shall give notice to the Office of Rail Regulation, served in accordance with Condition J4.8(c) or J5.4(a), as applicable; and
- (c) the Cordon Cap Reduction shall have effect from the date on which notice is given to the Office of Rail Regulation by Network Rail pursuant to Condition J6.2.4(b).

6.2.5 If the Train Operator does not agree to the Cordon Cap Reduction, it shall serve a Counter Notice, in accordance with Condition J4.9 or J5.4(b), as applicable:

- (a) specifying that it objects to the Cordon Cap Reduction because it has a reasonable on-going commercial need for its Existing Cordon Cap; and
 - (b) providing evidence in support of its objection.
- 6.2.6 Condition J4.9.2 shall apply as if that Condition referred to a Cordon Cap Reduction rather than a surrender.
- 6.2.7 If the Train Operator and Network Rail agree or it is Determined that the Cordon Cap Reduction shall not take effect, the Failure to Use Notice or the Third Party Failure to Use Notice, as applicable, shall cease to have effect to the extent that it relates to a Cordon Cap Reduction.
- 6.3 *Effective Date of Cordon Cap Reduction*
 - 6.3.1 If it is Determined that the Cordon Cap Reduction shall have effect, then the Cordon Cap Reduction shall have effect from the date:
 - (a) on which notice is given to the Office of Rail Regulation pursuant to Condition J6.3.2, in the event of an ADRR Determination; or
 - (b) specified in the Office of Rail Regulation Determination, if applicable.
 - 6.3.2 In the event of an ADRR Determination in accordance with Condition J6.3.1, Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after the date of the ADRR Determination and shall include a copy of the relevant ADRR Determination with such notice.
 - 6.3.3 Where the Cordon Cap Reduction is specified in a Third Party Failure to Use Notice, any relevant Determination will be between Network Rail and the Incumbent, and the Applicant shall accept that the Determination will dispose of the matter as between the Applicant and Network Rail.

7. Freight transfer mechanism

7.1 *Application of this Condition J7*

- 7.1.1 This Condition J7 applies only to services for the carriage of goods by railway.

7.1.2 This Condition J7 applies only to an application from the Applicant which requests a Quantum Access Right for the provision of transport services to a third party that the Applicant will (subject, where applicable, to any competitive tendering process amongst other parties) replace the Incumbent in providing.

7.1.3 This Condition J7 shall not apply to applications under an Access Agreement by third party Train Operators that are substantially similar in nature to applications made under this Condition J7.

7.2 *Third Party Notice*

If Network Rail receives an application from a Train Operator (the “Applicant”) requesting a Quantum Access Right that is substantially similar to an existing Quantum Access Right of another Train Operator (the “Incumbent”) then, within 10 Working Days following receipt of the Applicant’s application, Network Rail shall serve a Third Party Notice on the Incumbent and send a copy of that notice to the Office of Rail Regulation. If the Applicant’s application does not comply with Conditions J7.1 and J7.2, then within 10 Working Days following receipt of the Applicant’s application Network Rail shall serve a notice on the Applicant rejecting its application and setting out its reasons for rejecting the application.

7.3 *Applicant’s responsibilities*

When making an application to Network Rail of the type described in Condition J7.2, the Applicant shall:

- (a) at the same time as submitting the application to Network Rail, send a copy of the application to the Incumbent; and
- (b) specify in the application:
 - (i) the date on which the Applicant requests that the Quantum Access Right takes effect in its Access Agreement; and
 - (ii) that the Quantum Access Right sought is for the provision of transport services to a third party that the Applicant will (subject, where applicable, to any competitive tendering process) replace the Incumbent in providing.

7.4 *Contents of Third Party Notice*

A Third Party Notice shall specify:

- (a) the Quantum Access Right sought by the Applicant; and

- (b) the Rights Subject to Surrender, which Network Rail requires the Incumbent to surrender in order to accommodate the Applicant's request..

7.5 *Acceptance of surrender*

If the Incumbent agrees to the surrender specified in the Third Party Notice, then:

- (a) it shall, within 10 Working Days, give notice to that effect to Network Rail;
- (b) the Rights Subject to Surrender shall be surrendered and will be removed in their entirety from the Incumbent's Access Agreement on the date on which notice is given to the Office of Rail Regulation pursuant to Condition J7.5(c); and
- (c) Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after the date on which the Train Operator agrees to the surrender pursuant to Condition J7.5(a).

7.6 *Third Party Counter Notice*

7.6.1 The Incumbent may, within 10 Working Days of receipt of a Third Party Notice, serve a Third Party Counter Notice on Network Rail:

- (a) specifying that it considers the Third Party Notice to be invalid; or
- (b) specifying that it objects to the surrender of the Rights Subject to Surrender because it has a reasonable on-going commercial need for all or any of the Rights Subject to Surrender; and
- (c) providing evidence in support of its opinion or objection as appropriate.

The Incumbent shall send a copy of any Counter Notice and such evidence to both the Office of Rail Regulation and, subject to the redaction of any commercially sensitive information, the Applicant.

7.6.2 If the Incumbent disagrees with the Train Slots shown in the Third Party Notice as corresponding to the Rights Subject to Surrender, it shall include in the Third Party Counter Notice details of the Train Slots that it asserts correspond to the Rights Subject to Surrender.

7.6.3 If no Third Party Counter Notice is served within 10 Working Days of receipt of a Third Party Notice:

- (a) the Incumbent will be deemed to have agreed to the surrender of the Rights Subject to Surrender specified in the Third Party Notice;
- (b) the Rights Subject to Surrender shall be surrendered and will be removed in their entirety from the Incumbent's Access Agreement with effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J7.6.3(c); and
- (c) Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Incumbent's and Applicant's Access Agreements no more than 10 Working Days after the date on which the Train Operator is deemed to have agreed the surrender pursuant to Condition J7.6.3(a).

7.6.4 If the Quantum Access Right sought by the Applicant is for the provision of transport services to a third party which are the subject of a competitive tendering process amongst other parties including the Incumbent, then the Incumbent:

- (a) may notify Network Rail of this process; and
- (b) if it has done so, the period of 10 Working Days referred to in this Condition J7.6 shall be deemed to commence on the date that the third party indicates its intention to contract at the end of the relevant tendering process.

7.7 *Cessation of notice*

If the Incumbent and Network Rail agree or it is Determined that the Incumbent has a reasonable on-going commercial need in respect of any or all of the Rights Subject to Surrender, the Third Party Notice shall cease to have effect to the extent that the Incumbent's claim has been substantiated. Network Rail shall notify the Applicant in writing within 10 Working Days of such agreement or Determination that the Applicant's application has failed (in whole or in part) and shall set out the reasons for such failure.

7.8 *Surrender of access rights*

7.8.1 If it is Determined that the Incumbent has no reasonable on-going commercial need for all or any of the Rights Subject to Surrender, then the rights that are to be surrendered will be surrendered, and removed

in their entirety from the Train Operator's Access Agreement, from the date:

- (a) on which notice is given to the Office of Rail Regulation pursuant to Condition J6.3.2, in the event of an ADRR Determination; or
- (b) specified in the Office of Rail Regulation Determination, if applicable.

7.8.2 In the event of an ADRR Determination in accordance with Condition J7.8.1(a), and providing no appeal is made to the Office of Rail Regulation in accordance with Condition J13.3, Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 15 Working Days after the date of that ADRR Determination and shall include a copy of the relevant ADRR Determination with such notice.

7.8.3 In respect of this Condition J7.8, any relevant Determination will be between Network Rail and the Incumbent, and the Applicant shall accept that the Determination will dispose of the matter as between the Applicant and Network Rail.

7.9 *Grant to Applicant*

Network Rail shall, through the issue of a notice to both the Applicant and the Incumbent, grant to the Applicant the rights surrendered by the Incumbent under this Condition J7. Such rights shall be granted to the Applicant:

- (a) as from the latest of the following dates on which:
 - (i) notice is given to the Office of Rail Regulation pursuant to Condition J7.5(c), J7.6.3(c) or J7.8.2 or the date specified in the Office of Rail Regulation Determination (as applicable);
 - (ii) the Applicant's Access Agreement is modified to include, where applicable, any relevant Restrictive Provisions associated with such rights contained in the Incumbent's Access Agreement; or
 - (iii) the relevant Cordon Cap Increase, if any, has effect pursuant to Condition J8;
- (b) with Service Characteristics in substantially the same form as the Rights Subject to Surrender; and

- (c) for a period of time:
 - (i) equal to that which the Incumbent would have enjoyed had the rights remained with the Incumbent; or
 - (ii) until expiry of the Applicant's Access Agreement,whichever is the shorter.

7.10 *Bids*

Where any Rights Subject to Surrender surrendered under this Condition J7 include the surrender of a Bid, Network Rail's obligations under Condition D4.7.1 shall, in respect of that Bid:

- (a) cease to have effect in relation to the Incumbent as from the date the surrender takes effect in accordance with this Condition J7; and
- (b) be deemed to have effect in relation to the Applicant as from the date the Bid is granted to the Applicant in accordance with Condition J7.9.

8. Cordon Cap Reduction (transfer)

8.1 *Application of this Condition J8*

This Condition J8 shall not apply if, in accordance with Condition J7, the Incumbent and Network Rail agree or it is Determined that in relation to any Quantum Access Right sought by the Applicant there are no Rights Subject to Surrender.

8.2 *Existing Cordon Cap adjustments procedure*

- 8.2.1 Where any Rights Subject to Surrender specified by Network Rail in a Third Party Notice relate to Level Two Rights and concern a location where either the Incumbent has an Existing Cordon Cap or Network Rail considers that a new Cordon and/or Cordon Cap should be incorporated into the Applicant's Access Agreement the provisions of Condition J8 will apply in addition to Condition J7.
- 8.2.2 The Third Party Notice, in addition to the matters set out in Condition J7.4, may specify any reduction to an Existing Cordon Cap (the "Cordon Cap Reduction") that Network Rail considers should be made

if Rights Subject to Surrender were surrendered by the Incumbent under Condition J7.

8.2.3 The Cordon Cap Reduction shall be based on Network Rail's assessment of the Incumbent's reasonable on-going commercial need for its Existing Cordon Cap, having had regard to any rules or criteria as determined and published from time to time under Condition J12.

8.2.4 If the Incumbent agrees to the Cordon Cap Reduction it shall give notice to that effect to Network Rail, as part of its notice served in accordance with Condition J7.5.

8.2.5 If the Incumbent does not agree to the Cordon Cap Reduction, it shall serve a Third Party Counter Notice, as part of its notice served in accordance with Condition J7.6:

(a) specifying that it objects to the Cordon Cap Reduction because it has a reasonable on-going commercial need for its Existing Cordon Cap; and

(b) providing evidence in support of its objection.

8.2.6 Condition J7.6.3 shall apply as if that Condition referred to a Cordon Cap Reduction rather than a surrender.

8.2.7 Condition J7.6.4 shall apply.

8.2.8 If the Incumbent and Network Rail agree or it is Determined that the Incumbent has a reasonable on-going commercial need for its Existing Cordon Cap, the Third Party Notice shall cease to have effect to the extent it relates to a Cordon Cap Reduction.

8.2.9 Where the Cordon Cap Reduction is specified in a Third Party Notice, any relevant Determination will be between Network Rail and the Incumbent, and the Applicant shall accept that the Determination will dispose of the matter as between the Applicant and Network Rail.

8.3 *Cordon Cap Increase*

8.3.1 If Network Rail considers that a new Cordon and/or Cordon Cap should be incorporated into the Applicant's Access Agreement, it shall serve a notice on the Applicant specifying the increase that Network Rail considers should be made to the Applicant's Existing Cordon Cap or, where no Cordon or Cordon Cap exists in the Applicant's Access Agreement, provide to the Applicant a new Cordon and/or Cordon Cap (in either case a "Cordon Cap Increase") to take effect at the same time as the corresponding Relevant Surrender.

- 8.3.2 The Applicant may, within 10 Working Days of receipt of a notice from Network Rail under Condition J8.3.1, serve a Counter Notice on Network Rail:
- (a) specifying that it objects to the Cordon Cap Increase; and
 - (b) providing reasons for its objection.
- 8.3.3 If no Counter Notice is served within 10 Working Days of receipt of a notice from Network Rail under Condition J8.3.1 the Applicant will be deemed to have agreed to the Cordon Cap Increase specified in the notice.
- 8.3.4 Subject to Condition J8.4, a Cordon Cap Increase shall be granted to the Applicant:
- (a) as from the date of the corresponding Relevant Surrender; and
 - (b) for a period of time:
 - (i) equal to that which the Incumbent would have enjoyed had its Existing Cordon Cap remained unchanged; or
 - (ii) until the expiry of the Applicant's Access Agreement, whichever is the shorter.
- 8.4 *Office of Rail Regulation's consent to or Determination of Cordon Cap Increase*
- 8.4.1 Subject to Condition J8.4.2, a Cordon Cap Reduction and a Cordon Cap Increase shall have effect only with the Office of Rail Regulation's consent in accordance with Condition J10. Such consent shall be sought by Network Rail submitting the relevant modifications to the Incumbent's and Applicant's Access Agreements to the Office of Rail Regulation for consent within 10 Working Days after the later of:
- (a) the Incumbent's acceptance of the Cordon Cap Reduction under Condition J8.2.4;
 - (b) the Incumbent's deemed acceptance of the Cordon Cap Reduction under Condition J8.2.6; or
 - (c) the relevant ADRR Determination.
- 8.4.2 Network Rail, the Incumbent and the Applicant shall use all reasonable endeavours to procure that the Office of Rail Regulation is furnished with sufficient information and evidence as it requires to determine:

- (a) whether or not to give its consent to the modifications in question; and
- (b) the date from which those modifications shall have effect.

8.4.3 The Cordon Cap Reduction and Cordon Cap Increase shall have effect from the date the Office of Rail Regulation issues a notice to the parties giving its consent to the reduction or increase. If the Office of Rail Regulation does not consent to the reduction or increase, it shall issue a notice to the parties setting out why consent has been refused.

9. Rights Review Meetings

9.1 *Application*

- 9.1.1 This Condition J9 applies only to services for the carriage of goods by railway.
- 9.1.2 Subject to Conditions J9.3.2 and J9.4.2, the Train Operator shall attend a Rights Review Meeting if requested to do so by Network Rail in a notice served in accordance with Condition J9.2.1.
- 9.1.3 Rights Review Meetings shall be scheduled by Network Rail, subject to Condition J9.2.1, at six-monthly intervals.
- 9.1.4 If Network Rail fails to schedule Rights Review Meetings with a Train Operator (“the Review Operator”) in accordance with Condition J9.1.3, the Review Operator or any other Train Operator may, by issuing a notice to Network Rail, request that Network Rail schedules a Rights Review Meeting with the Review Operator. Network Rail shall schedule a Rights Review Meeting with the Review Operator within 10 Working Days of receipt of such a notice. If, however, Network Rail considers a notice issued by a Train Operator in accordance with this provision to be invalid, it shall, within 10 Working Days of the receipt of the notice, issue a notice to the Train Operator rejecting the request and setting out its reasons for doing so.

9.2 *Network Rail notice*

- 9.2.1 Not later than 20 Working Days in advance of any scheduled date for holding a Rights Review Meeting, Network Rail shall serve a notice on the Train Operator requesting the Train Operator to attend the Rights Review Meeting.
- 9.2.2 A notice served under Condition J9.2.1 shall specify:

- (a) any:

(i) Rights Subject to Surrender; and/or

(ii) Existing Cordon Caps,

which Network Rail requests that the Train Operator agree to surrender or be reduced; and

(b) the reasons for such request.

Such a notice shall be copied to the Office of Rail Regulation.

9.3 *Train Operator agreement to Review Proposal*

9.3.1 If the Train Operator agrees to the Review Proposal in whole or in part then:

(a) it shall give notice to that effect to Network Rail before the date of the Rights Review Meeting;

(b) the Review Proposal, to the extent that it is agreed by the Train Operator, shall have effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J9.3.1(c); and

(c) Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after it receives notice from the Train Operator in accordance with Condition J9.3.1(a).

9.3.2 If the Train Operator agrees to the entire Review Proposal, Network Rail's request for a Rights Review Meeting shall cease to have effect.

9.4 *Train Operator notice*

9.4.1 If the Train Operator does not agree to all or part of the Review Proposal, no later than 5 Working Days prior to the Rights Review Meeting, it shall serve a notice on Network Rail, copied to the Office of Rail Regulation:

(a) specifying that it has a reasonable on-going commercial need for some or all of the Rights Subject to Surrender and/or Existing Cordon Caps specified in the Review Proposal; and

(b) providing evidence in support of any such contention.

9.4.2 If no notice is served by the Train Operator in accordance with Condition J9.4.1:

- (a) it shall be deemed that the Train Operator agrees to the Review Proposal;
- (b) Network Rail's request for a Rights Review Meeting shall cease to have effect;
- (c) the Review Proposal shall have effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J9.4.2(d); and
- (d) Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after the date on which the Train Operator is deemed to agree to the Review Proposal pursuant to Condition J9.4.2(a).

9.5 *Cessation of notice*

If the Train Operator and Network Rail agree or it is Determined that the Train Operator has a reasonable on-going commercial need for all or any of the Rights Subject to Surrender and/or Existing Cordon Caps specified in the Review Proposal, Network Rail's notice served under Condition J9.2.1 shall cease to have effect to the extent the Train Operator's claim has been so agreed or Determined.

9.6 *The Rights Review Meeting*

- 9.6.1 At the Rights Review Meeting, Network Rail and the Train Operator shall discuss the content of the notices served under Conditions J9.2.1 and J9.4.1 and attempt to reach agreement on the issues raised in those notices.
- 9.6.2 If, at the Rights Review Meeting, Network Rail and the Train Operator reach agreement on some or all of the issues raised in notices served under Conditions J9.2.1 and J9.4.1:
 - (a) the Review Proposal, to the extent that it has been agreed, shall have effect from the date on which notice is given to the Office of Rail Regulation pursuant to Condition J9.6.2(b); and
 - (b) Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after the Rights Review Meeting.

9.7 *Surrender of access rights and/or Cordon Caps*

9.7.1 If it is Determined that the Train Operator has no reasonable on-going commercial need for all or any of the Rights Subject to Surrender and/or Existing Cordon Caps specified in the Review Proposal, then the rights that are to be surrendered will be surrendered, and removed in their entirety from the Train Operator's Access Agreement, and/or the Existing Cordon Cap shall be reduced, from the date:

- (a) on which notice is given to the Office of Rail Regulation pursuant to Condition J6.3.2, in the event of an ADRR Determination; or
- (b) specified in the Office of Rail Regulation Determination, if applicable.

9.7.2 In the event of an ADRR Determination in accordance with Condition J9.7.1, Network Rail shall notify the Office of Rail Regulation of the relevant modifications to the Train Operator's Access Agreement no more than 10 Working Days after the date of that ADRR Determination and shall include a copy of the relevant ADRR Determination with such notice.

9.8 *Bids*

Where any Rights Subject to Surrender surrendered under this Condition J9 include the surrender of a Bid, Network Rail's obligations under Condition D4.7.1 shall cease to have effect in respect of that Bid as from the date the Review Proposal takes effect in accordance with this Condition J9.

10. Office of Rail Regulation consent or Determination

10.1 *Consent to part of the modifications or Determination of modifications*

10.1.1 Where Network Rail submits modifications to an Access Agreement to the Office of Rail Regulation for consent under Condition J2.13, the Office of Rail Regulation may elect to give its consent to part only of the modifications submitted to it.

10.1.2 Where Network Rail submits modifications to an Access Agreement relating to a Cordon Cap Reduction or Cordon Cap Increase to the Office of Rail Regulation for consent under Condition J8.4.1, the Office of Rail Regulation may, if it does not consider it appropriate to give its consent to the Cordon Cap Reduction or Cordon Cap Increase submitted to it (or to reject it), issue a notice requiring the parties to the relevant Access Agreement to modify the Cordon Cap Reduction and/or Cordon Cap Increase as specified in the notice.

10.1.3 No notice of the Office of Rail Regulation under Condition J10.1.2 shall have effect unless the Office of Rail Regulation has:

- (a) consulted the parties to the relevant Access Agreement on a draft of the notice it proposes to issue;
- (b) taken into account any representations made by the parties in response to the consultation under Condition J10.1.3(a); and
- (c) notified the parties as to its conclusions in relation to the issues specified in the notice and its reasons for those conclusions.

10.1.4 If the Office of Rail Regulation Determines the Cordon Cap Reduction or Cordon Cap Increase under Condition J10.1.2, then Conditions J8.4.1 and J8.4.2 shall apply as if the references to the Office of Rail Regulation giving its consent to a Cordon Cap Reduction or Cordon Cap Increase, as applicable, are to the Office of Rail Regulation Determining such Cordon Cap Reduction or Cordon Cap Increase.

10.2 *Effect of modifications*

If the Office of Rail Regulation gives its consent to, or Determines, any modification to an Access Agreement under this Part J, such modification shall have effect from the date specified in the relevant notice of consent or Determination.

11. **Obligation of Network Rail to publish documentation**

Subject to Condition A3.1, Network Rail shall promptly publish an accurate and up to date copy or statement of every notice or, in respect of Condition J7.10, notification given or received pursuant to Conditions J2.2, J2.11.3, J2.13.2, J4.5(a), J4.9.2(c), J4.12.2, J5.1, J5.4(d), J6.2.2, J6.2.6, J6.3.2, J7.2, J7.6.3(c), J7.8.2, J8.2.2, J8.4.1, J9.1.3, J9.1.4, J9.2.1, J9.4.2(d) and J9.7.2, in order to inform persons holding or contemplating holding or surrendering access rights about how the allocation of capacity on any part of Network Rail's network may change over time.

12. **Reasonable on-going commercial need**

12.1 In this Part J, the phrase 'reasonable on-going commercial need' shall be interpreted in accordance with rules or criteria (if any) determined and revised from time to time in accordance with this Condition J12 which, subject to Condition J12.4:

- (a) follow consultation by Network Rail with the appropriate franchising authority and Train Operators providing services for the carriage of goods by railway; and

- (b) have been approved by the Office of Rail Regulation.
- 12.2 If Network Rail wishes to revise the rules or criteria published pursuant to Condition J12.1, it shall submit the revised rules or criteria to the Office of Rail Regulation for approval. The revised rules or criteria shall have effect only with the Office of Rail Regulation's consent.
- 12.3 If:
 - (a) the Office of Rail Regulation does not give its approval to the revised rules or criteria described in Condition J12.2; or
 - (b) the Office of Rail Regulation considers that the rules or criteria published pursuant to Condition J12.1 should be revised, the Office of Rail Regulation may issue a notice requiring Network Rail to publish the revised rules or criteria specified in the notice and Network Rail shall comply with any such requirements. If Network Rail fails to comply with any such requirements of the Office of Rail Regulation within the time specified in the notice from the Office of Rail Regulation, the Office of Rail Regulation may publish the revised rules and criteria itself.
- 12.4 The revised rules or criteria shall be published by Network Rail in its network statement, and on its website.
- 12.5 No notice of the Office of Rail Regulation under Condition J12.3 shall have effect unless the Office of Rail Regulation has:
 - (a) consulted Network Rail, the appropriate franchising authority and Train Operators providing services for the carriage of goods by railway in relation to the issues specified in the notice;
 - (b) taken into account any representations made by the parties in response to the consultation under Condition J12.5(a); and
 - (c) notified Network Rail, the appropriate franchising authority and those Train Operators as to its conclusions in relation to the issues specified in the notice and its reasons for those conclusions.
- 12.6 The rules or criteria published in accordance with this Condition J12 may differentiate between the use of the phrase 'reasonable on-going commercial need' in the context of:
 - (a) Rights Subject to Surrender; and
 - (b) a Cordon Cap Reduction.

13. Dispute resolution

13.1 If within 5 Working Days of:

- (a) receipt by the Train Operator of a Relevant Response under Condition J2.2;
- (b) receipt by Network Rail of a Counter Notice under Condition J4.9.1;
- (c) receipt by Network Rail of a Counter Notice under Condition J5.4(b);
- (d) receipt by Network Rail of a Counter Notice under Condition J6.2.5;
- (e) receipt by Network Rail of a Third Party Counter Notice under Condition J7.6.1;
- (f) receipt by Network Rail of a Third Party Counter Notice under Condition J8.2.5;
- (g) receipt by Network Rail of a Counter Notice under Condition J8.3.2; or
- (h) the end of the Rights Review Meeting under Condition J9,

Network Rail and the Train Operator or the Incumbent (as the case may be) have failed to reach agreement on whether the Specified Relevant Adjustment, Specified Relevant Surrender or Cordon Cap Reduction (as the case may be) shall have effect, the Train Operator, in the case of a Relevant Response received by the Train Operator under Condition J2, or either party, in all other cases, may refer the matter for determination in accordance with the ADRR.

13.2 In determining matters in accordance with the ADRR referred under Condition J2, due regard is to be given to any criteria which the Office of Rail Regulation has most recently published (and identified as such) in relation to the surrender or adjustment of Access Rights.

13.3 If either Network Rail, the Train Operator or the Incumbent is dissatisfied with any decision made in accordance with the relevant ADRR in relation to any matter referred to it under Condition J13.1(a)-(e) or (h), that party may, within 10 Working Days of receipt of that determination, refer the matter to the Office of Rail Regulation for Determination under Part M. This right of appeal shall be automatically incorporated into and cannot be excluded from, any procedure

agreement agreed by the parties or applied to the dispute in accordance with the ADRR.

14. Appeal procedure

14.1 *Right of appeal in accordance with the ADRR*

Without prejudice to the provisions of Condition J13, if any Access Party is otherwise dissatisfied as to any matter concerning the operation of Part J in respect of any access agreement, that party may refer the matter for determination in accordance with the ADRR.

14.2 *Right of appeal to the Office of Rail Regulation*

If any Access Party or Potential Access Party is dissatisfied with any decision made in relation to any matter referred to the ADRR under Condition J14.1, that Access Party may refer the matter to the Office of Rail Regulation for determination under Part M.

Part K – Information

Explanatory Note

- A. *Part K provides for the two-way flow of key information between Access Parties both on a regular and an ad-hoc basis.*
- B. *Network Rail is required to produce annual information, mirroring the business planning and stewardship obligations under its network licence, and update the annual information and report on progress against the information contained in it.*
- C. *Network Rail is entitled to request information from an Access Beneficiary, and an Access Beneficiary is similarly entitled to request information from Network Rail, where this is reasonably requested for either party to plan its business with a reasonable degree of assurance.*
- D. *Part K will have effect subject to a notice or notices served by the Office of Rail Regulation concerning the types and classes of information, timeliness of provision, quality (including completeness and accuracy) and level of detail of the information.*
- E. *Save as provided in the notice or notices served by the Office of Rail Regulation, the information to be provided under Part K is to be complete and accurate in all material respects to the greatest extent reasonably practicable.*
- E. *This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

In this Part K:

“Accounting Period”	means each of thirteen consecutive periods in each Relevant Year, each such period being 28 days in length, save that the length of the first and last period in the Relevant Year shall be such as shall be adopted by Network Rail;
“Information”	means Network Rail Annual Information, Network Rail Monitoring Information and Requested Information;
“Monitoring Period”	shall consist in each financial year commencing on 1 April of one of four consecutive periods, each of which shall comprise three consecutive Accounting Periods except the last which shall comprise four consecutive Accounting Periods, or such periods beginning and ending on such other dates as the Office of Rail Regulation may specify in a notice;
“Network Rail Annual Information”	means the information specified in Condition K1.1;
“Network Rail Annual Report”	means the report referred to in Condition K3.1;
“Network Rail Monitoring Information”	means the information specified in Condition K1.2;
“Network Rail Monitoring Report”	means the report referred to in Condition K3.2;
“Relevant Network”	means that part of the Network comprising any Strategic Planning Route which the relevant Train Operator is permitted to use or to which the access option of an Access Option Holder

	relates;
"Relevant Year"	means each 12 month period beginning 1 April;
"Requested Information"	means the information specified in Condition K1.3; and
"Strategic Planning Route"	means a route for route planning purposes designated in the delivery plan (including its related route plans) which Network Rail is required to produce under Condition 1 of its network licence as a "strategic planning route" or "strategic route".

CONDITION K1 – INFORMATION COVERED BY PART K

1.1 Network Rail Annual Information

Network Rail Annual Information means, in relation to any Access Beneficiary:

- (a) projections of future network quality and capability requirements;
- (b) planned activities and volumes of work in respect of the carrying out of:
 - (i) relevant activities; and
 - (ii) network services in relation to the Relevant Network to be carried out by any other person;
- (c) the expected effect of relevant activities on the quality and capability of the Relevant Network, the quality of network services and the ability of users to provide improved services to their customers; and
- (d) the expected effect of relevant activities on the outputs required of Network Rail and established in the last access charges review.

In this Condition K1.1:

"duty"	means the duty incumbent on Network Rail to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of Network Rail to finance its licensed activities;
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“purpose”

is to secure:

- (a) the operation and maintenance of the network;
- (b) the renewal and replacement of the network; and
- (c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:

- (i) the quality and capability of the network; and
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network;

“relevant activities”

means the activities which are necessary or expedient in order to carry out the duty;

“relevant asset categories” means track, signalling and telecommunications, structures, electrification equipment, stations, maintenance depots, real and heritable property, information systems and such other categories of material asset as are necessary or expedient so as to facilitate compliance by Network Rail with the duty; and

terms used in Condition K1.1 shall have the same meaning as in Condition 1 of the network licence of Network Rail and in the event of any conflict terms defined in the network licence shall prevail.

1.2 Network Rail Monitoring Information

Network Rail Monitoring Information means, in relation to any Access Beneficiary:

- (a) information as to any changes to the programmes of work contained in the last Network Rail Annual Report and Network Rail Monitoring Report which changes are likely materially to affect the operation of trains operated by any Access Beneficiary on the Network;

- (b) a statement of Network Rail's actual performance on the Relevant Network in the immediately preceding Monitoring Period, and its projected performance on the Relevant Network for the remainder of the Relevant Year;
- (c) information as to the addition or removal of temporary speed restrictions on the Relevant Network in the immediately preceding Monitoring Period, and any temporary speed restrictions which are likely to be added or removed in the current Monitoring Period and in the remainder of the Relevant Year;
- (d) a statement of the duration of any temporary speed restrictions on the Relevant Network in the immediately preceding Monitoring Period and the likely duration of any temporary speed restrictions in the current Monitoring Period and in the remainder of the Relevant Year; and
- (e) a statement of the efficiency of possession utilisation on the Relevant Network in the immediately preceding Monitoring Period, including the proportion of possessions cancelled or subject to late change.

1.3 Requested Information

Requested Information means:

- (a) in relation to information to be provided by Network Rail, such information as an Access Beneficiary may reasonably request from time to time in order to plan its business with a reasonable degree of assurance, including information on relevant assets which Network Rail is required to maintain under Condition 1 of its network licence; and
- (b) in relation to information to be provided by an Access Beneficiary, such information as Network Rail may reasonably request from time to time in order to plan its business with a reasonable degree of assurance,

in each case

- (i) subject to the request for the information concerned being made in writing and identifying expressly that it is a request made under this Part K; and
- (ii) to the extent specified in a notice given by the Office of Rail Regulation under Condition K6.1.

CONDITION K2 - PROVISION OF INFORMATION

2.1 Provision of Information by Network Rail

Network Rail shall, subject to Condition K3.3, make available to each Access Beneficiary:

- (a) Network Rail Annual Information;

(b) Network Rail Monitoring Information; and

(c) Requested Information,

in accordance with this Part K.

2.2 Provision of Information by each Access Beneficiary

Each Access Beneficiary shall make available to Network Rail Requested Information in accordance with this Part K.

2.3 Limitation on use of Information by Network Rail

Any Information provided to Network Rail under this Part K may only be used by Network Rail subject to the limitations in Condition 14 of its network licence and in accordance with this code.

2.4 Form of Information

Any Information made available under this Part K shall be in such form and level of detail as is reasonably necessary to enable:

(a) Network Rail to assess the effect of the matters disclosed in the Information provided to it on its provision of network services and fulfilment of its network licence obligations; and

(b) the relevant Access Beneficiary to assess the effect of the matters disclosed in the Information provided to it on its Services.

2.5 Quality of information

Subject to Condition K6, Information provided by any party under this Part K shall, to the greatest extent reasonably practicable, be complete and accurate in all material respects.

CONDITION K3 – PROVISION OF NETWORK RAIL ANNUAL INFORMATION AND NETWORK RAIL MONITORING INFORMATION

3.1 Provision of annual report

Subject as provided in Condition K3.3, Network Rail Annual Information shall be provided as an annual report and in form and detail consistent with that applicable to any annual update of the delivery plan (including its related route plans) mentioned in Condition 1 of the network licence of Network Rail.

3.2 Provision of report

Subject as provided in Condition K3.3, Network Rail Monitoring Information shall be provided in the form of a report for each Monitoring Period.

3.3 Provision of information at election of Access Beneficiary

- (a) Network Rail shall not be obliged to provide any Access Beneficiary with Network Rail Annual Information or Network Monitoring Information unless that Access Beneficiary has notified Network Rail that it elects to receive such information. Any such election shall have effect 28 days from the date it is received by Network Rail and shall continue until any date specified for its duration by the Access Beneficiary in the notice or (if no date is specified) until the election is withdrawn. An Access Beneficiary may withdraw or vary any such election made by it at any time by giving 28 days notice to Network Rail. The ability of an Access Beneficiary to seek Requested Information shall not be prejudiced by any failure by that Access Beneficiary to elect to receive information under this Condition K3.3.
- (b) Where an Access Beneficiary makes or has made an election to receive Network Rail Annual Information or Network Monitoring Information it may, either in the election or subsequently, inform Network Rail which elements of that information it wishes to receive. Network Rail shall use all reasonable endeavours, following consultation where appropriate with the Access Beneficiary, to meet the Access Beneficiary's request in respect of those elements of that information.
- (c) Where Network Rail complies with any request by an Access Beneficiary under Condition K3.3(b) regarding the elements of information required to be provided, it shall not also have to provide to that Access Beneficiary the balance of the information which is not required by that Access Beneficiary.

CONDITION K4 - TIMING OF PROVISION OF INFORMATION

4.1 Provision of Information by Network Rail

Network Rail shall provide to each Access Beneficiary, having elected to receive such information under Condition K3.3 and while its election remains effective:

- (a) Network Rail Annual Information by such date as shall be agreed between Network Rail and the relevant Access Beneficiary or, where the Office of Rail Regulation specifies a date upon the application of any party, by the date specified;
- (b) Network Rail Monitoring Information within 28 days after the beginning of each Monitoring Period, unless the Office of Rail Regulation agrees to the provision of such information on another date upon the application of any party, in which event the Network Rail Monitoring Information shall be provided on such other date; and
- (c) Requested Information in a timely manner after such information is requested, subject to Condition K4.4.

4.2 Updating Information by Network Rail

If:

- (a) a proposed final Local Output is the subject of an appeal under Condition L7, or is varied under Condition L9, the relevant Network Rail Annual Information and Network Rail Monitoring Information shall be updated and reissued as soon as reasonably practicable after the date on which the Local Output or the variation is finally established (following any appeal where relevant) and has become effective; and
- (b) insofar as any Information provided by Network Rail relates to any of Network Rail's future plans, and at any time during the Relevant Year such plans alter to the extent that such alterations are likely to have a material adverse effect on achievability of Network Rail's current Local Output Commitments under Part L, then Network Rail shall promptly notify the relevant Access Beneficiary of any necessary changes to that Information.

4.3 Provision of Information by Access Beneficiary

Each Access Beneficiary shall provide to Network Rail Requested Information in a timely manner after such information is requested, subject to Condition K4.4.

4.4 Provision of Requested Information

A party receiving a request for Requested Information shall within 15 Working Days of receipt of that request either (i) fulfil the request or (ii) notify the requesting party of the likely timescales and extent to which it reasonably expects to be able to fulfil the request and/or (iii) identify to the requesting party any element of the request which it considers it will not be able to fulfil or is not obliged to provide.

CONDITION K5 – APPEAL PROCEDURE

5.1 Right of appeal to senior officers or in accordance with the ADRR

If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure set out in this Part K;
- (b) any refusal by an Access Party to provide Requested Information;
- (c) the interpretation by an Access Party of the provisions of this Part K or any notice given by the Office of Rail Regulation under Condition K6.1 in relation to whether or not any information requested is Requested Information; or

- (d) the adequacy of information provided or the time taken to provide that information, in each case in response to a Request for Requested Information,

the matter shall be referred by that Access Party for review by the Access Parties concerned, with the review process to involve a senior manager of each of those Access Parties. If those Access Parties fail to reach a resolution within 28 days of the referral, either party may refer the matter for determination in accordance with the ADRR.

CONDITION K6 - APPLICATION OF PART K

6.1 Extent and timing of information obligations

This Part K shall have effect to the extent, including as to:

- (a) the types or classes of information to be provided;
- (b) the times within which information must be provided;
- (c) the categories of persons to whom information of different types or classes is to be provided; and
- (d) the quality of information and the level of detail with which it must be provided (including the extent to which it must be complete and accurate),

as are specified in a notice or notices given by the Office of Rail Regulation.

6.2 Asset information

No notice under Condition K6.1 may have effect to the extent that it requires Network Rail to provide asset information:

- (a) of a type or class;
- (b) to a quality or level of detail; or
- (c) within a time,

which is more onerous than it is required to do under Condition 1 of its network licence. In this Condition K6.2, “asset information” is information which Network Rail is required to maintain on relevant assets under that condition of its network licence.

6.3 Consultation

No notice may be given by the Office of Rail Regulation under Condition K6.1 unless it has first:

- (a) published the notice it intends to give and its reasons for that intention;
and
- (b) considered any representations which it has received in relation to the proposed notice and reasons.

CONDITION K7 - OTHER OBLIGATIONS TO CONTINUE

This Part K is:

- (a) without prejudice to any other obligation of any Access Party to provide information under any other provision of this code or the relevant Access Agreement; and
- (b) subject to the confidentiality provisions of this code and the relevant Access Agreement.

Part L – Performance

CONDITION LA

DEFINITIONS

In this Condition LA of Part L, unless the context otherwise requires:

“Class Representative”	is as defined in Part C;
“Condition Precedent (Franchised)”	has the meaning ascribed to it in Condition LA1.2;
“Franchised Passenger Class”	is as defined in Part C;
“franchised passenger train operator”	means a member of the Franchised Passenger Class;
“individual Joint Performance Process” or “individual JPP”	has the meaning ascribed to it in Condition LA3;
“Joint Performance Improvement Plan” or “JPIP”	has the meaning ascribed to it in Condition LA4;
“JPIP Party”	means any of the TAC Parties between whom a JPIP has from time to time been agreed in accordance with this Part L;
“Joint Performance Review ” or “JPR”	means a meeting held pursuant to Condition LA3.2 or LA3.5;
“Non-Franchised Passenger Class”	is as defined in Part C;
“Non-Passenger Class”	is as defined in Part C;
“Performance Objectives”	has the meaning ascribed to it in Condition LA2;
“Remedial Plan”	means a plan agreed pursuant to Condition LA5.1.
“Reporting Period”	means

- (a) each consecutive period of 28 days commencing on 1 April in each year, provided that the length of the first and last such period in any year may be varied by up to 7 days upon notice by Network Rail; or
- (b) as between any TAC Parties, such alternative period as may be agreed between them.

CONDITION LA1 – RELATIONSHIP WITH PART L

LA1.1 Replacement of Part L

This Condition LA1 (including its related definitions) has effect from its incorporation into the Network Code and:

- (a) the remainder of Condition LA shall have effect to the extent and in the circumstances set out below; and
- (b) Part L shall cease to have effect to the extent and in the circumstances set out below.

LA1.2 Condition LA and franchised passenger train operators

As from the occurrence of the Condition Precedent (Franchised), the remainder of Condition LA shall have effect in relation to all franchised passenger train operators. The Condition Precedent (Franchised) shall be the receipt by Network Rail of notice in writing stating that Condition LA shall have effect and given by:

- (a) members of the Franchised Passenger Class (the identity of such members being determined as at the date of the notice) representing not less than 90% in number of such members; or
- (b) the Class Representatives for the Franchised Passenger Class.

LA1.3 Condition LA and other operators

In relation to Train Operators other than franchised passenger train operators, the remainder of Condition LA shall have effect in relation to any such Train Operator upon the later of the following:

- (a) Conditions L1 to L11 inclusive ceasing to have effect in relation to that Train Operator by virtue of Condition LA1.5; and
- (b) Receipt by Network Rail of notice in writing from that Train Operator stating that Condition LA shall have effect.

If at any time the remainder of Condition LA has effect in relation to Train Operators who then consist of all members of the Non-Franchised Passenger Class or the Non-Passenger Class, then it shall also have effect in relation to all future members of the relevant Class, whether or not paragraphs (a) and (b) above apply to such future members. Network Rail shall then forthwith publish notice on its website, confirming when this applies to all such future members.

LA1.4 Part L and franchised passenger train operators

As from the occurrence of the Condition Precedent (Franchised), Conditions L1 to L11 inclusive shall cease to have effect in relation to all franchised passenger train operators and:

- (a) Network Rail shall have no further obligations for the benefit of franchised passenger train operators in respect of the provision or achievement of a Local Output Commitment;
- (b) this shall be without prejudice to any accrued liability, including as to appeal proceedings, in respect of any Local Output Commitment as at the later of:
 - (i) the occurrence of the Condition Precedent (Franchised); and
 - (ii) 1 April 2006.

LA1.5 Part L and other operators

In relation to Train Operators other than franchised passenger train operators, Conditions L1 to L11 inclusive shall cease to have effect in relation to any such Train Operator upon receipt by Network Rail of notice in writing from that Train Operator stating that those Conditions shall cease to have effect.

If at any time Conditions L1 to L11 inclusive no longer have effect in relation to Train Operators who then consist of all members of the Non-Franchised Passenger Class or the Non-Passenger Class, then they shall also have no effect in relation to all future members of the relevant Class, whether or not such notice shall be given by such future members. Network Rail shall then forthwith publish notice on its website, confirming when this applies to all such future members.

LA1.6 Part L and other operators – transitional arrangements

Upon Conditions L1 to L11 inclusive ceasing to have effect on any Train Operator other than a franchised passenger train operator, as provided in Condition LA1.5:

- (a) Network Rail shall have no further obligations for the benefit of that Train Operator in respect of the provision or achievement of a Local Output Commitment;
- (b) this shall be without prejudice to any accrued liability, including as to appeal proceedings, in respect of any Local Output Commitment applying to that Train Operator as at the date upon which such Conditions cease to have effect.

LA1.7 Interpretation

References in this Condition LA1 to Conditions L1 to L11 inclusive shall include their related definitions, although references to “Local Output Commitment” shall be interpreted as though its definition had continued to exist, notwithstanding that Conditions L1 to L11 shall have ceased to have effect.

CONDITION LA2 – OBJECTIVES

LA2.1 Performance Objectives

The objectives of this Condition LA (the “**Performance Objectives**”) are to

- (a) provide for the improvement, on a continuous basis, of performance both as between the TAC Parties and of the rail industry as a whole, through a process for liaison and cooperation in performance improvement to be applied between those parties, and
- (b) provide a process of reporting to the Office of Rail Regulation and (in the case of franchised passenger train

operators) the appropriate franchising authority on the performance of trains and the Network on a cooperative basis as between the TAC Parties and on a consistent basis as between different Train Operators (while having regard to the differing nature of their operations).

LA2.2 Achievement of Performance Objectives

Each TAC Party shall participate in the performance reporting, planning, monitoring and reviewing procedures set out in this Condition LA in order to achieve the Performance Objectives.

LA2.3 Limits

This Condition LA shall require participation as set out in Condition LA2.2, but

- (a) does not provide a cause of action in relation to the failure either to agree or to achieve any performance targets or levels or improvement plans;
- (b) other than as regards such participation and without limiting obligations arising under any franchise agreement to which it is a party or under a licence with respect to a railway asset of which that person is a holder or otherwise, shall not require any person to whom it applies to do or omit to do anything; and
- (c) shall neither relieve any person of any responsibility it may have in relation to its operations, acts or omissions nor transfer any such responsibility to any other person.

CONDITION LA3 – INDIVIDUAL JOINT PERFORMANCE PROCESS

LA3.1 Process for Liaison and Cooperation

The TAC Parties shall establish an individual JPP for regular liaison and cooperation between themselves with a view to fulfilling the Performance Objectives. The individual JPP shall be consistent with the ability to enable performance reporting at national level and to compare performance as between different Train Operators, while facilitating the parties' ability to accommodate needs at local level. It may be documented within the JPIP.

LA3.2 Frequency of Meeting

The individual JPP shall include at least a Joint Performance Review between the TAC Parties each Reporting Period during the term of each relevant Access Agreement between them. It may also provide for more frequent review meetings and less frequent planning or strategic meetings. Notwithstanding the process, either TAC Party may require a Joint Performance Review to be held at any time by giving at least 14 days' written notice to the other with a proposed agenda of items to be considered.

LA3.3 Attendance at Meetings

The individual JPP shall provide for meetings to involve suitably senior representatives from all parties, attending on a consistent basis so far as reasonably practicable, so as to facilitate the participation referred to in LA2.2 achieving the Performance Objectives in an efficient and effective manner.

LA3.4 The Reporting Period Joint Performance Review

The individual JPP shall provide for the Joint Performance Review held each Reporting Period to address at least:

- (a) presentation by Network Rail of performance data in respect of the previous Reporting Period relevant to the TAC Parties;
- (b) an analysis of that performance data;
- (c) a comparison against any applicable JPIP, including an assessment of reasons for any shortfalls or improved achievement in comparison with any relevant JPIP performance targets and any relevant JPIP action plans;
- (d) consideration of actions which may be planned, tested, implemented or revised, taking into account past and current performance, the performance experience of other Train Operators and any future circumstances reasonably anticipated. Actions may be planned to be taken individually, jointly or jointly with other third parties.

LA3.5 Joint Meetings

The individual JPP may provide for JPRs to be held either in whole or in part between Network Rail and two or more Train Operators where

those Train Operators are all reasonably likely to be materially affected by the matters to be addressed.

LA3.6 Documentation of the Process and Amendments

The individual JPP between the TAC Parties shall be agreed by them by the latest of (a) three months after the Network Code is amended to include this Condition, (b) in relation to any Train Operator who gives notice under Condition LA1.5, one month after the giving of such notice and (c) one month after the date of the relevant Access Agreement between the TAC Parties, and shall be documented in writing signed by the TAC Parties. Once agreed, either party may at any time propose amendments to the process which are consistent with the requirements of this Condition LA and the parties shall then apply their reasonable endeavours to agree whether and if so what amendments should be made.

LA3.7 Notice to the Office of Rail Regulation and the appropriate franchising authority

If the individual JPP is not agreed by the time specified in Condition LA3.6 or if any proposed amendment to the process is not resolved within three months of its first being raised in writing, either TAC Party may give notice to the Office of Rail Regulation and (where a relevant Train Operator is a franchised passenger rail operator) the appropriate franchising authority as provided in Condition LA5.2.

CONDITION LA4 - JOINT PERFORMANCE IMPROVEMENT PLAN

LA4.1 Parties to a JPIP

Except to the extent that it is agreed otherwise under Condition LA7.1, Network Rail and each Train Operator shall agree a JPIP which covers all the parts of the Network over which that Train Operator has rights of access. This does not preclude a JPIP being agreed between Network Rail and more than one Train Operator.

LA4.2 Period

Each JPIP shall specify the period to which it relates. It is anticipated that elements of a JPIP may relate to differing periods, reflecting the short, medium or long term nature of the plans concerned.

LA4.3 Contents of a JPIP

A JPIP shall contain such matters as are agreed between the JPIP Parties as being designed to achieve the Performance Objectives for the period covered by that JPIP, including:

- (a) performance metrics to be used for reporting on performance, the information to be provided by each party to the other for the purpose of such reporting, the format for regular reporting of performance and any more detailed process required to support the compilation, review and agreement of such reports;
- (b) performance targets in respect of the JPIP Party or Parties, which may include,
 - (i) stretch targets,
 - (ii) performance levels at which a Remedial Plan will be established;
 - (iii) performance levels at which a shortfall in performance shall be notified to the Office of Rail Regulation and (where the relevant JPIP Party is a franchised passenger train operator) the appropriate franchising authority; and
- (c) specific actions planned to be taken by one or both of the JPIP Parties (either together or separately and whether or not involving third parties) which are designed to help improve performance generally or to help achieve any stretch performance targets in the JPIP or (where these targets have been met) to maintain performance at least at these levels and to achieve further performance improvements which are reasonably practicable.

LA4.4 Review of JPIP

The JPIP Parties shall maintain the JPIP under regular ongoing review as part of the JPIP and shall make such amendments as are agreed as being designed to maintain or improve the achievement of the Performance Objectives.

LA4.5 Compatibility of JPIPs

Without prejudice to the Performance Objectives in relation to improvement of the rail industry as a whole, each JPIP Party shall endeavour to ensure, so far as is reasonable, that:

- (a) no JPIP contains actions, targets or performance levels that are incompatible with actions, targets or performance levels included in other JPIPs, or which are known, or could reasonably be expected to be known, by it to conflict with any other obligations of that JPIP Party; and
- (b) a JPIP shall not be inconsistent with the continued development of performance arrangements where the JPIP spans, or ends upon, the end of a franchise.

LA4.6 Information for the Office of Rail Regulation

Network Rail shall, except to the extent that the Office of Rail Regulation may otherwise request, provide the Office of Rail Regulation with copies (which may be in electronic format) of all JPIPs and any modifications of them made from time to time.

CONDITION LA5 - REMEDIAL PLANS AND FAILURE TO AGREE

LA5.1 Remedial Plan

If at any time:

- (a) one or more of the performance targets (other than any which is described as a stretch performance target) contained in a JPIP is not achieved; or
- (b) in the opinion of either JPIP Party, acting reasonably, any performance target (other than any which is described as a stretch performance target) contained in a JPIP will not be achieved within the time periods set out in that JPIP; or
- (c) if the JPIP specifies that a Remedial Plan is required at a particular level of performance and that level has been reached,

then the JPIP Parties shall use all reasonable endeavours to agree specific actions for inclusion in the JPIP which are designed to restore the level of performance as soon as reasonably practicable (with the timescales for the restoration being specified) to at least the level of that performance target or Remedial Plan trigger point as specified to be achieved by that time (a “**Remedial Plan**”).

LA5.2 Notice to the Office of Rail Regulation and the appropriate franchising authority

5.2.1 If:

- (a) the TAC Parties are unable to agree a JPIP or any amendment to a JPIP proposed by either of them; or
- (b) the TAC Parties are unable to agree regarding the reasons for any particular shortfall in performance or the actions which either or both should be taking to address that shortfall in performance; or
- (c) the JPIP Parties are unable to agree a Remedial Plan where one is required by this Condition; or
- (d) a Remedial Plan is considered by either party to it to be unlikely to be effective, or has not proved to be effective in each case in achieving the required level of performance and the JPIP Parties have been unable to agree further amendments to the Remedial Plan to take account of that actual or anticipated failure; or
- (e) where the JPIP Plan sets levels at which a shortfall in performance is to be notified to the Office of Rail Regulation and/or the appropriate franchising authority, and those levels have been reached,

then either party may give notice to the Office of Rail Regulation and (where a relevant Train Operator is a franchised passenger rail operator) the appropriate franchising authority setting out the circumstances that have led to the relevant shortfall in performance and/or lack of agreement. The party intending to give notice shall, before doing so, notify the other party or parties of its intention to do so and provide details of its concerns on which that notice is to be based. The

relevant parties shall, within 14 days of that notification (or within such other period as may be agreed) consider those concerns at a JPR or other meeting at which each will ensure that a suitably senior representative is present. The parties may, in considering those concerns, agree means of resolution, but are not bound to do so. Subject to this, following such meeting (or in its absence, if the failure to hold one within the relevant period is not attributable to the party intending to give notice), the notice may be given.

- 5.2.2 Any notice to the Office of Rail Regulation and the appropriate franchising authority given pursuant to Condition LA5.2.1 shall be accompanied by such supporting evidence as the JPIP Party giving the notice considers appropriate. Any such notice shall be copied at the same time together with the accompanying supporting information by the party serving that notice to the other TAC Party.

CONDITION LA6 - PERFORMANCE REPORTING

LA6.1 Each TAC Party shall provide to the other information in its possession or under its control reasonably required by the other for the purposes of any Joint Performance Review or the agreement of any JPIP to which that TAC Party is a party.

LA6.2 The parties to each JPIP shall keep under regular review the terms of that JPIP relating to the regular reporting and review of performance, recognising that there are efficiencies and other benefits to be secured through the adoption of common formats and processes of such reporting across the Network and that these are expected to evolve over time. Accordingly and without prejudice to any arrangements in a JPIP which are specific to monitoring initiatives or aspects of performance particular to that JPIP, a JPIP Party shall not unreasonably withhold its consent to proposals for change to the JPIP insofar as they relate to changes to such common formats and processes of reporting in circumstances where such changes have been agreed between Network Rail and a majority of other Train Operators in the same Class (as defined in Part C of the Network Code).

CONDITION LA7 – APPLICATION

LA7.1 Limited Application

Where the nature of the access rights enjoyed by a Train Operator is such that the Performance Objectives would not be usefully served by the full application of this Condition LA, Network Rail and that Train Operator may agree the extent to which this Condition LA shall be applied as regards that Train Operator.

LA7.2 Revision of Limited Application

If either party is subsequently of the opinion that the circumstances have become such that the Performance Objectives would be usefully served by the full application, or a different application, of Condition LA, then that party may by notice to the other require the review of that agreement or revoke it.

DEFINITIONS

In this Part L, unless the context otherwise requires:

- “Appeal” in relation to a Local Output Commitment, means the exercise by a Train Operator of a right under this Part L to make a reference in that respect in accordance with the ADRR
- “Class” has the meaning ascribed to it in Part C of this Network Code;
- “Class A Local Output” means, in relation to a Relevant Year, a level of operational performance relating to:
- (a) delays to or cancellations of train services; or
 - (b) such other matter relating to operational performance in respect of which an Access Agreement provides for one party to be entitled to receive from the other:
 - (i) compensation based on a tariff (including, in the case of a breach of contract, whether by way of liquidated damages or otherwise); or
 - (ii) a variation in the amount of compensation due depending on the quality, timeliness or any other aspect of the performance of an obligation;
- “Class B Local Output” means, in relation to a Relevant Year, a level of capability or quality of the Network or any other matter which is not the subject of a Class A Local Output;
- “Established” in relation to a Local Output Commitment, means the Local Output Commitment has come into effect for the benefit of the Train Operator in question, whether:
- (a) following the LOC Statement in that respect having been given to the Train Operator and either no Appeal having been lodged or, if such an Appeal has been lodged, it has not been proceeded with; or
 - (b) following the final determination of an Appeal

in that respect,

and subject always to:

- (i) adjustment under Condition L7;
- (ii) suspension under Condition L8; and
- (iii) variation under Condition L9,

and “Establish” and “Establishment” shall be construed accordingly;

“Excess Aggregate Local Outputs” in the case of either Class A or Class B Local Outputs for a Relevant Year, means a Local Output Commitment the achievement of which would, when taken together with all other Local Output Commitments for that Relevant Year, either:

- (a) make it impossible for Network Rail to achieve one or more other Local Output Commitments; or
- (b) commit Network Rail to a level of operational performance, capability or quality of the Network, or any other matter, materially beyond the targets and other requirements of Network Rail established by the Office of Rail Regulation in the most recent access charges review;

“Expiry” in relation to a Local Output Commitment, means either:

- (a) the end of the obligations in question as determined or effected in accordance with the relevant LOC Statement; or
- (b) the Establishment of a Local Output Commitment which, in terms of the LOC Statement in which it is contained, replaces or supersedes the earlier Local Output Commitment;

“Local Output” means a Class A Local Output and/or a Class B Local Output;

“Local Output Commitment” has the meaning ascribed to it in Condition L2;

“LOC Statement”	in relation to a Train Operator, means the statement of Network Rail’s Local Output Commitment to that Train Operator, given by Network Rail and as Established under this Part L;
“LOC Suspension Notice”	means a notice given under Condition L8;
“Mandatory Variation Notice”	means a notice given under Condition L9.3;
“Office of Rail Regulation’s LOC Criteria”	means a document or documents published by the Office of Rail Regulation from time to time specifying the matters to which the Office of Rail Regulation will expect to have regard and the relative weight which it will expect to place on such matters when considering any reference made to it under Condition L7;
“Performance Plan”	means a statement by Network Rail, forming part of a LOC Statement, of its plans for the carrying out of such maintenance, repair, renewal, enhancement or other modification of such parts of the Network as will enable it to discharge its Local Output Commitments in respect of a Train Operator;
“Reasonable Grounds”	means, in relation to a Local Output, that Network Rail is or will be unable to achieve that Local Output (in whole or in part) as a result of not having obtained a Relevant Consent or being unable to comply with a Relevant Rule and Procedure having acted, in relation to the obtaining of the Relevant Consent or the compliance with the Relevant Rule and Procedure, with due efficiency and economy and in a timely manner, including in all respects with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced network owner and operator;
“Relevant ADRR Forum”	means Forum as defined in the ADRR;
“Relevant Consents”	means all consents, permissions, approvals, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, which are required (or which would, in accordance with the standards of a reasonable and

prudent person, normally be obtained of or from any competent authority or third party) in connection with the achievement of any Local Output;

“Relevant Rules and Procedures” means all applicable Railway Group Standards, the Health and Safety at Work etc. Act 1974, the Disability Discrimination Act 1995, the Channel Tunnel Rail Link Act 1996, the Transport and Works Act 1992, the Railways Act 1993, the Transport Act 2000, this Network Code, any relevant regulations or directives made by the European Union, all laws, by-laws, codes, common law, instruments, licences, regulations, requirements, rules, safety cases and other rules or procedures which concern the giving of any Relevant Consent or are otherwise relevant to the achievement of a Local Output; and

“Relevant Year” means each 12 month period beginning 1 April.

CONDITION L1 - EFFECT OF PART L

1.1 General

This Part L shall have effect:

- (a) in relation to members of such Class or Classes as are specified by the Office of Rail Regulation in a notice given to the parties and published on its website;
- (b) from such date or dates or the happening of such event or events as are specified; and
- (c) subject, where relevant, to the transitional provisions in Condition L11.

1.2 Procedural

In relation to a notice under Condition L1.1:

- (a) it may specify different dates or events for different Classes;
- (b) more than one notice may be given; but
- (c) none may have retrospective effect.

CONDITION L2 - LOCAL OUTPUT COMMITMENTS

A Local Output Commitment is an obligation, Established under this Part L, owed by Network Rail to a Train Operator, and concerning:

- (a) operational performance; or
- (b) the capability or quality of the Network or other matters,

as more particularly defined in this Part L as, respectively, Class A Local Outputs and Class B Local Outputs, and as specified in the relevant LOC Statement.

CONDITION L3 - OBLIGATION TO ACHIEVE LOCAL OUTPUTS

Network Rail shall achieve each Local Output Commitment specified in a LOC Statement.

CONDITION L4 - CONTENT OF LOC STATEMENT

Each LOC Statement shall specify:

- (a) the Relevant Year to which it relates;
- (b) details of the Local Outputs which are to be achieved for the benefit of the relevant Train Operator in that Relevant Year and in the next two following Relevant Years; and
- (c) where relevant, the dates on which those Local Outputs are to be achieved in the Relevant Years.

CONDITION L5 - DURATION OF LOCAL OUTPUT COMMITMENT

5.1 *Effective period*

A Local Output Commitment has effect from its Establishment until its Expiry.

5.2 *Preservation of accrued rights*

The variation, replacement or super session of a Local Output Commitment shall not affect any accrued rights of the Train Operator in relation to any failure by Network Rail to achieve the relevant Local Outputs while the Local Output Commitment was effective.

CONDITION L6 - ESTABLISHMENT OF LOCAL OUTPUTS AND PERFORMANCE PLANS

6.1 *Draft LOC Statement*

Not later than the 30 November before the start of each Relevant Year,

Network Rail shall send to each Train Operator a draft of the LOC Statement in respect of that Train Operator, containing:

- (a) details of the Local Outputs which Network Rail proposes should be included in a Local Output Commitment:
 - (i) in respect of that Train Operator; and
 - (ii) in respect of any other Train Operator which Network Rail reasonably considers may, if included in a Local Output Commitment, affect the first-mentioned Train Operator;
- (b) its proposed Performance Plans in those respects;
- (c) its best estimate of the timing of the carrying out of the works contemplated by the Performance Plans;
- (d) its best estimate of the date of achievement of the Local Outputs in question; and
- (e) a statement as to whether, in Network Rail's reasonable opinion, such works or the achievement of the Local Outputs in question are likely to constitute a Network Change under Part G.

6.2 Adequacy of Performance Plans

Each Performance Plan shall be prepared in sufficient detail so as to enable the Train Operator to assess its adequacy and its likely effect on its Services.

6.3 Consultation on draft LOC Statement

As soon as reasonably practicable after the date on which Network Rail sent the draft LOC Statement to the relevant Train Operator, Network Rail shall:

- (a) consult that Train Operator in relation to the Local Outputs and Performance Plans specified in the draft LOC Statement, and shall invite the submission to it of representations or objections in respect of them;
- (b) schedule and attend a meeting between Network Rail and all of the Train Operators whose Services may be affected by the implementation of any such Local Output and Performance Plan with a view to establishing the specification of that Local Output and the timing of any works to be done to achieve it and the time at which it will come into effect; and

- (c) consult that Train Operator in relation to any representation which the Train Operator has made or may wish to make in relation to funding arrangements relevant to the Local Outputs,

and Network Rail shall conclude such consultation and meeting by the 15 January before the start of the Relevant Year.

6.4 *Response on consultation*

Each Train Operator consulted under Condition L6.3 shall:

- (a) consider the matters on which Network Rail has consulted it; and
- (b) give notice to Network Rail of any representations or objections it wishes to make in relation to the consultation no later than the date for concluding the consultation specified in Condition L6.3.

6.5 *Decision and Establishment*

Following consideration of all representations and objections received under Condition L6.4, Network Rail shall:

- (a) decide on the Local Outputs which will make up the Local Output Commitments in question, and the associated Performance Plans; and
- (b) send to the relevant Train Operator, each other Train Operator which Network Rail reasonably considers may be affected and the Office of Rail Regulation, a LOC Statement in that respect,

and thereby Establish the Local Output Commitments in question.

6.6 *Timing*

Network Rail shall send the LOC Statement in question to the persons entitled to receive it not later than the 28 February before the start of the Relevant Year to which it relates.

6.7 *Non-provision of LOC at election of Train Operator*

Network Rail may give notice to any Train Operator requiring it to elect, by notice to Network Rail, if it wishes not to receive a LOC Statement relating to one or more Relevant Years. The Train Operator shall elect accordingly and such decision shall have effect in relation to the Relevant Years specified by the Train Operator.

6.8 Saving

The obligations in this Condition L6 are without prejudice to Conditions L7 (Appeals), L8 (LOC Suspension Notices) and L9 (Variations to Local Output Commitments) and Parts D and G of this Network Code.

CONDITION L7 - APPEALS

7.1 Right of appeal in accordance with the ADRR

Subject to Condition L7.2, if any Train Operator is dissatisfied as to:

- (a) any matter concerning or in connection with the Establishment of a Local Output Commitment made in respect of it; or
- (b) any variation of such a Local Output Commitment issued under Condition L9.2,

the Train Operator may refer the matter for determination in accordance with the ADRR (as supplemented or varied by this Condition L7).

7.2 Time limits for appeal

A Train Operator's right of appeal under Condition L7.1 shall lapse if that Train Operator has not referred the relevant matter in accordance with the ADRR:

- (a) in the case of a new Local Output Commitment, by the 31 March before the start of the Relevant Year or, if later, within 31 days of receiving a LOC Statement sent under Condition L6.5(b); and
- (b) in the case of a variation under Condition L9.2, within 28 days of receiving notification under Condition L9.2(a).

7.3 Information to be sent in relation to the appeal

Without prejudice to Condition L7.4 or 7.5, if there has been a reference under Condition L7.1:

- (a) Network Rail shall provide the Train Operator and the Secretary with the name and address of every other Train Operator who Network Rail reasonably considers may be affected by the Local

Output Commitment within 7 days of the making of the reference;
and

- (b) the TAC Party making the reference shall:
 - (i) include with its reference a statement in reasonable detail as to the matter in question and its reasons for making the reference; and
 - (ii) within 14 days of making the reference, send a copy of the reference and the statement specified in Condition L7.3(b)(i) to the other party to the dispute and, where Network Rail has made the reference, to every other affected Train Operator or, where a Train Operator has made the reference, to every other affected Train Operator of which it has notice under Condition L7.3(a) and to the Office of Rail Regulation.

7.4 Obligation to provide evidence

Without prejudice to Condition L7.5, each of Network Rail, the relevant Train Operator and every other affected Train Operator shall, as soon as reasonably practicable after the date of any reference under Condition L7.1, use their respective reasonable endeavours to procure that the Secretary is furnished with sufficient information and evidence so that any matter referred under Condition L7.1 may be properly considered. All information and evidence provided under this Condition L7.4 shall be copied to the Office of Rail Regulation.

7.5 Power of Relevant ADRR Forum

In relation to a reference made under Condition L7.1, the parties shall request the Relevant ADRR Forum to have regard to the need to issue the LOC Statement as soon as reasonably practicable and the Relevant ADRR Forum shall, in determining the matter in question, 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 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 that directions given by the Relevant ADRR Forum under this Condition L7.5 shall not be inconsistent with the ADRR;
- (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; and/or

- (d) to make such orders as it thinks fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the Relevant ADRR Forum determines) which shall be borne by either or both of the parties.

7.6 Criteria for appeal

Any matter referred under Condition L7.1 shall be determined by reference to the Office of Rail Regulation's LOC Criteria.

7.7 Obligation to comply with determinations

7.7.1 Each party to a dispute which has been the subject of a reference under Condition L7.1 shall comply with an interim order of the kind referred to in Condition L7.5(c).

7.7.2 A determination made following a reference under Condition L7.1 shall be final and binding on:

- (a) Network Rail;
- (b) the relevant Train Operator; and
- (c) all other affected Train Operators, whether or not any of them has been required to provide evidence or make submissions under Conditions L7.4 or L7.5.

7.8 Issue of adjusted LOC Statement

When any appeal brought under this Condition L7 has been finally concluded, Network Rail shall promptly issue a further LOC Statement to the relevant Train Operator (with a copy to the Office of Rail Regulation) containing the revised Local Output Commitment applicable to that Train Operator, as adjusted by the outcome of such appeal.

CONDITION L8 - LOC SUSPENSION NOTICES

8.1 *When a LOC Suspension Notice may be given*

The Office of Rail Regulation may give a LOC Suspension Notice in relation to any Local Output Commitment, any variation under Condition L9.1 or L9.2 or any revision issued under Condition L7.8, if:

- (a) it has consulted with Network Rail, the relevant Train Operator and the Secretary of State on the Local Output Commitment, the variation or the revision; and
- (b) it reasonably believes that allowing the Local Output Commitment, the variation or the revision to become effective is likely to result in Network Rail committing to Excess Aggregate Local Outputs.

8.2 Content of LOC Suspension Notice

A LOC Suspension Notice shall state that the Local Output Commitment or the variation or the revision in question shall not become effective, to the extent (including as to time) specified in the LOC Suspension Notice, unless and until:

- (a) the Office of Rail Regulation issues a further notice confirming that the Local Output Commitment, variation or revision may become effective; and/or
- (b) any Local Output is reduced to a level specified by the Office of Rail Regulation in the LOC Suspension Notice; and/or
- (c) Network Rail takes the steps specified in the LOC Suspension Notice to Establish the Local Output Commitment on revised terms.

8.3 Timing of LOC Suspension Notice

A LOC Suspension Notice may only be given:

- (a) in relation to a Local Output Commitment, on or before 30 April in the Relevant Year to which it relates; and
- (b) in relation to a revision or a variation to a Local Output Commitment, within 42 days of the Office of Rail Regulation receiving notification under Condition L7.8, L9.1(a) or L9.2(a).

8.4 Effect of LOC Suspension Notice

If the Office of Rail Regulation gives a LOC Suspension Notice, the Local Output Commitment, the variation or the revision to which the notice relates shall not become effective until the requirements of the LOC Suspension Notice are complied with.

8.5 Mandatory variations

The power of the Office of Rail Regulation to give a LOC Suspension Notice is in addition to its power to require mandatory variations to a Local Output Commitment under Condition L9.3.

CONDITION L9 - VARIATIONS TO LOCAL OUTPUT COMMITMENTS

9.1 Variations by agreement

If Network Rail and the Train Operator agree a variation to a Local Output Commitment:

- (a) Network Rail shall notify the Office of Rail Regulation of the proposed variation; and
- (b) the variation shall become effective on the date agreed for its implementation (which shall not be less than 45 days from the date of such notice) subject to the issue of a LOC Suspension Notice, in which event the variation shall come into effect under Condition L8.

9.2 Variations on Reasonable Grounds

If Network Rail proposes a variation to a Local Output Commitment relying on Reasonable Grounds:

- (a) Network Rail shall notify the Train Operator (with a copy to the Office of Rail Regulation) of the proposed variation, the timing for implementing the variation (which shall not be less than 30 days from the date of such notice) and specify the Reasonable Grounds relied on; and
- (b) the variation shall become effective on the date proposed for its implementation, subject to the Train Operator bringing an Appeal in relation to the variation under Condition L7 within 28 days of receiving notification under Condition L9.2(a), in which event the variation shall come into effect upon the final determination of the reference, subject to any adjustments under Condition L7.8.

9.3 Mandatory variation to Local Output Commitments

If:

- (a) any proposed Local Output Commitment or variations to Local Output Commitments have been the subject of an Appeal by a Train Operator or Network Rail under Condition L7; or
- (b) relevant changes (as that term is defined in paragraph 4(2) of Schedule 4A to the Act) to access agreements have come into operation by virtue of Schedule 4A to the Act,

the Office of Rail Regulation may give a Mandatory Variation Notice to Network Rail and to any Train Operator:

- (i) requiring any Local Output Commitment which is in effect between Network Rail and that Train Operator to be varied to the extent required to ensure that Network Rail does not commit to Excess Aggregate Local Outputs; and
- (ii) specifying the process and timing for varying the relevant Local Output Commitment,

and the relevant Local Output Commitment shall be varied in accordance with the Mandatory Variation Notice.

9.4 *Issue of varied Local Output Commitment*

When any LOC Suspension Notice containing a variation is given under Condition L8 or any Mandatory Variation Notice is given under this Condition L9, Network Rail shall promptly issue a further statement to the relevant Train Operator (with a copy to the Office of Rail Regulation) containing the revised Local Output Commitment applicable to that Train Operator, as varied by the terms of the relevant notice.

CONDITION L10 - PROCEDURES FOR ISSUING LOCAL OUTPUT COMMITMENTS AND PERFORMANCE PLANS

10.1 *Timing*

The Office of Rail Regulation may vary the dates and other timing requirements provided for in this Part L:

- (a) if and to the extent that the Priority Date established under Part D has been varied in order to comply with a Community obligation (as defined in the European Communities Act 1972); and/or
- (b) if it is satisfied on reasonable grounds that it is necessary or expedient to make such variations to promote or achieve the objectives specified in section 4 of the Act.

10.2 *Procedure*

A variation under Condition L10.1 may only be made by notice given by the Office of Rail Regulation to Network Rail and each affected Train Operator.

10.3 Requirement for prior consultation

A notice given by the Office of Rail Regulation under Condition L10.2 shall not have effect unless:

- (a) the Office of Rail Regulation has first consulted Network Rail and each affected Train Operator in relation to the proposed notice in question;
- (b) in the consultations referred to in Condition L10.3(a), the Office of Rail Regulation has made available to Network Rail and each affected Train Operator such drafts of the proposed notice as it considers are necessary so as properly to inform them of its contents;
- (c) the Office of Rail Regulation has given Network Rail and each affected Train Operator the opportunity to make representations in relation to the proposed notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the notice to be given; and
- (d) the Office of Rail Regulation has notified Network Rail and each affected Train Operator as to its conclusions in relation to the notice in question (including by providing to each such person a copy of the text of the proposed notice) and its reasons for those conclusions.

CONDITION L11 - TRANSITIONAL PROVISIONS

11.1 General

If Part L is brought into effect in respect of any Class or Classes for Relevant Year 2004 then it shall have effect in respect of Relevant Year 2004 subject to the adaptations in these transitional provisions.

11.2 Definitions

In this Condition L11:

- (a) “2004 LOC Statement Issue Date” means, in relation to any Class, the date falling 20 Working Days after the date on which the Office of Rail Regulation brings Part L into effect for that Class;
- (b) “Relevant Year 2004” means the period beginning 121 days after the 2004 LOC Statement Issue Date and concluding on 31 March 2005; and

- (c) other words or expressions defined in Part L shall have the same meanings in this Condition L11 as they have in the remainder of Part L.

11.3 *Relevant Year 2004*

In respect of Relevant Year 2004 the LOC Statement shall specify:

- (a) that the LOC Statement relates to Relevant Year 2004;
- (b) details of the Local Outputs which are to be achieved for the benefit of the relevant Train Operator in Relevant Year 2004 and in the next following Relevant Year; and
- (c) where relevant, the dates on which those Local Outputs are to be achieved in Relevant Year 2004 and the next following Relevant Year.

11.4 *Changes to dates in Part L in respect of Relevant Year 2004*

In respect of Local Output Commitments to be Established in Relevant Year 2004:

- (a) the date in Condition L6.1 shall be the 2004 LOC Statement Issue Date instead of 30 November;
- (b) the date in Condition L6.3 shall be 46 days after the 2004 LOC Statement Issue Date instead of 15 January;
- (c) the date in Condition L6.6 shall be 89 days after the 2004 LOC Statement Issue Date instead of 28 February;
- (d) the date in Condition L7.2(a) shall be 120 days after the 2004 LOC Statement Issue Date instead of 31 March; and
- (e) the date in Condition L8.3(a) shall be 150 days after the 2004 LOC Statement Issue Date instead of 30 April.

Part M – Appeals

Explanatory Note

- A. *Provision is made for parties who are dissatisfied with the outcome of Timetabling Disputes made under Part D of and with ADRR Determinations of disputes under Part J to appeal decisions to the Office of Rail Regulation. Part M sets out general provisions regarding appeals to the Office of Rail Regulation.*
- B. *If the Office of Rail Regulation refuses to hear the appeal, and the Appellant wishes to pursue the appeal, he must, unless agreed otherwise by the parties, do so before the High Court (in Scotland, the Court of Session).*
- C. *This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

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

“Appellant”	means any dispute party seeking to challenge a determination made in accordance with the ADRR by appeal to the Office of Rail Regulation;
“dispute party”	means any person who fulfilled the definition of “Dispute party” set out in the ADRR;
“Respondent”	means, in relation to any determination which is challenged under this Part M, any other dispute party which is affected by such determination.

CONDITION M1 - APPLICATION OF PART M

The rules in this Part M apply to any appeal to the Office of Rail Regulation under:

- (a) any relevant Condition of this code; or
- (b) the ADRR.

CONDITION M2 - TIME LIMIT FOR APPEALS

Any appeal made under this Part M must be made by written notice served in accordance with Condition M3:

- (a) in the case of an appeal under Condition D5, within five Working Days of receipt of the determination to be challenged. If Christmas Day occurs within this period then an appeal should be submitted within 10 Working Days;
- (b) in the case of an appeal under Condition J13 or J3.13, within 10 Working Days of a relevant ADRR Determination;
- (c) in any other case, within 30 Working Days of receipt of the determination to be challenged,

or such longer period as the Office of Rail Regulation may allow.

CONDITION M3 - NOTICE OF APPEAL

3.1 *Contents*

In a notice of appeal the Appellant must:

- (a) identify the determination which the Appellant wishes to challenge;
- (b) detail why the Appellant believes that the determination is:
 - (i) wrong; or

- (ii) unjust because of a serious procedural or other irregularity;
and
- (c) insofar as reasonably practicable, attach any evidence on which the Appellant wishes to rely in support of the appeal.

3.2 Service

The Appellant must serve the notice of appeal on the Office of Rail Regulation and the Respondent(s).

CONDITION M4 - RIGHT OF THE OFFICE OF RAIL REGULATION TO REFUSE TO HEAR APPEAL

4.1 Grounds of decision

Within 15 Working Days of service of a notice of appeal pursuant to Condition M3, the Office of Rail Regulation may decide that the appeal should not proceed to it, including on the grounds that:

- (a) the matter in question is not of sufficient importance to the industry;
- (b) the reference is frivolous or vexatious;
- (c) the conduct of the party making the reference ought properly to preclude its being proceeded with; or
- (d) it is appropriate or convenient for the matter instead to be disposed of by the High Court (in Scotland, by the Court of Session).

4.2 Consequences of decision

If the Office of Rail Regulation decides that the reference to appeal should not proceed, it shall immediately notify the Appellant and each Respondent of its decision, and:

- (a) in the case of decision on any of the grounds specified in Condition M4.1(a), (b) or (c), the decision in accordance with the ADRR shall stand; and

- (b) in the case of a decision on the ground specified in Condition M4.1(d), either party to the appeal shall be entitled to apply to the High Court (in Scotland, the Court of Session) for any appropriate relief.

CONDITION M5 - RESPONDENT'S NOTICE

5.1 Within 30 Working Days of service of a notice of appeal a Respondent may serve on the Appellant, any other Respondent and the Office of Rail Regulation a notice:

- (a) stating that he opposes the appeal; and
- (b) insofar as reasonably practicable, attaching any evidence on which the Respondent wishes to rely in opposing the appeal.

5.2 In the event that:

- (a) a Respondent seeks more time to serve such a notice; or
- (b) the Appellant seeks the appeal to be dealt with more expeditiously than the timescales in Condition M5.1 would allow,

the Office of Rail Regulation may, upon the relevant party providing the Office of Rail Regulation with evidence which satisfies it that an extension or expedition of the timeframe for service of the notice is appropriate, grant such shorter or longer period for service of the notice as it considers necessary.

CONDITION M6 - MATTERS TO BE CONSIDERED ON APPEAL

6.1 Scope

Every appeal will be limited to a review of the decision of the lower tribunal unless the Office of Rail Regulation considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

6.2 Grounds

At any hearing of the appeal, a party may not rely on a matter not contained in the appeal notice or Respondent's notice unless the Office of Rail Regulation gives permission.

CONDITION M7 - POWERS OF OFFICE OF RAIL REGULATION

The Office of Rail Regulation shall, in determining the matter in question, have the power:

- (a) to give directions as to the procedure to be followed in the appeal, including in relation to the time limits within which anything must be done, 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 any other;
- (b) to appoint any person to act as a legal or technical assessor who it considers has suitable knowledge and experience to assist the Office of Rail Regulation;
- (c) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by the Office of Rail Regulation; and
- (d) 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 Office of Rail Regulation shall determine) which shall be borne by each party.

CONDITION M8 - IMMUNITY OF OFFICE OF RAIL REGULATION

The Office of Rail Regulation shall not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the conduct of any reference to appeal.

CONDITION M9 - OBLIGATION TO COMPLY WITH DETERMINATION OF APPEAL

All Appellants and Respondents shall:

- (a) subject to and pending the final determination of any reference to the Office of Rail Regulation, comply with:

- (i) any determination made in accordance with the ADRR in relation to any dispute referred ; and/or
 - (ii) any interim order of the Office of Rail Regulation; and
- (b) comply with any final determination of the Office of Rail Regulation.

CONDITION M10 - EFFECTIVE DATE OF OFFICE OF RAIL REGULATION'S DECISION

If, in relation to any particular dispute, any interim order or final determination of the Office of Rail Regulation is made during any period of operation of the Working Timetable to which the dispute relates, the Office of Rail Regulation may, if it 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.

Annex

Access Dispute Resolution Rules

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EXPLANATORY NOTE

This Explanatory Note does not form part of the Network Code.

This explanatory note provides a brief overview of the purpose and structure of the Access Dispute Resolution Rules (ADRR).

The ADRR themselves are intended to be a readable single point of reference for parties involved in a dispute (and other Access Parties or Potential Access Parties). However, further background, and the templates required for use in connection with the ADRR are available at the access disputes website <http://www.accessdisputesrail.org/>.

Overview

The purpose of the ADRR is to provide a clear, coherent, and effective structure for dealing with those rail disputes arising under access agreements and access conditions/codes that should be dealt with under access-specific processes.

Structure

***Chapter A** of the ADRR sets out principles which should be applied throughout the determination procedure by the parties, Chairs, arbitrators, experts and others involved. Those using the Rules are expected to respect the principles and have regard to them at all stages in the determination procedure. Failure to do so is intended to carry penalties including potential adverse costs awards.*

***Chapter B** provides the mechanism by which a dispute will be initiated and allocated to the agreed or most appropriate forum.*

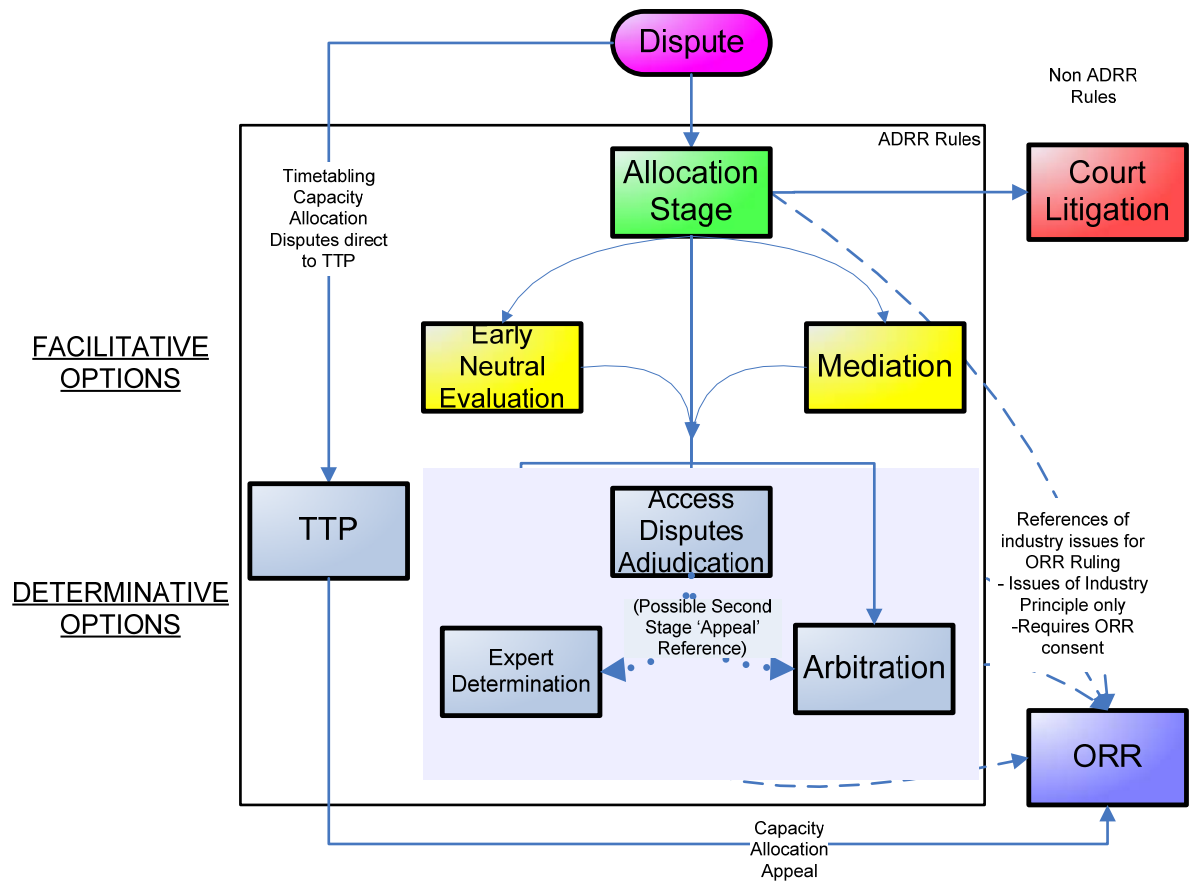
***Chapter C** describes the mechanism by which issues of wider industry concern and issues of a regulatory nature (including those which come within the scope of the Railways Infrastructure (Access and Management) Regulations 2005) can be referred to the industry Regulator at any stage of the process.*

***Chapters D-I** set out the Rules applicable to each of the dispute resolution processes provided for in the Rules. These include facilitative and determinative processes which may be conducted in parallel (particularly in the case of mediation in parallel with a determinative process) or by way of offering a means of appeal from a first instance decision.*

***Chapter J** contains the constitutional, governance and administrative arrangements required to provide the services contained within the Rules.*

***Chapter K** sets out the mechanism for dealing with disputes where there may be overlaps with the Rail Industry Dispute Resolution Rules (RIDR), either because it is a mixed dispute or because the access jurisdiction is challenged by one of the parties to the dispute.*

In addition it is envisaged that it will be possible in certain cases to refer cases outside these Rules to ORR under the Access and Management Regulations or to court on particular issues for which a commercial jurisdiction is most beneficial. The following diagram illustrates how allocation can take place:



DEFINITIONS AND INTERPRETATION

1 *In these rules, unless the context otherwise requires, the following words and phrases where capitalised shall mean:*

Term	Definition
Access Conditions	In relation to an access contract, whichever of the Network Code, the National Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions (or successor documents) or any other document carrying out a similar purpose is incorporated by reference in that access contract;
Act	The Railways Act 1993 as amended from time to time and/or such other legislation taking effect in Great Britain in respect of the same subject matter as that act;
ADA	Access Disputes Adjudication in accordance with Chapter G;
Allocation Chair	The individual appointed by the Committee pursuant to Rule J20, or, where the context so allows, another individual appointed as a substitute by the Secretary to discharge the role of the Allocation Chair in respect of a specific dispute;
Arbitration Acts	Means those acts in force from time to time governing arbitration proceedings in England, Wales and/or Scotland (including in England and Wales the Arbitration Act 1996 and in Scotland the Administration of Justice (Scotland) Act 1972);
Arbitrator	An arbitrator and includes, in Scotland, an arbiter;
Band; Class; Franchised Passenger Class; Non-Franchised Passenger Class; Non-Passenger Class; Representative Committee	Have the definitions in Part C of the Network Code;
Case Summary	Is as defined by Rule D7(a) in respect of a mediation and Rule E5(a) in respect of an ENE;
Committee	The Access Disputes Committee constituted under Rule J2;
Committee Chair	A Committee Member appointed as Committee Chair pursuant to Rule J19;

Term	Definition
Committee Member	A person appointed to the Committee pursuant to Rule J6;
Conflict of Interest	Includes bias or an appearance of bias, a potential conflict of interest and any circumstances in which a reasonable third party may consider that there is a real risk of a conflict of interest existing or arising in the future;
Costs	Professional and other costs and expenses which would be recoverable following a judgment in Court proceedings in England;
Delay Attribution Board	The Delay Attribution Board constituted in accordance with Condition B6.2 of the Network Code;
Dispute Party	An Involved Party which is likely to be materially affected by the outcome of the dispute and is putting its position to the Forum and/or requesting a determination from a Forum;
Document	Hard copy or electronic data of any kind and in any format including internal or external correspondence, emails or other communications, documents, spreadsheets and databases;
ENE	Early Neutral Evaluation in accordance with Chapter E;
Evaluation Documents	Is as defined in Rule E5(b);
Existing Resolution Service Parties Forum	Is as defined in Rule J56; Each Hearing Chair of an ADA or Timetabling Panel, evaluator, mediator, arbitrator and determining expert appointed under these Rules;
Hearing Chair	An individual appointed by the Secretary to determine a dispute referred to TTP or ADA in accordance with these Rules;
Human Rights Act	The Human Rights Act 1998 as amended from time to time and/or such other legislation taking effect in Great Britain in respect of the same subject matter as that act;
Industry Advisor	An individual appointed as such in accordance with Rule J29;
Involved Party	In relation to a dispute, dispute procedure or dispute resolution process means a party directly involved in the dispute including the Secretary, all Dispute Parties, and the Forum;
Mediation Documents	Are those defined in Rule D7(b);

Term	Definition
Network Code	The document entitled Network Code maintained by Network Rail as amended from time to time;
Non-Access Dispute Resolution Rules	The Rules bearing the name "The Railway Industry Disputes Resolution Rules" (formerly the "Industry Disputes Resolution Committee, Mediation, Arbitration and Expert Determination Rules");
Notice of Dispute	A notice issued by a Resolution Service Party wishing to refer a dispute to resolution in accordance with these Rules;
ORR	The Office of Rail Regulation (and where relevant the former Rail Regulator) or any successor body or regulator;
Panel Member	In respect of a dispute to be resolved by TTP or ADA, each individual member of the panel appointed from time to time in respect of that dispute;
Principles	The principles set out in Rules A4-A9;
Procedure Agreement	Is as defined in Rule B9;
Railways Infrastructure (Access and Management) Regulations	The Railways Infrastructure (Access and Management) Regulations 2005 as amended from time to time and/or such other legislation taking effect in Great Britain in respect of the same subject matter as those Regulations;
Railway Safety Levy	Has the meaning ascribed to railway safety levy in Regulation 2 of the Railway Safety Levy Regulations 2006;
Reference	In respect of a reference to ORR, is as defined in Rule C6;
Referring Party	Is as defined in Rule C2;
Regulatory Issue	<p>A principle, issue or process connected with the railway industry (and any interactions between such principles, issues and processes) which</p> <ul style="list-style-type: none"> (a) concerns the regulated structure of the industry as a whole or a material part of it, or (b) relates to or is closely aligned with a matter on which the ORR has regulatory oversight (from time to time); or (c) is connected with the ORR's duties, functions or powers as a regulator including without limitation under the Railways Act 1993 s4;
Related Dispute	A dispute which in the reasonable opinion of the Allocation

Term	Definition
	Chair raises similar or connected factual or legal issues;
Resolution Service Party	A party entitled to use the dispute resolution service described in these Rules, in accordance with regulated access contracts, agreements with the Committee or otherwise, having made payments to the Committee in accordance with Chapter J;
RIDR Secretary	The disputes secretary appointed in accordance with the Non-Access Dispute Resolution Rules;
Secretariat	Individuals appointed as such in accordance with Rule J39;
Secretary	The individual appointed as such in accordance with Rule J34;
Statement of Case	Any of the initial submissions setting out a Dispute Party's case including a statement of claim, reference, statement of defence, reply, answers and response and such other Documents as a Hearing Chair, arbitrator or determining expert shall identify as such;
Timetabling Dispute	A dispute arising out of or concerning issues of timetabling, timetable change and/or changes in the allocation of capacity, for which the TTP is identified in the relevant Underlying Contract as the relevant dispute resolution process;
Timetabling Panel	The panel including a Hearing Chair and one or more members of the Timetabling Pool appointed in respect of a dispute to be resolved by TTP.
Timetabling Pool	The pool of potential members of Timetabling Panels established under Rule H2;
TTP	The dispute resolution process for resolving Timetabling Disputes in accordance with Chapter H of these Rules; and
Underlying Contract	Any contract (or to the extent applicable any other source of a reference to a dispute) under which disputes are or can be referred to resolution under these Rules, and this may include such interrelated contracts as govern access to infrastructure.

Interpretation

2 Unless the context otherwise requires:

- (a) terms and expressions defined in the Railways Act 1993 shall, unless the contrary intention appears, have the same meaning in these Rules;
- (b) the use of male pronouns and other words connoting the male gender shall encompass the equivalent female word;
- (c) use of the singular shall include the plural
- (d) 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) any agreement, instrument, licence, standard, timetable, code or other document referred to in these Rules or entered into, approved, authorised, accepted or issued by a person pursuant to this code 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.
- (f) words and expressions defined in the Interpretation Act 1978 shall have the same meaning in these Rules and the rules of interpretation contained in that Act shall apply to the interpretation of these Rules.
- (g) where in these Rules any obligation of any party is required to be performed within a specified time limit that obligation shall continue after that time limit if the party fails to comply with that obligation within the time limit.
- (h) the words "include" and "includes" are to be construed without limitation.
- (i) references to Rules and Chapters are to Rules and Chapters of these Rules;
- (j) references to the law shall be to the law of England except where otherwise provided to be the law of Scotland and shall include all binding legislation (including regulations and statutory instruments) and directly effective European law; and
- (k) the headings in these Rules are used for convenience only and shall not affect the interpretation of the Rules.

CHAPTER A – THE PRINCIPLES AND OPERATION OF THE DETERMINATION PROCEDURE

- 1 The Principles set out in this Chapter A are intended to be applied to the whole of the conduct and determination of disputes by all parties including the Allocation Chair, the Secretary and each Forum.
- 2 Except as otherwise provided in these Rules, any and all references in any contractual document to resolution or determination of a dispute, matter or issue under or in accordance with the whole or any part of, or any process subject to or governed by:
 - (a) the Access Dispute Resolution Rules (or ADRR) incorporated into (or annexed to) the Network Code; or
 - (b) the Network Code itself;

shall be a reference to resolution in accordance with these Rules as a whole and (unless otherwise provided in these Rules) no such reference shall restrict or otherwise limit or determine the process or processes to be adopted under these Rules to resolve or determine any dispute or issue.

Purpose

- 3 The determination procedure for disputes described in these Rules is intended to:
 - (a) include one or more dispute resolution processes appropriate to the dispute;
 - (b) include at least one available determinative stage which is objectively impartial and fair trial compliant;
 - (c) provide a relatively swift and easy to access disputes process for all cases where this is appropriate;
 - (d) be able to accommodate larger cases of significant value or wider importance including cases that reasonably require extensive documentation and/or witness evidence;
 - (e) provide a mechanism for the parties or any relevant Forum to obtain a determination on Regulatory Issues from ORR;
 - (f) allow parties to resolve disputes as efficiently and effectively as possible;
 - (g) allow the parties flexibility to identify and adopt the most appropriate dispute resolution process(es) for each dispute; and
 - (h) avoid the use by any party of any dispute resolution process to delay, frustrate or avoid determination or resolution of the dispute.
- 4 The Allocation Chair and each Forum under these Rules shall have regard to the Principles:
 - (a) when making any procedural decisions; and

- (b) at any stage when Costs are awarded.

PRINCIPLES

Determinations and Remedies

- 5 Each and every Forum shall reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis. Each and every Forum shall act in accordance with the law; and all its decisions, including its determinations and decisions on procedure, shall be in accordance with the law.
- 6 Each and every Forum shall:
- (a) where the Access Conditions or Underlying Contract require that a specific remedy be granted, grant that remedy accordingly; or
 - (b) Where a specific remedy is provided for at law, grant that remedy accordingly; or
 - (c) where the choice of remedy is not a matter of entitlement but is a question properly falling within the discretion of the Forum, exercise that discretion in accordance with any requirements and criteria set out in the Access Conditions and Underlying Contract after due consideration of all remedies and orders that could properly be made.

Precedent

- 7 In reaching its determination, each and every Forum shall:
- (a) take note of relevant published ADA or TTP determinations (and those of any predecessor bodies) and of any other relevant tribunal excluding (to the extent referred to in (b) below) the ORR, as persuasive authority but need not be bound by them;
 - (b) be bound by any relevant decision of the ORR on a Regulatory Issue and any relevant decisions of the courts.

Impartiality

- 8 Members of Forums may be appointed in part due to their particular industry expertise. Nonetheless, all members of Forums shall exercise their functions impartially and not on behalf of any specific organisation, company, business, trade or profession.

Duties of Dispute Parties

- 9 Dispute Parties shall at all times:
- (a) co-operate with any reasonable request of the Allocation Chair, any Forum, the Secretary and each other;
 - (b) conduct themselves in good faith with the objective of resolving the dispute; and
 - (c) avoid antagonistic or unduly adversarial behaviour.

- 10 Dispute Parties shall provide voluntarily, or where reasonably requested, to each other, to the Allocation Chair, the Secretary and to any Forum, all material required for the effective consideration and determination of the dispute, mindful of the requirements of Rules F20, G25, H26, and I20 on Documents.

OPERATION OF THE RULES

Funding

- 11 The delivery of the dispute resolution service provided for in these Rules will be funded by potential users of the service in accordance with Chapter J.

The Role of the Allocation Chair and Secretary

- 12 The Allocation Chair:
- (a) has oversight (under the powers contained in Chapter B) of the effective overall case management of a dispute;
 - (b) will consider any disputes referred under Chapter B in accordance with these Rules and the Dispute Parties' proposals for the procedure for resolution of them including whether any issues should or could be referred to the ORR;
 - (c) may, at the request of any Resolution Service Party, give guidance on dispute procedure prior to the reference of any dispute for resolution under these Rules;
 - (d) where the Dispute Parties are not in agreement will seek to facilitate an agreement between them concerning the most appropriate determination procedure;
 - (e) has responsibility for any allocation hearing including directions for any submissions, the hearing itself and any decisions connected with allocation.
- 13 The Allocation Chair may, where reasonable to do so, delegate the performance of any of his functions in any dispute to the Secretary appointed under Rule J34 or any member of the Secretariat appointed under Rule J39 but such delegation shall not affect the obligations and responsibilities of the Allocation Chair set out in Rule A12.
- 14 The Secretary:
- (a) has responsibility for appointing Hearing Chairs and Industry Advisors from a register maintained by the Secretary and, where parties are unable to agree, arbitrators and determining experts.
 - (b) shall assist the Allocation Chair, as required, in the discharge of the functions in Rule A12;
 - (c) shall receive disputes referred under Chapter B, record them and allot a case number to them;
 - (d) is responsible for managing the delivery of the determination procedure allocated to the dispute;

- (e) may at the request of any Resolution Service Party, give guidance on dispute procedure prior to the reference of any dispute for resolution under these Rules.

Timely Determination

- 15 Subject to the other provisions of these Rules and any specific timescale provisions of the Access Conditions, Underlying Contract or any other legal requirements, a Forum shall reach its determination in a timely manner consistent with the nature and complexity of the dispute.

Consequences of procedural default

- 16 If a Dispute Party is in procedural default, the Allocation Chair or Forum (as appropriate) may, whether or not upon the application of the other Dispute Party, make one or more of the following orders:

- (a) that the defaulting party comply with its obligation;
- (b) that the defaulting party is prohibited from relying upon the information or other matter which it has failed to provide in accordance with these Rules or a valid direction;
- (c) that the dispute can proceed to determination without one or more steps being taken which have not been taken because of the procedural default; and/or
- (d) that the Costs arising from or connected with the procedural default be paid by the defaulting party on an interim or final basis.

In addition, and where appropriate to do so, adverse inferences may be drawn by any Forum in respect of the position for which the defaulting party contends.

- 17 For the purposes of Rule A16 procedural default shall include:

- (a) failure to take a step by the time required by these Rules;
- (b) failure to comply with any direction of the Allocation Chair, the Secretary or any Forum;
- (c) failure to abide by the Principles.

Representation

- 18 A Dispute Party is entitled to be represented by such person(s) (legally qualified or otherwise), as it chooses.

- 19 A Dispute Party shall not be prejudiced by its choice of one category of representative as against another. It shall, however, ensure that:

- (a) the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value);
- (b) where a representative is also a witness, that representative is able to perform both duties in full;

- (c) where a representative is not a witness, any appropriate witnesses are present at the hearing to provide relevant information; and
- (d) its representatives shall respect and act at all times in accordance with the Principles.

Hierarchy

20 In the event of conflict (when using these Rules) between the Act, the Access Conditions, an Underlying Contract, and these Rules the following order of precedence shall apply:

- (a) the Act;
- (b) the Access Conditions;
- (c) these Rules; and
- (d) the Underlying Contract.

Service of Documents and Notice

21 Documents may be served:

- (a) in person on any director of any party, in which case service shall be deemed to take place on the day on which the documents are given to the director in person;
- (b) by personal delivery to the registered address or principal business address within the UK of any party, or such other address (including that of a representative or adviser) as that party identifies in connection with the relevant dispute; in which case service shall be deemed to take place on the day of delivery or, if delivery is made after 5pm, the following working day;
- (c) by first class post, to the registered address or principal business address within the UK of any party, or such other address (including that of a representative or adviser) as that party identifies in connection with the relevant dispute; in which case service shall be deemed to take place two working days after posting;
- (d) by email, to any party which has previously identified in writing an electronic address for service of documents in connection with the relevant dispute (including the address of a representative or adviser) in which case service shall be deemed to take place on the day of receipt, or if receipt is after 5pm, the day following receipt. For the purposes of this Rule A20(d) the Secretary will accept documents sent to him at ***sec.adc@btconnect.com***;
- (e) by fax to the advertised fax number of any Party, in which case service shall be deemed to take place on the day of transmission or, if transmission is completed after 5pm, the following working day;
- (f) where a party has no registered address or principal business address within the UK, service may be made in accordance with the above

requirements to the Secretary on behalf of that party. The Secretary shall be considered to be the relevant party's agent for service and shall take all reasonable efforts to transmit the documents on to the party at such address as is specified outside the UK.

Provided that, in all cases in which documents are sent to any company or corporate entity, such documents are addressed "Urgent; for the attention of the Company Secretary" or addressed to a person representing the party who has previously confirmed in writing his willingness to receive such documents on behalf of the party.

- 22 In these Rules, whenever any notice is required to be given in writing, writing shall include email.
- 23 Any reference to pages is a reference to A4 pages containing reasonably legible typescript at 1.5 line spacing. All documents submitted shall be made in a form compatible with software agreed with the Secretary from time to time and all attachments should be where reasonably possible, in electronic format.
- 24 All documents, correspondence, communications and other material including spoken statements, submissions and communications shall be in the English language.
- 25 In the event that any date specified in these Rules for service of documents or any action by any party, Forum, Allocation Chair, Hearing Chair or Secretary or any other date specified would fall between 25 December and 31 December in any year, it shall be extended by seven days. Any such date falling on a public holiday in England (or where the matter is being conducted subject to Scottish law, in Scotland) shall be extended to the next working day.

CHAPTER B – INITIATING A DISPUTE AND ALLOCATION

- 1 Disputes proceedings will be initiated and referred for allocation in accordance with the following Rules.

NOTIFICATION OF A DISPUTE

- 2 A Resolution Service Party wishing to refer a dispute shall serve a written Notice of Dispute on the Secretary and shall serve a copy of the Notice of Dispute on every other party to the dispute.
- 3 The Notice of Dispute shall, unless otherwise advised by the Secretary, normally be in accordance with the template format for a Notice of Dispute (found on the access disputes website) and shall do all of the following:
 - (a) state the contract and relevant contractual clause under which the reference is made (or such other basis for the reference under these Rules);
 - (b) list the other parties concerned whether as a Dispute Party to the dispute or otherwise;
 - (c) summarise the basis of the claim including a brief list of issues;
 - (d) state whether the Dispute Parties have already agreed on a determination procedure, or, if not, specify the referring party's initial preference for a determination procedure, including, if it believes it is a Timetabling Dispute, a statement to this effect; and
 - (e) state whether exceptional circumstances exist requiring an expedited hearing or process.
- 4 Valid service of a Notice of Dispute upon the Secretary in accordance with Rule B2 shall amount to the issuing of proceedings relating to the dispute for the purposes of all relevant limitation periods or provisions. Provided that the dispute has not subsequently been finally resolved or withdrawn (upon the occurrence of which all relevant limitation periods shall be calculated by excluding the period during which the claim was subject to these Rules), no party shall raise any argument, defence or exclusion in subsequent proceedings (whether under these Rules or otherwise) on the basis of the expiry, after the date of valid service of a Notice of Dispute in accordance with Rule B2, of any limitation period.

ALLOCATION PROCESS

- 5 All Timetabling Disputes shall be referred to a Timetabling Panel in accordance with Chapter H of these Rules. Following service of a Notice of Dispute relating to a Timetabling Dispute Rule H11 shall apply and a Procedure Agreement shall be drawn up by the Secretary accordingly.
- 6 All disputes referred to resolution in accordance with these Rules under Condition B2.4.4 of the Network Code (following guidance from the Delay Attribution Board) shall be referred to an ADA in accordance with Chapter G of these Rules as a single stage dispute resolution process with no appeal. Following service of a Notice of Dispute relating to such a dispute Rule G8 shall

apply and a Procedure Agreement shall be drawn up by the Secretary accordingly.

- 7 All disputes referred to resolution in accordance with these Rules under Condition J13 or J14 of the Network Code shall be referred to an ADA in accordance with Chapter G of these Rules with a right of appeal to the ORR for determination in accordance with Part M of the Network Code. Following service of a Notice of Dispute relating to such a dispute Rule G8 shall apply and a Procedure Agreement shall be drawn up by the Secretary accordingly.
- 8 Unless otherwise ordered by the Allocation Chair, following service of a Notice of Dispute upon him, the Secretary:
 - (a) shall allot a case number to the dispute and notify this case number to all Involved Parties including those identified in the Notice of Dispute according to Rule B3(b);
 - (b) where he reasonably believes that another party or parties are likely to be directly affected by the outcome of the dispute and it is appropriate that they should be informed of the existence of the dispute, may seek clarification from the party initiating proceedings about why that party has not been identified in accordance with Rule B3(b) and inform the Allocation Chair or relevant Hearing Chair (as appropriate) accordingly;
 - (c) (unless a Procedure Agreement has already been drawn up or served on him) shall set a date and time for an allocation hearing to take place within 28 days of the service of the Notice of Dispute upon him or such other time as the Dispute Parties may agree;
 - (d) (unless a Procedure Agreement has already been drawn up or served on him) shall provide initial directions to the parties setting out the following initial timetable (or such variation of the timetable as the Allocation Chair shall approve):
 - (i) fixing a date and time of the allocation hearing, a provisional method by which such allocation hearing shall take place (in writing, in person at a specified location, or by telephone conference or otherwise) and an estimated duration for the allocation hearing;
 - (ii) encouraging the parties to seek to agree a determination procedure between them and in the event of reaching such an agreement immediately to notify him accordingly;
 - (iii) requiring each party to serve upon him and exchange with the other parties a statement, at least seven days before the hearing, containing that party's:
 - (A) assessment of the basis of the claim and a brief list of issues. Alternatively agreement with the basis of the claim and list of issues provided with the Notice of Dispute; and

- (B) preferences for the Forum and any facilitative stages together with short reasons in support of such process; and
- (C) assessment of any issues which should be referred to the ORR together with the proposed form of words for the reference and short reasons in support of such a reference.

Such statements should each be less than three pages long unless the Allocation Chair directs otherwise.

- 9 The Secretary shall assist the parties to reach an agreement regarding the most appropriate determination procedure and whether any issues can or should be referred to the ORR or to the courts. In doing so the Secretary shall act in a facilitative role impartially between the parties and shall not seek to impose his own assessment or preference upon the parties.
- 10 If the parties reach agreement upon a determination procedure, they shall confirm their agreement and the terms of that agreement to the Secretary by way of a written procedure agreement (the "Procedure Agreement") executed by or confirmed in writing on behalf of all Dispute Parties. The form of the Procedure Agreement received by the Secretary shall be definitive evidence of the agreement reached and shall specify at least:
 - (a) the dispute resolution process or processes agreed by the parties and the order in which they will take place (or specify that facilitative processes are to take place in parallel to other dispute resolution processes);
 - (b) where appropriate, the basis on which any appeal or reference to a second (or later) stage may be made;
 - (c) (subject to the provisions of the Network Code Part M) where in exceptional circumstances the ORR has identified that the matter is appropriate for it to determine (and the parties have requested that it do so) and has therefore agreed to act as an appeal body, confirmation of ORR's agreement. Parties should note that, except as expressly provided in these Rules, ORR will not generally accept the role of appeal body unless exceptional circumstances can be shown justifying it taking on this role; and
 - (d) where any dispute is agreed to be referred to the courts at any stage, specify the timescale (which shall not be less than 2 months nor more than 9 months) by which any claim must be initiated following conclusion of any prior stages, otherwise the dispute will be deemed withdrawn.
- 11 The Procedure Agreement may specify dispute resolution processes provided for in these Rules (including Court proceedings) or otherwise (provided that agreement from any tribunal/ determinative body not provided for in these Rules is obtained before a reference to it is agreed). The Procedure Agreement may not specify that a dispute be referred to a Timetabling Panel unless it is a Timetabling Dispute.

- 12 The Procedure Agreement may also specify any agreed timings for commencement of any dispute resolution process, the terms of any reference agreed to be made to the ORR by the Dispute Parties and any other agreement between the parties regarding the procedure to be adopted.
- 13 The Allocation Chair shall preside over any allocation hearing which takes place. At an allocation hearing he shall:
- (a) consider the Notice of Dispute, the written statements of the parties and any oral representations from the parties;
 - (b) ask questions to identify the most appropriate determination procedure and whether any issues exist which could be referred to the ORR;
 - (c) seek to facilitate an agreement between the parties on the most appropriate determination procedure and whether any issues exist which should be referred to the ORR;
 - (d) having heard each party's full submissions, if no agreement has been reached, state clearly any view he has of the most appropriate determination procedure;
 - (e) in the event that any party claims the right to refer a matter or issue directly to the ORR under the Railways Infrastructure (Access and Management) Regulations (without the need to first refer the matter to a Timetabling Panel), determine whether it is arguable that such a right exists and if so direct the reference of the matter to the ORR;
 - (f) in the event that any party claims the right to refer a matter or issue to a Timetabling Panel and subsequently to the ORR in accordance with the Railways Infrastructure (Access and Management) Regulations, determine whether it is arguable that such a right exists and if so refer the matter to a Timetabling Panel followed by appeal to the ORR. There is a presumption that disputes referred to resolution under Condition D5.1.1 of the Network Code shall, unless there are compelling reasons to the contrary relating to subject matter, be allocated to a Timetabling Panel. Consequently the Allocation Chair shall not allocate a dispute ostensibly falling within Condition D5.1.1 other than to a Timetabling Panel without first inviting written representations from the Dispute Parties on his intention to do so (to be provided by the parties within seven days of the request or such other time as he shall specify) and giving proper consideration to any representations made;
 - (g) in the event that the parties agree that an issue would be best determined by the ORR but are unable to agree to the wording of the necessary reference, determine the wording of the reference and write to the ORR (copying the parties) identifying the issue and requesting that the issue be considered in accordance with Chapter C;
 - (h) in the event that agreement in principle on the resolution procedure has been reached, but the parties are unable to agree on the timings of each stage (including adjustments to the default timings in these Rules), determine the timings to be applied following consideration of the parties' submissions in that respect;

- (i) in the event that agreement is reached between the parties (including agreement following the exercise by the Allocation Chair of his powers under (g) and/or (h)), the Allocation Chair shall draw up, with the parties' assistance, the Procedure Agreement and the parties shall execute it or confirm it in writing;
 - (j) in the event that no agreement is reached between the parties and neither (e) or (f) applies, determine that, unless the parties reach a contrary agreement within seven days of the allocation hearing, the matter shall be referred to final determination by arbitration subject to Chapter F as a one stage determination procedure with appeal only in accordance with the Arbitration Acts and shall draw up the Procedure Agreement accordingly and shall sign it as Allocation Chair.
- 14 Following an allocation hearing in accordance with Rule B13 the Allocation Chair may at his discretion write formally to all parties stating his view on the best allocation of the dispute and the approach taken by the parties leading to the actual allocation of the dispute.
- 15 Following service upon him of a Procedure Agreement in accordance with Rule B10 or drawing up of a Procedure Agreement in accordance with Rule B5, 6, 7 or 13, the Secretary shall write to all the Involved Parties:
 - (a) dispensing with any remaining stages of any previous directions;
 - (b) confirming receipt of the Procedure Agreement and recording the determination procedure to be adopted for the dispute;
 - (c) confirming the first dispute resolution process and the first dates required by these Rules in respect of that process; and
 - (d) where the first dispute resolution process is ADA or TTP, identifying the Hearing Chair appointed for the dispute;
- 16 For the purposes of these Rules the first dispute resolution process specified in the Procedure Agreement shall commence upon the date on which the Secretary writes to the Involved Parties in accordance with Rule B15. Subsequent dispute resolution processes provided for in the Procedure Agreement shall commence upon receipt by the Secretary in accordance with these Rules of notice from any party of that party's decision to refer the dispute to such dispute resolution process in accordance with these Rules.
- 17 In discharging his roles in respect of allocation under this Chapter B, the Allocation Chair shall have regard to:
 - (a) these Rules including the Principles;
 - (b) the allocation criteria (if any) published from time to time by the Committee on the access disputes website;
 - (c) the objective importance of the dispute to the Dispute Parties;
 - (d) the complexity of the issues;
 - (e) the significance (if any) to the railway industry of the issues involved;

- (f) the scale of any financial claims involved;
 - (g) the relevant laws including the Arbitration Acts, the Railways Act, the Railways (Access and Management) Regulations and the right to a fair trial at common law and under the Human Rights Act; and
 - (h) the provisions of Chapter K (Mixed Disputes)
- 18 The Allocation Chair (aided by the Secretary) shall continue to actively encourage and facilitate resolution of disputes throughout the life of the dispute. All parties and all Forums shall have liberty to apply to the Allocation Chair at any stage in respect of a restructuring of the determination procedure including as appropriate the addition of any facilitative process in parallel with determinative processes or otherwise.
- 19 In exceptional circumstances requiring an expedited hearing or process or where alternative actions or directions are required, the Allocation Chair may at any stage on the application of any party give directions varying the timescales provided for in these Rules and nothing in this Chapter B shall restrict such directions being given.
- 20 Upon the application of any Dispute Party or at his own instigation the Allocation Chair may order that any two or more disputes be joined or heard and resolved together where such disputes appear to him in his absolute discretion to concern the same or similar subject matter and where it is in the interests of efficient and fair resolution to do so.
- 21 Subject to the Arbitration Acts, any party may at any stage issue or initiate proceedings before the High Court in England, or the Court of Session in Scotland, for any interim remedies including injunctions, interdict or specific implement and nothing in this Chapter B shall prevent them from so doing.

CHAPTER C – REFERENCE TO THE ORR IN THE COURSE OF A DISPUTE RESOLUTION PROCESS

- 1 This section describes how issues connected to disputes may be referred to the ORR by the parties, the Allocation Chair or any Forum at any stage of the determination procedure and the basis on which ORR will determine such references.

ISSUES TO BE REFERRED

- 2 Issues may only be referred to the ORR under these Rules by:
- (a) the parties together acting by agreement;
 - (b) the Allocation Chair in accordance with the provisions of Chapter B; or
 - (c) any Forum acting in accordance with these Rules
- in each case a "Referring Party"
- 3 A Referring Party may at any stage or stages in a dispute refer to ORR any discrete issue or matter which is connected to or forms part of a dispute and:
- (a) concerns information to which ORR has access and which is not readily available from another source; or
 - (b) is or concerns a Regulatory Issue; or
 - (c) is an issue or matter of wider railway industry relevance which would benefit from ORR's industry specific experience and/or knowledge.
- 4 The purpose of a reference to ORR is to obtain answers to issues of general application to the railway industry (or a significant part of it) in respect of which ORR has relevant information or knowledge which may inform the resolution of the Dispute Parties' respective entitlements. Consequently (except where it is legally required to hear specific claims) ORR may at its discretion decline references which relate solely to one or more parties' specific factual or financial position or refuse to determine any party's rights on the basis of the particular facts applicable to that party. The ORR may exercise its discretion not to consider the substantive commercial issues in dispute or give an opinion on the merits of the dispute or on the proposed Forum for resolution.
- 5 The provisions of this Chapter C are without prejudice to any statutory or Access Conditions provisions which provide a right for a party to refer an appeal to ORR.

PROCESS FOR REFERENCES

- 6 Where a Referring Party decides to refer an issue or matter to the ORR it shall send a Reference to the ORR (copied to all other Involved Parties) ("Reference") containing the following:
- (a) the Referring Party's formulation of a specific question or questions for the ORR to answer with sufficient clarity to enable the ORR to understand the nature of the answer requested from it; and

- (b) a brief explanation of how the issue or matter fulfils the requirements of Rule C3; and
- (c) a statement of the steps which have already been taken to resolve the issue; and
- (d) (at the discretion of that Dispute Party) a statement from each Dispute Party of no more than three pages:
 - (i) stating that Dispute Party's position in respect of the Reference; and
 - (ii) explaining why the Reference should or should not be decided by the ORR; and
 - (iii) attaching any relevant Documents which the party wishes to bring to the attention of the ORR in connection with ORR's decision on whether the Reference should be decided by it.

Where applicable, the Referring Party should also state whether it believes that any party has a right to refer the issue or matter to ORR in accordance with the Railways Infrastructure (Access and Management) Regulations or the Network Code or otherwise.

- 7 For the purposes of this Chapter C, References to ORR may be sent to the following email address: addr.references@orr.gsi.gov.uk
- 8 ORR will aim to acknowledge receipt of a Reference within seven days to the Referring Party.
- 9 ORR will consider the Reference including any statements served under Rule C6 and will respond in writing within 21 days or such other period as ORR shall specify to the Referring Party (copying to all other Involved Parties):
 - (a) to advise it that the ORR declines to respond to the Reference and that the issue remains a matter for the relevant dispute Forum to determine and to provide reasons for this decision; or
 - (b) to provide a response on questions of fact and/or copies of relevant Documents or records in response to the Reference; or
 - (c) where the ORR accepts the Reference, but requires additional time, information or submissions to consider its response, to set directions and a timetable for any further stages in responding to the Reference.
- 10 Following receipt of a response from the ORR in accordance with Rule C9, the relevant Forum, if appropriate, shall give directions concerning any procedural steps required in light of the response including whether a stay is required pending further consideration by ORR.
- 11 Following completion of its process, ORR shall send its final written determination of the Reference to the Involved Parties. Following receipt of a final determination the Allocation Chair or the relevant Forum, as the case may be, shall give further directions concerning any procedural steps required in light of the determination.

- 12 Subject to any order from ORR for partial or complete redaction, all References, statements and submissions made under this Chapter C and all responses provided by ORR may be published by the ORR and shall also be made accessible from the access disputes website.
- 13 In accordance with Rule A4, ORR's determinations will be applied (in accordance with Rule A7(b) by relevant Forums to the resolution of the dispute on the basis of the Dispute Parties' respective entitlements. Consequently, subject to any specific legal obligations on ORR in considering a reference received under this Chapter C, ORR's determinations on the the Regulatory Issues raised will be made in accordance with the Dispute Parties' respective entitlements. The ORR will not take account of any argument raised by any Dispute Party which is not based upon the parties' respective entitlements or would have the effect of avoiding or rendering ineffective any Resolution Service Party's existing entitlements.

CHAPTER D – FACILITATIVE PROCESS RULES – MEDIATION

- 1 Mediation under these Rules is a private facilitative dispute resolution process in which a neutral mediator tries to help the parties to reach a negotiated settlement.

Disputes to be submitted to mediation

- 2 Any dispute which the Dispute Parties have agreed shall be submitted to mediation under these Rules shall proceed according to the Rules of this Chapter D. Such agreement may be made when the dispute arises or previously or in the Procedure Agreement or while any other dispute resolution process is taking place and may be made orally or in writing. Any mediation agreed by the parties which is not specified in the Procedure Agreement shall commence upon notification to the Secretary in writing by all parties (or confirmation in writing of such a notification on behalf of all parties) of their agreement to mediate.
- 3 Where a dispute which would otherwise be submitted to mediation in accordance with this Chapter D:
 - (a) is required to be submitted to mediation pursuant to the Non-Access Dispute Resolution Rules; or
 - (b) is subject to the agreement of the parties that it will be submitted to mediation pursuant to the Non-Access Dispute Resolution Rules; or
 - (c) is so closely connected with a dispute or related dispute (whether in either case involving the same parties or not) which is required 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,

the dispute shall be submitted to mediation under the Non-Access Dispute Resolution Rules.

Beginning a mediation

- 4 Upon commencement of a mediation (in accordance with the Procedure Agreement and Rule B16 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable mediator if not already done.
- 5 If no mediator can be agreed by the parties within 21 days of the date of commencement of the mediation, the Secretary shall recommend an appropriate individual from lists maintained by him or otherwise. If any party rejects the recommended individual then the mediation will be deemed to have failed and the Secretary shall write to the Involved Parties stating that that mediation stage has been terminated on the date of his letter.
- 6 Upon appointment of a mediator, the parties and the mediator will agree a date for the mediation session within 60 days of appointment of the mediator (subject to contrary agreement on timescales between the parties).

Exchange of Information

- 7 Following appointment of a mediator, each party shall prepare the following documents:
- (a) a concise summary ("the Case Summary") of its case in the dispute ; and
 - (b) all documents to which the summary refers and any others to which it may wish to refer to in the mediation ("the Mediation Documents").
- 8 The parties will exchange the Case Summary and Mediation Documents with each other at least seven days before the mediation session, or other such date as may be agreed between the parties and the mediator. Copies shall be sent directly to the mediator on the same date.
- 9 Subject to contrary agreement between the parties:
- (a) each Case Summary shall be a maximum of ten pages long; and
 - (b) a joint set of documents will be provided to the mediator containing the Mediation Documents requested by each party.

The Mediation

- 10 The mediator, where appropriate, will:
- (a) consult with the parties before the mediation session;
 - (b) read before the mediation session each Case Summary and all the Mediation Documents sent to him;
 - (c) determine the procedure for the mediation including the mediation session;
 - (d) facilitate the drawing up of any settlement agreement;
 - (e) be bound by the terms for the appointment of a mediator agreed with the parties; and
 - (f) abide by the terms of this Chapter D.
- 11 The mediation session will take place at the place and time stated by the mediator which is best suited to the location of the Dispute Parties.
- 12 No recording or transcripts of the mediation session will be made.
- 13 Each party shall be represented at the mediation session by at least one individual who shall be a senior manager with full decision-making authority to settle the dispute. If there is any restriction on that authority this should be discussed with the mediator before the mediation session. Parties should inform the mediator prior to the date of the mediation session of the identity of its representation which may include professional or other advisers. No other persons may attend without the mediator's agreement.

- 14 The mediator may see each party 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 disclosing such matters.
- 15 Within seven days of the end of the mediation session, if the parties have not resolved the dispute by agreement and only if all the parties request, the mediator may advise the parties of his non-binding views as to the likely outcome of the dispute if it were to be referred back to the determination procedure and/or what he considers would be a fair settlement of the dispute.

Settlement Agreement

- 16 Any settlement reached in the mediation will not be legally binding until it has been recorded in writing and signed by the parties.

Confidentiality

- 17 The mediation is and shall be kept confidential.
- 18 The parties, their representatives and advisers, the mediator and the 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 or any obligations at law.
- 19 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 disclosure 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.
- 20 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.

Costs

- 21 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, any costs of his appointment and all other administrative costs of the procedure.

Termination of the mediation

- 22 The mediation shall terminate upon the earliest of:
- (a) the occurrence of the events in Rule D5;
 - (b) service by one party to the mediation on the others and on the mediator of a notice of withdrawal from the mediation;

- (c) the provision to all parties by the mediator of his views in accordance with Rule D15;
 - (d) the expiry of 14 days from the end of the mediation session;
 - (e) withdrawal of the mediator from the mediation; or
 - (f) the conclusion of a written settlement agreement.
- 23 Upon termination any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of the termination and its intention to refer. Any such notification shall be copied to all Disptue Parties. If no party notifies the Secretary of its intention to refer the matter to another dispute resolution process (unless such other process has already been commenced) within 28 days of termination the claim shall be deemed to have been withdrawn.

Exclusion of liability

- 24 None of the Allocation Chair, the Secretary or any mediator shall be liable to any party for any act or omission (including negligence) in connection with any mediation under these Rules unless the act or omission is shown to have been in bad faith.

Mediator barred from further proceedings

- 25 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.

CHAPTER E – FACILITATIVE PROCESS RULES – EARLY NEUTRAL EVALUATION

- 1 Early Neutral Evaluation (ENE) under these Rules is a private facilitative dispute resolution process in which a neutral evaluator provides a confidential assessment of the likely merits of the case and tries to help the parties to reach a negotiated settlement.

Disputes to be submitted to ENE

- 2 Any dispute which the Dispute Parties have agreed shall be submitted to ENE under these Rules shall proceed according to the Rules of this Chapter E. Such agreement may be made when the dispute arises or previously or in the Procedure Agreement or while any other dispute resolution process is taking place and may be made orally or in writing. Any ENE agreed by the parties which is not specified in the Procedure Agreement shall commence upon notification of the Secretary in writing by all parties (or confirmation in writing of such a notification on behalf of all parties) of their agreement to an ENE.

Beginning an ENE

- 3 Upon commencement of an ENE (in accordance with the Procedure Agreement and Rule B16 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable evaluator, if not already done.
- 4 In the event that no evaluator can be agreed by the parties within 21 days of commencement of the ENE, the Secretary shall recommend an appropriate individual from lists maintained by him or otherwise. If any party rejects the recommended individual then the ENE will be deemed to have failed and the Secretary shall write to all involved Parties stating that that ENE stage has been terminated on the date of his letter.

Exchange of Information

- 5 Following appointment of an evaluator, each party will prepare the following documents:
 - (a) a concise summary ("the Case Summary") of its case in the dispute; and
 - (b) all documents to which the summary refers and any others to which it considers to be relevant to the evaluation ("the Evaluation Documents").

Unless the evaluator specifies otherwise, each Case Summary should be limited to 15 pages.

- 6 The evaluator will specify the date for exchange of submissions and the parties will exchange the Case Summary and Evaluation Documents with each other on that date. Copies shall be sent directly to the evaluator on the same date.
- 7 Within seven days of the receipt by him of the Case Summaries and Evaluation Documents the evaluator shall notify the parties of any further submissions he requires before making the evaluation including any questions he requires the parties to answer, the date for provision of such further submissions and if necessary the time for an oral hearing. The evaluator need not hold an oral hearing if he considers it unnecessary.

The Evaluation

- 8 The evaluator where appropriate, will:
- (a) read each Case Summary and all the Evaluation Documents sent to him;
 - (b) determine whether any further submissions are required by him and whether an oral presentation from the parties would assist him;
 - (c) provide a written statement of his evaluation of the dispute
 - (d) facilitate the drawing up of any settlement agreement;
 - (e) be bound by the terms for the appointment of an evaluator agreed with the parties; and
 - (f) abide by the terms of this Chapter E.
- 9 Any oral hearing will take place at the place and time stated by the evaluator who will chair and determine the procedure for the hearing. No recording or transcripts of the hearing will be made. Unless the evaluator orders otherwise each party shall be limited to one submission of up to one hour. The evaluator may require the parties to answer questions posed by him.
- 10 Within seven days of any hearing or confirmation from the evaluator that there will be no hearing, or such other date as the parties and the evaluator shall agree, the evaluator shall provide a written statement of his evaluation to all parties. The evaluation will state, on the basis of the information provided to him:
- (a) the evaluator's assessment of the dispute, the background and each party's arguments in respect of the facts;
 - (b) the evaluator's conclusions on, or his best estimate of, the likely outcome of the case and the merits of each party's case;
 - (c) the key issues or facts which the evaluator identifies as influencing the likely outcome of the case; and
 - (d) at his discretion, any suggestions on a fair or appropriate settlement of the dispute as between the parties.
- 11 No party shall be bound to adopt the views expressed, or accept the advice provided, by the evaluator.

Settlement Agreement

- 12 Any settlement reached in connection with the ENE will not be legally binding until it has been recorded in writing and signed by the parties.

Confidentiality

- 13 The evaluation is and shall be kept confidential.

- 14 The parties, their representatives and advisers, the evaluator and the Secretary shall keep confidential all Documents, submissions, statements and other information disclosed in the ENE, 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 or any obligations at law.
- 15 Its use in the ENE shall not affect the extent to which any Document, submission, statement or other information disclosed in the ENE is admissible or subject to disclosure 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.
- 16 The evaluator's evaluation shall be treated as being on the same basis as without prejudice negotiations in an action in the courts.

Costs

- 17 Unless the parties otherwise agree, each party shall bear its own costs of the ENE. The parties shall share equally the evaluator's fees and expenses, the costs of his appointment and all other administrative costs of the procedure.

Termination of the ENE

- 18 The ENE shall terminate upon the earliest of:
- (a) the occurrence of the events in Rule E4;
 - (b) the service by one party to the ENE on the others and on the evaluator of a notice of withdrawal from the ENE;
 - (c) withdrawal of the evaluator from the ENE; or
 - (d) provision of the evaluation to the parties.
- 19 Upon termination any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of the termination and its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to another dispute resolution process (unless such other process has already been commenced) within 28 days of termination, the claim shall be deemed to have been withdrawn.

Exclusion of liability

- 20 None of the Allocation Chair, the Secretary or any evaluator shall be liable to any party for any act or omission (including negligence) in connection with any ENE under these Rules unless the act or omission is shown to have been in bad faith.

Jurisdiction and governing law

- 21 ENEs shall take place in such location as the parties agree (or in default of agreement at such place as the evaluator specifies being appropriate for all parties and himself). Unless otherwise agreed by the parties, evaluations shall be subject to English law, except where the Underlying Contract has arisen confers permission to use railway assets situated entirely in Scotland or the Underlying Contract in question is governed by Scottish law, in which case the ENE shall be subject to Scottish law. For the purposes of this Rule E21, where a single Underlying Contract 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.

Evaluator barred from further proceedings

- 22 The evaluator shall not be entitled to act in any capacity in relation to the subject matter of the ENE in which he acted as evaluator in any subsequent arbitration, legal or other similar proceedings.

CHAPTER F – DETERMINATIVE PROCESS RULES – ARBITRATION

- 1 Arbitration under these Rules is a private determinative dispute resolution process subject to the Arbitration Acts in which a neutral arbitrator determines the dispute on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to him.

Disputes to be decided by arbitration

- 2 Any dispute which the parties to the dispute have agreed shall be submitted to arbitration under these Rules or which has otherwise been allocated to arbitration as a first, second or appeal stage dispute resolution process in accordance with these Rules, shall proceed according to the Rules of this Chapter F.
- 3 Any arbitration under these Rules shall proceed before a sole arbitrator.

Relationship with Non-Access Dispute Resolution Rules

- 4 Where a dispute which would otherwise be arbitrated in accordance with this Chapter F:
 - (a) has been referred pursuant to Rule K1 to the committee (or a sub-committee of it) established under the Non-Access Dispute Resolution Rules; or
 - (b) is so closely connected with a dispute or related dispute (in either case whether involving the same parties or not) which is required 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 or otherwise determined under the Non-Access Dispute Resolution Rules.

Beginning an arbitration and appointing the arbitrator

- 5 Upon commencement of an arbitration (in accordance with the Procedure Agreement and Rule B16 or otherwise), the Secretary shall promptly approach all Dispute Parties and liaise with and assist the parties in identifying, choosing and retaining a suitable arbitrator, if not already done.
- 6 In the event that no arbitrator can be agreed by the parties within 21 days of the commencement of the arbitration, the Secretary shall propose an appropriate individual, from lists maintained by him and published on the access disputes website, or otherwise. That individual shall be appointed by the parties as arbitrator unless any party notifies the Secretary of a challenge to the appointment on the ground of (real or apparent or potential) bias, Conflict of Interest or a lack of competence within 5 days of notification of the Secretary's choice. If any challenge is made on the ground of bias, Conflict of Interest or lack of competence, the Allocation Chair shall consider the challenge and determine either to:
 - (a) uphold the proposed appointment; or

- (b) remit the choice to the Secretary with directions concerning how a further choice should be made.

Nothing in this Rule F6 shall affect the power of an arbitrator to determine his own jurisdiction or appointment.

Notice of arbitration

- 7 Upon the appointment of an arbitrator, the Secretary shall send to all the parties to the dispute a notice of the appointment of the arbitrator. The Secretary shall also send to the arbitrator a copy of:

- (a) this Chapter F and Chapters A, B and C;
- (b) any template terms for appointment of an arbitrator issued by the Committee;
- (c) the Notice of Dispute;
- (d) any statements from the parties made under Rule B7(d)8(d)(iii); and
- (e) any correspondence from the Allocation Chair made under Rule B14

The Notice of Dispute shall stand as a notice of arbitration and no further notice of arbitration shall be required or served.

Change of arbitrator

- 8 If any arbitrator acting or appointed to act under these Rules resigns, withdraws, dies or refuses to act, the Secretary shall, upon application by the arbitrator or any Dispute Party, on proof satisfactory to the Secretary, declare the position of arbitrator vacant.
- 9 If the arbitrator or any Dispute Party considers that the arbitrator is unable by reason of mental or physical infirmity to perform the duties of his position as arbitrator or is disqualified for any reason from performing those duties, or has delayed unreasonably in the conduct of the arbitration or in the making of any award, the Secretary may, at the request of the arbitrator or any Dispute Party, having heard the arbitrator and the parties if they or any of them wish to be heard, declare the position of arbitrator vacant.
- 10 Where the position of arbitrator shall have been declared to be vacant pursuant to Rule F8 or F9, then Rule F5 shall apply to the appointment of a replacement arbitrator.

Procedure

General

- 11 The arbitrator shall act fairly and impartially as between the parties, giving each a reasonable opportunity of putting his case and dealing with facts raised by his opponent.
- 12 The arbitrator shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined in accordance with each

party's rights at law to a fair trial. The arbitrator may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the arbitration. The directions shall be in accordance with the Principles.

- 13 Subject to Rule F14, an arbitration shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute.
- 14 The parties may agree that an arbitration shall be conducted on the basis of written representations only. In such a case, nothing in this Rule 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.
- 15 Unless the arbitrator rules otherwise (either on his own motion or upon the application of any party), the following timetable and procedure shall apply:
 - (a) within 21 days of the notice of appointment of the arbitrator, the claimant(s) shall serve upon the arbitrator and each 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;
 - (b) within 21 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon the arbitrator and the claimant(s) a written statement of its defence (in Scotland, answers). 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;
 - (c) the statements of case served pursuant to sub-paragraphs (a) and (b) 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;
 - (d) after service by the respondent of its statement of defence (in Scotland, answers), the arbitrator may:
 - (i) allow the parties an adjustment period within which to adjust the written statements of case so that each material averment of the parties shall be answered (whether by admission, denial, explanation or otherwise). On the expiry of the adjustment period, the statements of case shall be finalised and within seven days thereafter the claimant(s) shall reproduce the statements of case, 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; or, alternatively; and/or
 - (ii) within seven days of the service by the respondent of its statement of defence (in Scotland, answers), allow a reply from

the claimant(s) limited to responding to new matters and contentions of law raised in the statement of defence (in Scotland, answers) including any counterclaim raised;

- (e) within seven days after the statements of case have been finalised, the arbitrator shall (in consultation with the parties) set a hearing date and the estimated length of the hearing;
- (f) within 21 days after the statements of case have been 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;
- (g) at least seven days before the hearing, each party shall serve on the other and on the arbitrator its written submissions;

16 Unless ordered otherwise by the arbitrator, 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 statements of case;
- (b) subject to sub-paragraph (iii) below, the testimony of a witness may be presented in written form, either as a signed statement or as an affidavit duly sworn, provided Rule 15(f) 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:
 - (i) place such weight on the written statement or affidavit as he thinks fit;
 - (ii) exclude it altogether; or
 - (iii) apply to the court for an order for the citation or attendance of witnesses;

In addition, in making his determination on Costs the arbitrator may take any failure to attend into account;

- (c) factual or expert witnesses who give oral evidence will not be required to provide their evidence in full orally. 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;
- (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; and
- (g) the arbitrator shall deliver to the parties a reasoned award within 21 days of the end of the hearing.

Proposed amendments

- 17 Immediately after his appointment, the arbitrator shall require each party to propose directions to him or to inform him of any amendments to the procedure or the time limits set out in Rule F15 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall send promptly any proposed directions or amendments to the arbitrator and each other party. Before responding or ordering any amendments to the procedure, the arbitrator may require the parties to meet him.

References to the ORR

- 18 The arbitrator may, on the application of either party or on his own motion, elect to refer any issue or issues to which Rule C3 applies, to the ORR in accordance with Chapter C. Before making any such reference the arbitrator shall:
 - (a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and
 - (b) determine the wording of any reference to be made with due regard to such submissions.

Supplemental

- 19 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, 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 Rule F30. The arbitrator shall provide to the parties the terms of reference, qualifications and experience of any adviser or assessor appointed. Where the arbitrator receives a report from any such person, he shall disclose the report to the parties and afford them an opportunity to comment on it.
- 20 In relation to the production of Documents:
 - (a) the arbitrator may, on the application of a Dispute Party, require the production of such specific identified Documents or class of Documents as are within the possession, custody or control of another Involved Party or any third party which the arbitrator considers relevant. The Dispute Parties 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:
 - (i) proceed with the arbitration on the basis of the Documents already before him;

- (ii) apply to the Court for an order to produce the Documents; or
- (iii) 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 draw inferences as he may think fit from the failure to supply the Document. In addition, in making his determination on Costs the arbitrator may take any failure to supply a Document at any stage in the proceedings into account;

- (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) unless otherwise ordered by the arbitrator, 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 14 days;
- 21 Without prejudice to the powers in Rule A16 and in addition to them, 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.
- 22 Without prejudice to the powers in Rule A16 and in addition to them, 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.
- 23 Without prejudice to the powers in Rule A16 and in addition to them, if any Dispute Party fails to serve a Statement of Case 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 a without notice basis.
- 24 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.

Awards

Final and binding

- 25 Awards shall be final and binding on the Dispute Parties subject to:
- (a) the provisions (including rights of appeal) of the Arbitration Acts and any other relevant law and
 - (b) the provisions of any agreement between the parties to the dispute, the relevant Access Conditions, and any further right of appeal or reference to another dispute resolution process provided for in the Procedure Agreement.
- 26 If any further dispute resolution process is provided for in the Procedure Agreement then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the final award, the final award shall be deemed to have been accepted by all parties.

Power to make orders

- 27 Subject to any other provision of the Access Conditions and Underlying Contract, the arbitrator may make such orders in his award as he considers necessary to resolve the dispute, including, without limitation, that:
- (a) one party shall pay an amount of money (including damages) to another party, whether that amount is specified in the determination or calculated in accordance with such procedure as the arbitrator shall specify;
 - (b) one Dispute 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 determination; or
 - (d) any principal sum the arbitrator may order one party to pay to another shall carry interest at such rate and over such period as he shall determine.

Issue of arbitration award

- 28 The arbitrator shall send a copy of his award to the parties, the Allocation Chair and the Secretary.

Costs

Discretion to order payment of Costs

- 29 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, assessed in such manner as the arbitrator shall determine. The arbitrator may make such an order without limitation following any interim or final award.

Joint and several liability of parties to arbitrators for fees and expenses

- 30 The Dispute Parties are jointly and severally liable to pay the arbitrator's reasonable fees and expenses.

Confidentiality

- 31 Subject to the provisions of Rule C and Rules F32, F33 and G68, all Documents produced or disclosed in the course of an arbitration including all awards shall be treated as confidential by the arbitrator, the Allocation Chair, the Secretary and all parties and shall not be published.

- 32 Unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an arbitration including all awards shall only be used:

- (a) 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 or any subsequent stages of the determination procedure;
- (b) for enforcing the arbitration award; or
- (c) in support of a plea of estoppel (or, for arbitrations taking place in Scotland, of res judicata) in any subsequent proceedings.

- 33 The confidentiality obligations under Rule F31 shall not apply to Documents which are:

- (a) agreed in writing by all the Dispute Parties to be disclosed (including in any Underlying Contract between them);
- (b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
- (c) disclosed on a confidential basis to the ORR or the appropriate franchising authority in the normal course of business; or
- (d) required to be disclosed pursuant to the order of a court of competent jurisdiction.

Communications

- 34 Communications for the purposes of the arbitration may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

Exclusion of liability

- 35 None of the Allocation Chair, the 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 shown to have been in bad faith.

Jurisdiction and governing law

- 36 Arbitrations shall take place in England or Wales and be subject to English law, except where the Underlying Contract in respect of which the dispute has arisen confers permission to use railway assets situated entirely in Scotland or the Underlying Contract in question is governed by Scottish law, in which case the arbitration shall take place in Scotland and be subject to Scottish law. In either case the arbitrator may order otherwise. For the purposes of this Rule F36, 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.

Interim relief granted by the Court

- 37 In an appropriate case, a party to a dispute which has been or may be submitted to arbitration may apply to the Court for interim relief (whether negative or positive), notwithstanding that the relief sought may overlap with the interim relief which is, or may be, claimed in the arbitration.

CHAPTER G – DETERMINATIVE PROCESS RULES – ACCESS DISPUTE ADJUDICATION

- 1 An Access Dispute Adjudication (ADA) under these Rules is a determinative dispute resolution process in which, with the benefit of advice from independent railway Industry Advisors, a Hearing Chair determines the dispute in a timely and efficient manner on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to him.

Disputes to be decided by ADA

- 2 Any dispute which is to be submitted to an ADA under these Rules shall proceed according to the Rules of this Chapter G.
- 3 Any ADA under these Rules shall proceed before a Hearing Chair and a number of Industry Advisors to be determined by the Hearing Chair in light of the issues in the dispute and/or its value or complexity. Unless otherwise ordered by the Hearing Chair the normal number of Industry Advisors shall be two.
- 4 An ADA shall:
 - (a) provide determinations as an adjudication body with relevant railway expertise;
 - (b) endeavour to reach fair, rapid and inexpensive determinations of disputes drawing on that expertise;
 - (c) where appropriate, take the initiative in ascertaining the facts and law relating to the dispute; and
 - (d) balance the formality required to achieve a fair and efficient process with the accessibility required so that the process is quick and easy to use.
- 5 It is an overriding objective of these Rules that disputes referred to an ADA shall be administered in a way which is proportionate to:
 - (a) the objective importance of the dispute to the Dispute Parties;
 - (b) the complexity of the issues;
 - (c) the significance (if any) of the issues involved to the railway industry; and
 - (d) the scale of any financial claims involved.

Accordingly having regard to Rule G16, the Hearing Chair shall (where appropriate) adapt the procedures adopted in respect of each dispute to reflect its specific requirements in terms of subject matter, timescales and value.

- 6 The ADA shall, in the case of unavoidable absence on the day of one Industry Advisor, be quorate to hear a dispute with all other selected Industry Advisors and the Hearing Chair present.

Relationship with Non-Access Dispute Resolution Rules

- 7 Where a dispute which would otherwise be determined by ADA in accordance with this Chapter G:
- (a) has been referred to the committee (or a sub-committee of it) established under the Non-Access Dispute Resolution Rules pursuant to Rule K1; or
 - (b) is so closely connected with a dispute or related dispute (in either case whether involving the same parties or not) which is required 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 or otherwise determined under the Non-Access Dispute Resolution Rules.

Beginning an ADA

- 8 An ADA shall commence upon the date identified in Rule B16.
- 9 The Secretary shall, on any occasion where the next dispute resolution process provided for in the Procedure Agreement is an ADA stage, appoint a Hearing Chair appropriate to the dispute.
- 10 The Hearing Chair:
- (a) has oversight of the effective case management of a dispute which has been referred to an ADA in light of the Principles;
 - (b) has responsibility to ensure that all procedures of the ADA (at and before ADA hearings) are being implemented fairly and effectively in respect of each dispute;
 - (c) will review each dispute following submission of statements of case to identify and to itemise in written form for consideration by the ADA all relevant issues of law raised by the dispute a copy which shall be provided promptly to the Dispute Parties;
 - (d) will make a final determination of the dispute referred to the ADA and prepare a written determination which is legally sound, appropriate in form, and otherwise compliant with this Chapter G;
 - (e) shall ensure that the final determination of the dispute is circulated promptly and (where applicable) in accordance with any mandatory time requirement; and
 - (f) may, where reasonable to do so, delegate the performance of any of his functions (with the exception of making the determination of the dispute) in any dispute to the Secretary, however, such delegation shall not affect the obligations and responsibilities of the Hearing Chair set out in this Rule.
- 11 Upon appointment, the Hearing Chair shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined. The

Hearing Chair may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the ADA. The directions shall be in accordance with the Principles.

- 12 The directions given under Rule G11 shall expressly require the parties to reconsider whether any third parties not already identified and notified to the Secretary, in accordance with Rule B3(b) or otherwise, may be directly affected by the outcome of the dispute and require the parties to notify the Secretary of the identity of any such parties.
- 13 Provided that such extension has no adverse effect upon the date fixed for an oral hearing, the Dispute Parties may agree an extension of any timescales of up to seven days in respect of any stage. For any period beyond that extension a party may seek an order from the Hearing Chair to provide an extension of time for any of the stages specified in the directions. The Hearing Chair shall make his decisions on any request for an extension of time based upon the Principles.
- 14 Subject to Rule G15, an ADA shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute.
- 15 The parties may agree that an ADA shall be conducted on the basis of written representations only. In such a case, nothing in this Rule shall prevent the Hearing Chair from requiring one or more oral hearings if he considers it appropriate for the just and expeditious determination of the proceedings.
- 16 The ADA process is flexible and may be adapted by the Hearing Chair to accommodate disputes of differing complexity and size and requiring different levels of evidence. The Hearing Chair shall therefore actively consider whether variations on the standard directions (which are for a straightforward matter) set out in Rule G17 are appropriate or justified and will have regard to the submissions of the parties in this respect.
- 17 Subject to Rule G16, unless the Hearing Chair directs otherwise (and subject to any party's right to apply for alternative or revised directions at all stages), the following timetable and procedure shall apply:
 - (a) within 14 days of the appointment of the Hearing Chair, the claimant(s) shall serve upon the Secretary and each other Involved Party, a written statement of its claim in accordance with the template format for a statement of claim (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute. The statement of claim shall include the following:
 - (i) names, registered address and any relevant correspondence address (including email address) of the Dispute Parties;
 - (ii) the subject matter of the dispute;
 - (iii) identification of the provision(s) of the Underlying Contract under which the reference is made;

- (iv) identification of any other provision(s) of the Underlying Contract or other contract(s) which the claimant believes are also relevant to the dispute;
 - (v) a summary of the nature and circumstances of the dispute in sufficient detail for the other Dispute Party to identify the issues raised;
 - (vi) the decision sought from the ADA;
 - (vii) the remedy claimed;
 - (viii) an authorised signature of the referring party; and
 - (ix) copies of the following Documents which shall be annexed and cross referenced to the statement:
 - (A) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and
 - (B) any other Documents referred to in the reference.
- (b) within 14 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon each other Involved Party a written statement of its defence (in Scotland, answers). The statement of defence shall be in accordance with the template format for a statement of defence (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute and shall include the following:
- (i) a schedule identifying those parts of the statement of claim that it agrees with and those that it disagrees with;
 - (ii) the reasons for any disagreement including any further references to provisions of the Underlying Contract or other contract(s) not dealt with in the reference;
 - (iii) details of any other related claim;
 - (iv) the decision (and, if relevant) any remedy sought from the ADA;
 - (v) an authorised signature of the responding party; and
 - (vi) copies of the following Documents which shall be annexed and cross referenced to the response if not dealt with in the statement of claim:
 - (A) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and
 - (B) any other Documents referred to in the defence.

- (c) the claimant(s) may within seven days of the service by the respondent of its statement of defence (in Scotland, answers), serve upon each Involved Party a reply limited to responding to new matters and contentions of law raised in the statement of defence (in Scotland, answers) and any counterclaim or related claim raised;
 - (d) following service of the reply, the Secretary shall write to all parties to inform them that a hearing date will be set in accordance with (e) below and to inquire whether any party intends to make an application for alternative or varied directions and/or a directions hearing at this stage;
 - (e) before the date 14 days after the statements of case referred to in paragraphs (a)-(c) have been finalised, the Secretary shall agree with the Hearing Chair and the parties a hearing date and the estimated length of the hearing. If a date cannot be agreed with one or more parties the Hearing Chair shall determine the hearing date. Unless the parties agree otherwise, or the Hearing Chair determines otherwise having due regard to Rule G16, the hearing date shall be within 35 days of the date on which it is agreed or determined in accordance with this Rule. Upon agreement or determination of a hearing date, the Secretary shall write to all Involved Parties to confirm the date to them;
 - (f) the Hearing Chair may raise any questions relating to the dispute he wishes in advance of the hearing. In particular the Hearing Chair shall consider whether any additional third party should be or should have been notified of the dispute subsequent to Rule B3(b) or otherwise and may ask the parties to justify their decision not to notify any such party. If any Industry Advisor or assessor raises a question, the Hearing Chair may in his absolute discretion refer such question to the parties;
 - (g) at least seven days before the hearing, each Dispute Party shall serve on all other Involved Parties its written submissions for the hearing and any additional information or responses to questions requested by the Hearing Chair.
- 18 At any stage prior to the date on which the Secretary writes to inform the Involved Parties of the date of the hearing, in accordance with Rule G17(e) or otherwise, any third party made aware of the dispute subsequent to Rule B3(b) or otherwise can by notification to the Secretary request to become a claimant, defendant or interested party in the dispute. Any Involved Party which has not requested to become a claimant, defendant or interested party in the dispute by this point shall cease to be an Involved Party.
- 19 Any third party which has not been made aware of the dispute subsequent to Rule B3(b) or otherwise can by notification to the Secretary request to become a claimant, defendant or interested party in the dispute at any stage prior to the final hearing. Unless the request seems to him vexatious or frivolous (in which case he shall request that the Hearing Chair determine appropriate directions) upon receiving such a request, the Secretary shall send copies of the Notice of Dispute and all statements of case to the third party making the request subject to a requirement that that party keep such Documents confidential.
- 20 Any request to become a claimant, defendant or third party in accordance with Rule G18 or 19 shall be considered and determined by the Hearing Chair

having considered such submissions and evidence as he shall request. In making his decision the Hearing Chair shall take into account the Principles, the wider interests of the industry, the balance of interests between all relevant parties and such other matters as appear to him to be relevant.

References to the ORR

- 21 The Hearing Chair may, on the application of any party or on his own motion, elect to refer any issue or issues to which Rule C3 applies, to the ORR in accordance with Chapter C. Before making any such reference the Hearing Chair shall:
- (a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and
 - (b) determine the wording of any reference to be made with due regard to such submissions.

Length of References, Responses and Joint References and method of service

- 22 The length of every Statement of Case shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Hearing Chair the maximum length of submissions shall be as follows:
- (a) a statement of claim or defence shall be no longer than 20 pages; and
 - (b) a reply shall be no longer than 10 pages.
- 23 The normal method of service shall be electronic to the Secretary and other Involved Parties.

Directions Hearing

- 24 The Hearing Chair, if necessary, may at any time (on his own motion or that of any party) require the Dispute Parties to participate in a directions hearing to decide, after hearing representations from the Dispute Parties, any issues relating to the procedures adopted for the dispute including:
- (a) whether further or additional third parties should be notified of the dispute;
 - (b) the procedures most appropriate to the dispute;
 - (c) the nature of the issues in dispute;
 - (d) whether any matters are to be referred to the ORR under Rule G21 or otherwise;
 - (e) an outline timetable;
 - (f) the process and details of the preparation, submission and amendments of statements of case;
 - (g) whether any Document disclosure procedures shall take place;

- (h) whether the parties shall be permitted to bring expert evidence and if so the details of such expert evidence;
- (i) the basis and timings for which witness evidence (if any) is to be prepared and exchanged; and/or
- (j) the appointment by the ADA of assessors.

Documents

25 Although Documents reasonably requested should be provided in compliance with the directions specified at Rule G17, disclosure will not ordinarily be ordered. However the Hearing Chair, whether or not on the application of any party and having due regard to Rule G16, has the power to:

- (a) order any Dispute Party to provide by way of formal disclosure and inspection, Documents which it controls and which are relevant to the dispute; and
- (b) specify the formalities, detail and timings involved.

The Hearing Chair shall exercise this power in accordance with the Principles.

26 No party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts.

27 Requests and applications to the Hearing Chair for disclosure may be made at any stage of the dispute but (whenever practicable) should be made at the time of or shortly following submission of the relevant Statement of Case giving rise to the request. The timing of any request (by reference to the date when it could first reasonably have been made) may be taken into account by the Hearing Chair when considering a request.

28 Without prejudice to any other action open to the Hearing Chair, the Hearing Chair shall be entitled to draw any inference he wishes from any failure to provide adequate or full disclosure by any party or disclosure in accordance with the terms of directions given by him.

29 When considering a request for disclosure, the Hearing Chair will consider the commercial sensitivity of the information requested and may exercise his discretion not to grant full disclosure.

Witness evidence

30 Subject to any alternative direction from the Hearing Chair, a Dispute Party may rely on any witness evidence it believes to be relevant in its statements of case and at any ADA hearing provided that either a witness summary or a witness statement has been served on all other Involved Parties at least seven days before the hearing.

31 A witness summary shall identify in overview the issues on which the witness will give evidence and a summary of the evidence he will give in respect of each such issue. Witness summaries shall be signed by the witness.

- 32 Written witness statements will not normally be required. However if the Hearing Chair permits or requires witness statements to be submitted he shall specify the formalities, detail and timings involved.

Experts

- 33 A Dispute Party can rely, as of right, upon expert evidence completed prior to the date of the reference. Where a Dispute Party wishes to exercise this right it shall attach such evidence to its first Statement of Case and the other Dispute Parties shall be entitled to a direction that they may commission expert reports responding to the particular issues covered by such evidence.
- 34 When considering whether and to what extent to permit the Dispute Parties to commission further expert reports, the Hearing Chair shall consider what evidence is reasonably required to determine the dispute, the Principles and Rule G16.
- 35 The reports of experts shall state:
- (a) the full remit against which the report has been prepared;
 - (b) the identity, qualifications and experience of the person(s) preparing the report;
 - (c) the extent (if any) to which the expert has previously been involved in the subject matter of the dispute and current or recent professional connections with any of the Dispute Parties.
- 36 At any hearing the Hearing Chair, Industry Advisors, or any assessor appointed, may address questions directly to any experts.
- 37 The Hearing Chair shall determine in accordance with the specific requirements of the dispute whether the expert evidence is dealt with either by consideration of reports only or by the attendance and examination of one or more of the experts to answer questions upon their reports, by telephone, conferencing facilities or by any other means.

Assessors

- 38 The Hearing Chair may appoint one or more assessors to facilitate the determination of a dispute. Any such assessor may be (without limitation):
- (a) a technical assessor with a specific area of expertise relevant to one or more issues in the dispute; and/or
 - (b) a legal assessor.
- 39 Assessors may help undertake the procedural management of the dispute and prepare such report(s) and guidance on such issues as the Hearing Chair may direct.
- 40 The Hearing Chair shall provide to the Dispute Parties the terms of reference, qualifications and experience of any assessor appointed and a summary of his advice.

- 41 The Hearing Chair shall not be bound by the views of an assessor but shall be required to explain his reasons for disagreeing with those views.

Hearing Conduct

- 42 The hearing will be chaired by the Hearing Chair.
- 43 Subject to any contrary direction of the Hearing Chair with due regard to Rule G16, the following procedure will be adopted at hearings:
- (a) the Hearing Chair, Industry Advisors and any assessor will meet in the absence of the Dispute Parties to discuss issues arising from the papers submitted by the Dispute Parties;
 - (b) the Hearing Chair, Industry Advisors and any assessor will confirm to the Dispute Parties the extent to which they have read the papers submitted by them;
 - (c) the claimant's representative will make an opening submission of its case of not longer than 10 minutes, referring if necessary to witness or expert evidence which the claimant wishes the Hearing Chair and Industry Advisors to consider;
 - (d) the respondent's representative will also make any opening submission of its response and/or counterclaim of not longer than 10 minutes, referring if necessary to additional witness or expert evidence which the respondent wishes the ADA to consider;
 - (e) if a written witness statement has been provided, the witness will not be required to read out his statement unless the Hearing Chair decides otherwise. If any witness summary has been provided the Hearing Chair shall direct how the evidence shall be admitted and may require the witness to provide his evidence in full orally before cross examination;
 - (f) if expert evidence is used, the expert will not be required to read out his report unless the Hearing Chair decides otherwise;
 - (g) the Hearing Chair and Industry Advisors and any assessor may put any relevant questions to the representatives, witness(es) and expert(s);
 - (h) Dispute Parties may put questions to any witness(es) or expert(s) in their capacity as witnesses or experts, and when any representative is acting as a witness he shall make that clear; and
 - (i) at the conclusion of questions, representatives may make closing submissions of not more than 10 minutes.
- 44 The hearing shall be conducted with the Dispute Parties present. Following conclusion of the submissions, the Dispute Parties will withdraw to allow the Hearing Chair and Industry Advisors to consider the evidence and arguments with any assessor. The Dispute Parties shall remain available to allow the Hearing Chair, Industry Advisors and any assessor to put any additional questions.

- 45 The Secretary will unless otherwise directed by the Hearing Chair make a full note of the evidence given to the ADA. The Hearing Chair may in his discretion direct in advance that a full transcript is taken.
- 46 The Hearing Chair may, subject to any specified requirements of the Access Conditions or Underlying Contract and legal requirement, reserve his determination until a later date.

Determinations

- 47 Having considered the submissions of the parties and the advice of the Industry Advisors and any assessor the Hearing Chair shall make a determination of the dispute in accordance with Rule G48.
- 48 Subject to any other provision of the Access Conditions and Underlying Contract, the Hearing Chair may make such orders in his determination as he considers necessary to resolve the dispute including, without limitation, that:
- (a) one Dispute Party shall pay an amount of money (including damages) to another Dispute Party, whether that amount is specified in the determination or calculated in accordance with such procedure as the Hearing Chair shall specify;
 - (b) one Dispute Party should take or not take specified action;
 - (c) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination; or
 - (d) any principal sum the Hearing Chair may order one party to pay to another shall carry interest at such rate and over such period as he shall determine.
- 49 The Hearing Chair's determination of a dispute shall be in writing and comprise:
- (a) the date of the hearing;
 - (b) the names of the Hearing Chair and Industry Advisors and any assessors present;
 - (c) details of all Dispute Parties (including interested parties);
 - (d) details of the attendance and status of all witnesses and interested parties;
 - (e) a brief summary of the dispute;
 - (f) an identification of the issues of fact and law considered by the Hearing Chair;
 - (g) a summary of the evidence presented;
 - (h) the findings of fact made by the Hearing Chair;
 - (i) identification of any precedents considered;
 - (j) the decisions and conclusions reached, distinguishing clearly between:

- (i) decisions upon legal entitlement;
 - (ii) decisions upon remedy;
 - (iii) guidance to the Dispute Parties or other observations not forming part of a decision upon either legal entitlement or upon remedy;
 - (k) the reasons for those decisions and conclusions (including any relevant legal principles or rules of law applied); and
 - (l) the signed and dated confirmation of the Hearing Chair that the determination is legally sound and appropriate in form.
- 50 The Hearing Chair shall provide a copy of his written reasoned determination to all the Dispute Parties.
- 51 Except as otherwise provided in the Underlying Contract and without prejudice to Rule G67, the Dispute Parties shall comply with the terms of the determination within such period as shall be specified in the determination.
- 52 If a Dispute Party fails to comply with the terms of the determination, that failure will be dealt with by way of a new dispute through the appropriate mechanism.

Costs

- 53 The Committee's fees and expenses including costs of any assessors and transcription services relating to the period up to and including the first day of any ADA Hearing shall not be charged to the parties. The parties at the time of the ADA hearing are jointly and severally liable to pay the Committee's reasonable fees and expenses connected with the ADA relating to the period after the first day of the hearing. Subject to Rule G54, the parties shall pay such fees in equal proportions.
- 54 The Hearing Chair shall have power to order one or more Dispute Party to meet part or all of the Costs or expenses of the ADA and of any other Dispute Party assessed by such means as the Hearing Chair shall determine. Any such order shall be made with due regard to the Principles and to the provisions of these Rules including in particular Rule A16(d).
- 55 An order for costs shall only be made where the Hearing Chair is satisfied that either:
- (a) the case of the relevant Dispute Party shall have been so lacking in merit that the reference should not have been made (or defended); or
 - (b) the conduct of the relevant Dispute Party before or during the references was such as to justify an award of costs being made against it (or them).
- 56 The Hearing Chair may make such an order at any stage including following any interim or final award.

Confidentiality

- 57 Subject to Rules G58, G60 and G61, and unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an ADA including

the determination shall be treated as confidential by the Hearing Chair, Panel Members, the Allocation Chair, the Secretary and all parties and shall only be used:

- (a) for the purposes of the ADA, including any appeal or further stage in the determination procedure;
- (b) for enforcing the ADA determination; or
- (c) in support of a plea of estoppel (or, for ADAs taking place in Scotland, of *res judicata*) in any subsequent proceedings.

58 The confidentiality obligations under Rule G57 shall not apply to Documents which are:

- (a) agreed in writing by all Dispute Parties to be disclosed (including in any Underlying Contract between them);
- (b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
- (c) disclosed on a confidential basis to the ORR or the appropriate franchising authority in the normal course of business;
- (d) disclosed pursuant to Rule G60 or 61; or
- (e) required to be disclosed pursuant to the order of a court of competent jurisdiction.

59 Within seven days of its receipt of the determination (or such longer period as the Hearing Chair shall allow), any party to the dispute may give notice to the Hearing Chair and the other parties to the dispute:

- (a) that it objects to the publishing of all or some of the Documents specified in Rule G60;
- (b) whether it considers that the Hearing Chair should exercise his discretion to exclude from publication any part of the determination which relates to its affairs; and
- (c) if confidentiality is sought, its justification for considering that the grounds referred to in Rule G62 do not exist.

60 If no notice under Rule G59 is given within the time specified in that Rule, the Secretary shall publish the following Documents on the access disputes website:

- (a) each finalised Statement of Case (including all exhibits and attachments to such statements of case);
- (b) each request from the Hearing Chair for further information and all responses to such requests;
- (c) all written submissions from all parties; and

- (d) all awards and/or determinations from the Hearing Chair.
- 61 If any Dispute Party serves a notice in accordance with Rule G59, the Hearing Chair shall be entitled to hear the parties on the question of confidentiality and determine which Documents shall be published and/or whether any aspects of such Documents should be made illegible or excluded prior to publishing. If any such representations shall have been made to him, unless the parties to the dispute otherwise agree the Allocation Chair shall provide the parties to the dispute with his reasons for making his determination on confidentiality. Such reasons shall be given in writing but shall not be published on the access disputes website.
- 62 There is a presumption that the Documents identified in Rule G58 shall be published provided that:
- (a) publication will not, in the Hearing Chair's reasonable opinion, result in any material adverse effect on the party or parties objecting to publication; and
 - (b) the determination contains a finding or findings of wider railway industry significance; and
 - (c) it is just in all the circumstances to decline the objection from the objecting party.

Communications

- 63 Communications for the purposes of the ADA may be by telephone or email (or such other means as are appropriate) and where by telephone shall be confirmed in writing wherever possible.

Exclusion of liability

- 64 None of the Allocation Chair, the Secretary, the Hearing Chair or any Industry Advisor shall be liable to any party for any act or omission (including negligence) in connection with any ADA under these Rules unless the act or omission is shown to have been in bad faith.

Jurisdiction and governing law

- 65 ADAs shall take place in England or Wales and be subject to English law, except where the Underlying Contract in respect of which the dispute has arisen confers permission to use railway assets situated entirely in Scotland or the Underlying Contract in question is governed by Scottish law, in which case the ADA shall take place in Scotland and be subject to Scottish law. In either case the Hearing Chair may order otherwise. For the purposes of this Rule G65, 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.

Interlocutory relief granted by the Court

- 66 In an appropriate case, a party to a dispute which has been or may be submitted to ADA 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 ADA.

Appeal

- 67 Following a determination of a dispute by the Hearing Chair any Dispute Party is entitled to appeal in accordance with any relevant provisions in the Procedure Agreement. If the Procedure Agreement is silent in respect of a right of appeal then each party shall have a right of appeal to arbitration in accordance with these Rules.
- 68 Any further dispute resolution process to which an appeal is made in accordance with Rule G 67, shall be subject to the confidentiality provisions set out in Rules G57 - G62 as if all Documents disclosed and prepared in relation to that further dispute resolution process had been prepared in respect of an ADA.
- 69 If any further dispute resolution process is provided for in the Procedure Agreement or if a right to appeal to arbitration exists in accordance with Rule G67 then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the determination of the Hearing Chair, that determination shall be deemed to have been accepted by all parties.

CHAPTER H – DETERMINATIVE PROCESS RULES – TIMETABLING PANEL

Purpose

- 1 The purpose of a Timetabling Panel is to determine disputes referred to it by parties to an access agreement which incorporates Part D of the Network Code which arise out of or in connection with issues of timetabling, timetable change and the allocation of capacity including restrictions of use and train slots, in:
 - (a) such an access agreement; or
 - (b) the Access Conditions incorporated by reference in the access agreement in question;

The Timetabling Pool

- 2 The Committee shall establish (and have administered by the Secretary) a pool of panel members for the TTP called the Timetabling Pool. The Timetabling Pool shall be primarily made up of individuals with expertise and experience in train services planning and the timetabling development process including the allocation of capacity which will allow them to understand and advise Hearing Chairs upon Timetabling Disputes.
- 3 Individual members of the Timetabling Pool shall be appointed by the following Bands and Classes:
 - (a) two members by each of the three Bands of the Franchised Passenger Class;
 - (b) two members by each of the two Bands of the Non-Passenger Class;
 - (c) two members by the Non-Franchised Passenger Class; and
 - (d) four members by Network Rail.

The members referred to in (a), (b) and (c) shall be appointed by the method used to elect members of the Class Representative Committee under Part C of the Network Code.

- 4 If the numbers of individuals nominated for appointment under Rule H3 (a), (b) and (c) exceeds the numbers specified then one or more election(s) shall be held as required, in each case in accordance with the relevant provisions of Part C of the Network Code.
- 5 Individual members of the Timetabling Pool shall commit to:
 - (a) sit on any Timetabling Panel when requested to do so by the Secretary subject only to diary commitments;
 - (b) hear disputes impartially in accordance with the Principles.

Disputes to be decided by a Timetabling Panel

- 6 Subject to Rule H7 and 8, any dispute which is to be submitted to a Timetabling Panel under these Rules, shall proceed according to this Chapter H.

7 Following service upon the Secretary of the Notice of Dispute in relation to a Timetabling Dispute in accordance with Rule B2, any Involved Party may apply to the Hearing Chair for a ruling that:

- (a) the dispute is not a Timetabling Dispute and should be referred to allocation in accordance with Rule B8; and/or
- (b) some aspects of the dispute or issues raised by the dispute are not matters of timetabling, timetable change and/or capacity allocation and are not properly resolved by a Timetabling Panel and consequently should be reserved for determination by another dispute resolution process.

Any such application shall give the reasons relied upon by the applicant in support of the application and be made as soon as possible after the applicant has become aware that a Timetabling Dispute has been notified to the Secretary.

8 Upon an application being made in accordance with Rule H7 the Hearing Chair may give such directions as he determines are appropriate to resolve the application and, where appropriate, to remit the dispute or aspects of the dispute to allocation in accordance with Chapter B. Such directions may include, as appropriate, a direction on whether aspects of the dispute which are not referred to a Timetabling Panel should be resolved concurrently or sequentially with any TTP process.

9 In taking his decision in accordance with Rule H8 the Hearing Chair shall have regard to the following:

- (a) there is a presumption that disputes for which a Timetabling Panel is identified in the relevant provisions of the Underlying Contract as the body to determine disputes are Timetabling Disputes and should be resolved in accordance with this Chapter H. Consequently the Hearing Chair shall not allocate a dispute ostensibly falling within such a provision other than to a Timetabling Panel without first inviting written representations from the Involved Parties on his intention to do so and giving proper consideration to any representations made;
- (b) any determination which may affect the production of the railway operational timetable must be made within the necessary timescales to allow that timetable to be published; and
- (c) Network Rail may only make adjustments to a timetable which affects train slots allocated to a train operator who is not a party to a dispute, with the assent of all affected parties, or to give effect to a decision of a Timetabling Panel or the ORR.

TTP Process

10 The TTP process in respect of a dispute shall commence upon the receipt by the Secretary of the Notice of Dispute in relation to a Timetabling Dispute in accordance with Rule B2.

11 Upon commencement of the TTP process in respect of any dispute, the Secretary shall appoint a Timetabling Panel in accordance with Rule H12 and

send to all the parties to the dispute, and publish upon the access disputes website, a notice of the appointment of a Timetabling Panel. This notice shall contain sufficient information regarding the matter under dispute that any other Resolution Service Party will be able to determine whether or not it should seek to be recognised as a Dispute Party. The Secretary shall also give the parties notice of the Hearing Chair who has been appointed.

- 12 A Timetabling Panel shall:
- (a) be appointed by the Secretary;
 - (b) consist of a Hearing Chair and four members selected from the Timetabling Pool; and
 - (c) in each case include one of the members of the Timetabling Pool appointed by Network Rail, one member of the Timetabling Pool from one of the three Bands of the Franchised Passenger Class, one member of the Timetabling Pool from one of the two Bands of the Non-Passenger Class and one member of the Timetabling Pool from the Non-Franchised Passenger Class. In the event that a member of the Timetabling Pool from the Non-Franchised Passenger Class is not available an additional member of the Timetabling Pool from the three Bands of the Franchised Passenger Class shall be appointed in substitution.
- 13 The Secretary shall appoint each Timetabling Panel in a manner that:
- (a) is in accordance with the Principles as set out in Rule A 5 - A10 and this Chapter H.
 - (b) over time rotates (as evenly as is reasonably achievable given inevitably differing levels of other commitments of individuals) the individuals from the Timetabling Pool hearing disputes subject to any preferences as to the utilisation of their own employees expressed by any organisation which employs two or more such individuals; and
 - (c) is in accordance with any further guidance issued to the Secretary by the Committee.
- 14 A Timetabling Panel shall:
- (a) provide determinations on the basis of the expertise of a knowledgeable peer group with relevant railway expertise;
 - (b) endeavour to reach fair, rapid and inexpensive determinations of disputes drawing on that expertise; and
 - (c) where appropriate, take the initiative in ascertaining the facts and law relating to the dispute.
- 15 Members of the Timetabling Pool are chosen because of their particular railway expertise as described at Rule H2. They shall exercise their functions impartially and not on behalf of any specific organisation, Band or Class.

- 16 It is an overriding objective of these Rules that disputes referred to a Timetabling Panel shall be administered in a way which is proportionate to:
- (a) the objective importance of the dispute to the Dispute Parties;
 - (b) the complexity of the issues;
 - (c) the significance (if any) of the issues involved to the railway industry; and
 - (d) the need to ensure that the production processes for the railway operational timetable are not disrupted to the potential detriment of third parties.

Accordingly the Hearing Chair shall (where appropriate) adapt the procedures adopted in respect of each dispute to reflect its specific requirements in terms of subject matter, timescales and significance. All procedures adopted must reflect the Principles and this Chapter H.

- 17 The Timetabling Panel shall, in the case of absence on the day of one member (unless it is the Hearing Chair), be quorate to hear a dispute with any three of the four selected members of the Timetabling Pool present.

- 18 The Hearing Chair:

- (a) has oversight of the effective case management of a dispute which has been referred to a Timetabling Panel;
- (b) has responsibility to ensure that all procedures of the Timetabling Panel (at, before and after TTP hearings) are being implemented fairly and effectively in respect of each dispute;
- (c) will review each dispute following submission of statements of case to identify and to itemise in written form for consideration by the other Panel Members all relevant issues of law raised by the dispute a copy which shall be provided promptly to the Dispute Parties;
- (d) will make a final determination of the dispute referred to a Timetabling Panel and prepare a written determination which is legally sound, appropriate in form, and otherwise compliant with this Chapter H;
- (e) may, where reasonable to do so, delegate the performance of any of his functions (with the exception of making the determination of the dispute and acting as Hearing Chair at any hearing) in any dispute to the Secretary, however, such delegation shall not affect the obligations and responsibilities of the Hearing Chair set out in this Chapter H.

- 19 Any Resolution Service Party can by notification to the Secretary at any stage become a Dispute Party if it fulfils the definition of a Dispute Party, provided that the prior consent of the Hearing Chair is obtained in order for such a Resolution Service Party to become a Dispute Party if such notification is made after any directions hearing pursuant to Rule H25.

- 20 Upon appointment the Hearing Chair may give directions as to any or all aspects of the procedures to be followed. The Hearing Chair shall have the

power at any time to make or amend the procedure to be followed by the parties in the TTP. The directions shall be in accordance with the Principles and this Chapter H and with any mandatory time requirements.

- 21 Unless the Hearing Chair directs otherwise (and subject to each party's right to apply for alternative or revised directions at all stages), the following timetable and procedure shall apply:

- (a) if the parties agree to submit a joint reference they shall, within 14 days of notification of the appointment of the Hearing Chair, submit a joint reference in accordance with the template format for a joint reference (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute;
- (b) if the parties do not agree to submit a joint reference in accordance with (a) above,
 - (i) each claimant shall within seven days of notification of the appointment of the Hearing Chair produce and serve upon all Involved Parties a sole reference which shall include:
 - (A) names, registered address and any relevant correspondence address (including email address) of the Dispute Parties;
 - (B) the subject matter of the dispute;
 - (C) identification of the provision(s) of the Access Conditions or any Underlying Contract under which the reference is made;
 - (D) identification of any other provision(s) of the Access Conditions or any Underlying Contract which the claimant believes are also relevant to the dispute;
 - (E) a summary of the nature and circumstances of the dispute in sufficient detail for the other Dispute Party or Resolution Service Parties to identify the issues and whether they are likely to be materially affected;
 - (F) the decision sought;
 - (G) the remedy claimed;
 - (H) an authorised signature of the referring party; and
 - (I) copies of the following Documents which shall be annexed and cross referenced to the reference:
 - 1) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the Timetabling Panel arises and/or provision(s) associated with the substance of the dispute; and

- 2) any other Documents referred to in the reference.

and which shall be in accordance with the template format for a sole reference (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute.

- (ii) each defendant shall within seven days of service on it of such sole reference produce and serve upon all Involved Parties a response which shall include:

- (A) a schedule identifying those parts of the reference that it agrees with and those that it disagrees with;
- (B) the reasons for any disagreement including any further references to provisions of the Access Conditions and Underlying Contracts not dealt with in the reference;
- (C) details of any other related claim;
- (D) the decision and, (if relevant) any remedy sought from the Hearing Chair;
- (E) an authorised signature of the responding party; and
- (F) copies of the following Documents which shall be annexed and cross referenced to the response if not dealt with in the reference:

- 1) the relevant extracts of contractual Documents containing the provision(s) under which the referral to Timetabling Panel arises and/or provision(s) associated with the substance of the dispute; and

- 2) any other Documents referred to in the response.

and which shall be in accordance with the template format for a response (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute.

- (c) the Dispute Parties shall send any additional information requested by the Hearing Chair, unless directed otherwise, to the Secretary not later than seven days prior to the hearing;
- (d) an oral hearing lasting no more than one day shall be conducted.

22 Provided that such extension has no adverse effect upon the date fixed for an oral hearing, the parties may agree an extension of any timescales of up to seven days in respect of any stage. For any period beyond that extension a party may seek an order from the Hearing Chair for an extension of time for any of the stages specified in the directions. The Hearing Chair shall make his decisions on any request for an extension of time based upon the Principles and this Chapter H.

Length of References, Responses and Joint References and method of service

- 23 The length of every reference and response shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Hearing Chair, the maximum length of submissions shall be as follows:
- (a) a joint reference shall be no longer than 20 pages; and
 - (b) a sole reference or response shall be no longer than 10 pages.
- 24 The normal method of service shall be electronic to the Secretary and other Dispute Parties.

Directions Hearing

- 25 The Hearing Chair, may at any time (on his own motion or that of any party) require the Dispute Parties to participate in a directions hearing to decide, after hearing representations from the Dispute Parties, any issues relating to the procedures adopted for the dispute including:
- (a) the procedures most appropriate to the dispute, subject to compliance with the Principles and this Chapter H;
 - (b) the nature of the issues in dispute;
 - (c) an outline timetable;
 - (d) the process and details of the preparation, submission and amendments of statements of case;
 - (e) whether any Document disclosure procedures shall be required to take place;
 - (f) the basis and timing in which witness evidence, if any, is to be prepared and exchanged; and/or
 - (g) the appointment by the Hearing Chair of assessors.

Documents

- 26 Although Documents reasonably requested should be provided in compliance with the directions specified at Rule H21, disclosure will not ordinarily be ordered. However, the Hearing Chair, whether or not on the application of any Dispute Party, has the power to:
- (a) order any Dispute Party to provide by way of formal disclosure and inspection, Documents which it controls and which are relevant to the dispute; and
 - (b) specify the formalities, detail and timings involved.
- 27 The Hearing Chair shall exercise this power in accordance with the Principles and this Chapter H.
- 28 No party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts.

- 29 Requests and applications to the Hearing Chair for disclosure may be made at any stage of the dispute but (whenever practicable) should be made at the time of or shortly following submission of the relevant joint reference or sole reference or response giving rise to the request. The timing of any request (by reference to the date when it could first reasonably have been made) may be taken into account by the Hearing Chair when considering a request.
- 30 Without prejudice to any other action open to the Hearing Chair, the Hearing Chair shall be entitled to draw any inference he wishes from any failure to provide adequate or full disclosure by any party or disclosure in accordance with the terms of directions given by him.
- 31 When considering a request for disclosure, the Hearing Chair will consider the commercial sensitivity of the information requested and may exercise his discretion not to grant full disclosure.

Witness evidence

- 32 Subject to any alternative direction from the Hearing Chair, a Dispute Party may rely on any witness evidence it believes to be relevant in its statements of case and at any TTP hearing provided that either a witness summary or a witness statement has been served on all other Involved Parties at least seven days before the hearing.
- 33 A witness summary shall identify in overview the issues on which the witness will give evidence and a summary of the evidence he will give in respect of each such issue. Witness summaries shall be signed by the witness.
- 34 Written witness statements will not normally be required. However if the Hearing Chair permits or requires witness statements to be submitted he shall specify the formalities, detail and timings involved.

Assessors

- 35 The Hearing Chair may appoint one or more assessors to facilitate the determination of a dispute. Any such assessor may be (without limitation):
- (a) a technical assessor with a specific area of expertise relevant to one or more issues in the dispute; and/or
 - (b) a legal assessor.
- 36 Assessors may help undertake the procedural management of the dispute and prepare such report(s) and guidance on such issues as the Hearing Chair may direct.
- 37 The Hearing Chair shall provide to the Dispute Parties the terms of reference, qualifications and experience of any assessor appointed and a summary of his advice.
- 38 The Hearing Chair shall not be bound by the views of an assessor but shall be required to explain his reasons for disagreeing with those views.

Experts

- 39 A Dispute Party can rely, as of right, upon expert evidence completed prior to the date of the reference. Where a Dispute Party wishes to exercise this right it shall attach such evidence to its first Statement of Case and the other Dispute Parties shall be entitled to a direction that they may commission expert reports responding to the particular issues covered by such evidence.
- 40 When considering whether and to what extent to permit the Dispute Parties to commission further expert reports, the Hearing Chair shall consider what evidence is reasonably required to determine the dispute, the Principles and this Chapter H.
- 41 The reports of experts shall state:
- (a) the full remit against which the report has been prepared;
 - (b) the identity, qualifications and experience of the person(s) preparing the report;
 - (c) the extent (if any) to which the expert has previously been involved in the subject matter of the dispute and current or recent professional connections with any of the Dispute Parties.
- 42 At any hearing the Hearing Chair, other Panel Members, and/or any assessor appointed, may address questions directly to any experts.
- 43 The Hearing Chair shall determine in accordance with the specific requirements of the dispute whether the expert evidence is dealt with either by consideration of reports only or by the attendance and examination of one or more of the experts to answer questions upon their reports, by telephone, conferencing facilities or by any other means.

Hearing Conduct

- 44 The hearing will be chaired by the Hearing Chair who may, in his absolute discretion make any order in respect of procedure at the hearing which he considers appropriate including whether to admit additional evidence (including oral evidence) from any party and the degree to which weight should be given to such additional evidence.
- 45 Subject to any contrary direction of the Hearing Chair, the following procedure shall be adopted at hearings:
- (a) the Timetabling Panel will meet in the absence of the Dispute Parties to discuss issues arising from the papers submitted by the Dispute Parties;
 - (b) the Timetabling Panel will confirm to the Dispute Parties the extent to which it has read the papers submitted by the Dispute Parties;
 - (c) the Hearing Chair, the other Panel Members and any assessors shall declare any relevant interests;
 - (d) the claimant's representative will make an opening submission of its case of not longer than 10 minutes, referring if necessary to witness or

- (e) the respondent's representative will also make a brief opening submission of its response and/or counterclaim of not longer than 10 minutes, referring if necessary to additional witness or expert evidence which the respondent wishes the Timetabling Panel to consider;
 - (f) if a written witness statement has been provided, the witness will not be required to read out his statement unless the Hearing Chair decides otherwise. If any witness summary has been provided the Hearing Chair shall direct how the evidence shall be admitted and may require the witness to provide his evidence in full orally before cross examination. The Hearing Chair shall direct whether any further witness evidence shall be allowed;
 - (g) if expert evidence is used, the expert will not be required to read out his report unless the Hearing Chair decides otherwise. Whenever expert evidence is being given by any individual that individual shall state that he is giving expert evidence and the basis upon which he claims expertise in the relevant matter;
 - (h) the Hearing Chair, other Panel Members and any assessor may put any relevant questions to the representatives, witness(es) and expert(s);
 - (i) Dispute Parties may put questions to any witness(es) or expert(s) in their capacity as witnesses or experts, and when any representative is acting as a witness he shall make that clear; and
 - (j) at the conclusion of questions, representatives may make closing submissions of not more than 10 minutes.
- 46 The hearing shall be conducted with the Dispute Parties present. Following conclusion of the submissions, the Dispute Parties will withdraw to allow the Timetabling Panel to consider the evidence and arguments (with any assessor). The Dispute Parties shall remain available to allow the Hearing Chair, other Panel Members and any assessor to put any additional questions.
- 47 The Secretary will, unless otherwise directed by the Hearing Chair, make a full note of the evidence given to the hearing. The Hearing Chair may in his discretion direct in advance that a full transcript is taken.
- 48 The Hearing Chair may, subject to any specified requirements of any Access Condition and legal requirement, reserve his determination from the hearing until a later date.

Determinations

- 49 Having considered the submissions of the parties and the advice of the other Panel Members and any assessor, the Hearing Chair shall make a determination of the dispute in accordance with Rule H51.
- 50 Subject to any other provision of the Access Conditions and Underlying Contract, the Hearing Chair may make such orders in his determination as he considers necessary to resolve the dispute including without limitation that:

- (a) one Dispute Party should take or not take specified action; or
 - (b) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination.
- 51 The Hearing Chair's determination of a dispute shall be in writing and comprise:
- (a) the date of the determination;
 - (b) the names of the Hearing Chair, other Panel Members and any assessors present;
 - (c) details of all parties to the dispute;
 - (d) details of the attendance and status of all experts, witnesses and interested parties;
 - (e) a brief summary of the dispute;
 - (f) an identification of the issues of fact and law considered by the Timetabling Panel;
 - (g) a summary of the evidence presented;
 - (h) the findings of fact made by the Hearing Chair;
 - (i) identification of any precedents considered;
 - (j) the decisions and conclusions reached, distinguishing clearly between:
 - (i) decisions upon legal entitlement;
 - (ii) decisions upon remedy;
 - (iii) guidance to the Dispute Parties or other observations not forming part of a decision upon either legal entitlement or upon remedy;
 - (k) the reasons for those decisions and conclusions (including any relevant legal principles or rules of law applied); and
 - (l) signed and dated confirmation of the Hearing Chair that the determination is legally sound and appropriate in form.
- 52 The Hearing Chair shall provide a copy of his written reasoned determination to all Dispute Parties and the Secretary. The Secretary shall send the determination to each Resolution Service Party and shall arrange for the determination to be immediately published on the access disputes website.
- 53 Subject to appeal in accordance with Rule H58, the Dispute Parties shall comply with the terms of the determination within such period as shall be specified in the determination.
- 54 If a Dispute Party fails to comply with the terms of the determination, that failure will be dealt with by way of a new dispute through the appropriate mechanism.

Confidentiality

- 55 Except for anything published pursuant to Rule H56, unless otherwise agreed by all parties, all Documents produced or disclosed in the course of a TTP shall be treated as confidential by the Panel Members, assessors or others present, the Allocation Chair, the Secretary and all parties and shall only be used:
- (a) for the purposes of the TTP, including any appeal or further stage in the determination procedure;
 - (b) for enforcing the Hearing Chair's determination in the TTP; or
 - (c) in support of a plea of estoppel (or, for determinations taking place in Scotland, of res judicata) in any subsequent proceedings.
- 56 Immediately upon receipt by the Secretary the following Documents shall be published on the access disputes website:
- (a) each finalised Statement of Case;
 - (b) each request for further information from the Hearing Chair and all responses to such requests;
 - (c) all written submissions from all parties; and
 - (d) all awards and/or determinations from the Hearing Chair.

Communications

- 57 Communications for the purposes of the TTP may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

Appeal

- 58 Following a determination of a Timetabling Dispute by the Hearing Chair of a TTP any Dispute Party is entitled to appeal in accordance with the relevant part of the Access Conditions or Underlying Contract (including, as applicable, Part M of the Network Code).

Costs

- 59 The Hearing Chair shall have power to order one or more Dispute Parties to meet part or all of the Costs of the Timetabling Panel and of any other Dispute Party assessed by such means as the Hearing Chair shall determine.
- 60 An order for Costs shall only be made where the Hearing Chair is satisfied that either:
- (a) the case of the relevant Dispute Party shall have been so lacking in merit that the reference should not have been made (or defended); or
 - (b) the conduct of the relevant Dispute Party before or during the reference was such as to justify an award of Costs being made against it (or them).

Any such order shall be made with due regard to the Principles and this Chapter H.

Exclusion of liability

- 61 None of the Allocation Chair, the Secretary, the Hearing Chair or any other Panel Member shall be liable to any party for any act or omission (including negligence) in connection with any TTP under these Rules unless the act or omission is shown to have been in bad faith.

CHAPTER I – DETERMINATIVE PROCESS RULES – EXPERT DETERMINATION

- 1 Expert determination under these Rules is a private determinative dispute resolution process in which a neutral expert (the determining expert) determines the dispute on the basis of the parties' respective legal rights, the information available to him and his own expertise.

Disputes to be decided by expert determination

- 2 Any dispute which the Dispute Parties have agreed shall be submitted to expert determination under these Rules or which has otherwise been allocated to expert determination as a first or second stage or appeal stage dispute resolution process in accordance with these Rules, shall proceed according to the Rules of this Chapter I.
- 3 Any dispute which the parties have agreed should be referred to expert determination under these Rules shall be determined by a sole expert agreed between the parties or appointed by the Secretary in accordance with this Chapter I.

Relationship with Non-Access Dispute Resolution Rules

- 4 Where a dispute which would otherwise be decided in accordance with this Chapter I:
 - (a) has been referred pursuant to Rule K1 to the committee (or a sub-committee of it) established under the Non-Access Dispute Resolution Rules; or
 - (b) is so closely connected with a dispute or related dispute (in either case whether involving the same parties or not) which is required to be (or has been) referred for determination 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 or otherwise determined under the Non-Access Dispute Resolution Rules.

Beginning an expert determination and appointing the Determining Expert

- 5 Upon commencement of an expert determination (in accordance with the Procedure Agreement and Rule B16 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable determining expert, if not already done.
- 6 In the event that no determining expert can be agreed by the parties within 21 days of commencement of the expert determination, the Secretary shall propose an appropriate individual from lists maintained by him and published on the access disputes website, or otherwise. That individual shall be appointed by the parties as determining expert unless either or both parties notify the Secretary of a challenge to the appointment on the ground of (real or apparent or potential) bias, Conflict of Interest or a lack of competence within 3 days of notification of the Secretary's choice. If any challenge is made on the ground of bias, Conflict of Interest or lack of competence, the Allocation Chair shall consider the challenge and determine either to:

- (a) uphold the proposed appointment; or
- (b) remit the choice to the Secretary with directions concerning how a further choice should be made.

Nothing in this clause shall affect the power of a determining expert to determine his own jurisdiction or appointment.

Notice of expert determination

- 7 Upon the appointment of a determining expert, the Secretary shall send to all the parties to the dispute a notice of the appointment of the determining expert. The Secretary shall also send to the determining expert a copy of:

- (a) this Chapter I and Chapter A, B and C;
- (b) any template terms for appointment of a determining expert issued by the Committee;
- (c) the Notice of Dispute;
- (d) any statements from the Parties made under Rule B8(d)(iii); and
- (e) any correspondence from the Allocation Chair made under Rule B14

The Notice of Dispute shall stand as a notice of expert determination and no further notice of expert determination shall be required or served.

Change of Determining Expert

- 8 If any determining expert acting or appointed to act under these Rules resigns, withdraws, dies or refuses to act, the Secretary shall, upon application by the determining expert or any party to the expert determination, on proof satisfactory to the Secretary, declare the office of determining expert vacant.
- 9 If the determining expert or any Dispute Party considers that the determining expert is unable by reason of mental or physical infirmity to perform the duties of his position or is disqualified for any reason from performing the duties of his position, or has delayed unreasonably in the conduct of the expert determination or in the making of any award, the Secretary may, at the request of the determining expert or any Dispute Party, having heard the determining expert and the parties if they or any of them wish to be heard, declare the position of determining expert vacant.
- 10 Where the position of determining expert shall have been declared to be vacant pursuant to Rule 18 or 19, then Rule 15 shall apply to the appointment of a replacement determining expert.

Procedure

General

- 11 The determining expert shall act fairly and impartially as between the parties, giving each a reasonable opportunity of putting his case and dealing with facts raised by his opponent.

- 12 The determining expert shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined in accordance with each party's rights at law to a fair trial. The determining expert may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the expert determination. The directions shall be in accordance with the Principles.
- 13 Subject to Rule 114, an expert determination shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute.
- 14 The parties may agree that an expert determination shall be conducted on the basis of written representations only. In such a case, nothing in this Rule shall prevent the determining expert from requiring one or more oral hearings if he considers it appropriate for the just and expeditious determination of the proceedings.
- 15 The determining expert may at any stage require one or more Dispute Parties to provide him with any information, data or computations which are within the control of that party or parties and reasonably accessible to them. The determining expert may further request one or more parties to produce further computations or analysis of data or information where such computations or analysis are reasonably necessary for the purposes of the fair resolution of the dispute and the necessary data, information and competence to prepare such computations or analysis is reasonably available to the relevant party or parties.
- 16 Unless the determining expert rules otherwise (either on his own motion or upon the application of any party), the following timetable and procedure shall apply:
- (a) within 21 days of the notice of appointment of the determining expert, the claimant(s) shall serve upon the determining expert and each 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;
 - (b) within 21 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon the determining expert and the claimant(s) a written statement of its defence (in Scotland, answers). 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;
 - (c) the statements of case served pursuant to sub-paragraphs (a) and (b) above shall be accompanied by copies of any Documents referred to in them or upon which the party serving the statement wishes to rely. In addition they shall be accompanied by (or, as appropriate refer to and identify) any computations, models, analysis or data prepared by or for that party upon which the party wishes to rely. That party shall, if so

requested, make the originals of such Documents available for inspection by the determining expert or the other party(s) and shall as appropriate make available active electronic copies of such Documents for analysis by the determining expert or the other party(s);

- (d) The determining expert may raise such questions as he considers necessary or appropriate and require responses from the parties within such time as he specifies.
- (e) at least seven days before any hearing, each party shall serve on the other and on the determining expert its written submissions;
- (f) unless ordered otherwise by the determining expert, at the hearing:
 - (i) there shall be no oral opening submissions, but the determining expert may ask the parties questions arising out of their written submissions or statements of case;
 - (ii) subject to sub-paragraph (iii) below, the testimony of a witness may be presented in written form, either as a signed statement or as an affidavit duly sworn. Any party may apply to the determining expert 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 determining expert 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 determining expert may:
 - (A) place such weight on the written statement or affidavit as he thinks fit;
 - (B) exclude it altogether; or
 - (C) apply to the Court for an order for the citation or attendance of witnesses.

In addition, in making his determination on Costs the determining expert may take any failure to attend into account;

- (iii) factual or expert witnesses who give oral evidence will not be required to provide their evidence in full orally. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the determining expert;
 - (iv) the parties may make oral closing submissions;
 - (v) the parties may be legally represented; and
 - (vi) the determining expert shall be entitled to receive such evidence as he shall consider relevant, whether or not such evidence would have been admissible in a Court; and
- (g) the determining expert shall deliver to the parties a reasoned award within 21 days of the end of the hearing.

Proposed amendments

- 17 Immediately after his appointment, the determining expert shall require each Dispute Party to propose directions to him or to inform him of any amendments to the procedure or the time limits set out in Rule I16 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall send promptly any proposed directions or amendments to the determining expert and each other party. Before responding and ordering any amendments, the determining expert may require the parties to meet him.

References to the ORR

- 18 The determining expert may, on the application of any party or on his own motion, elect to refer any issue or issues to which Rule C3 applies, to the ORR in accordance with Chapter C. Before making any such reference the determining expert shall:
- (a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and
 - (b) determine the wording of any reference to be made with due regard to such submissions.

Supplemental

- 19 If he considers it appropriate for the just and expeditious determination of the proceedings, the determining expert shall be entitled to appoint one or more advisers or assessors 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 Rule I29. The determining expert shall provide to the parties the terms of reference, qualifications and experience of any adviser or assessor appointed. Where the determining expert receives a report from any such person, he shall disclose the report to the parties and afford them an opportunity to comment on it.
- 20 In relation to the production of Documents:
- (a) the determining expert may, on the application of a party, require the production of such specific identified Documents or class of Documents or data or information as are within the possession, custody or control of any other party or any third party which the determining expert 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 determining expert and all other Dispute Parties within such time as the determining expert shall prescribe, the determining expert may:
 - (i) proceed with the expert determination on the basis of the Documents already before him;
 - (ii) apply to the court for an order to produce the Documents; or

- (iii) strike out (in Scotland, dismiss) the part of the claim or defence to which the Document relates,

and in making his award the determining expert shall be entitled to draw such inferences as he may think fit for the failure to supply the Document. In addition, in making his determination on Costs the determining expert may take any failure to supply a Document at any stage in the proceedings into account;

- (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) Unless otherwise ordered by the determining expert, an application by a party to the determining expert pursuant to sub-paragraph (a) above shall be made not later than 35 days after the appointment of the determining expert; a party in receipt of a request from the determining expert to produce a Document shall comply with such a request within 14 days;
- 21 Without prejudice to the powers in Rule A16 and in addition to them, the determining expert 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 determining expert; or
 - (c) inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the determining expert, 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.
- 22 Without prejudice to the powers in Rule A16 and in addition to them, the determining expert 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.
- 23 Without prejudice to the powers in Rule A16 and in addition to them, if any party fails to serve a Statement of Case within the period allowed under these Rules or by order of the determining expert, and fails to remedy his default within 14 days after despatch to him by the determining expert or any other Dispute Party to the dispute of notice of that default, the determining expert 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 determining expert shall be entitled to proceed with the reference on a without notice basis.
- 24 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.

Determination

Final and binding

- 25 The determining expert's determination shall be final and binding save
- (a) where it is so clearly erroneous on its face that it would be unconscionable for it to stand; or
 - (b) to the extent that a further right of appeal or reference to another dispute resolution process is provided for in the Underlying Contract, Access Conditions or Procedure Agreement.
- 26 If any further dispute resolution process is provided for in the Procedure Agreement then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the determining expert's determination, the determination shall be deemed to have been accepted by all parties.

Power to make orders

- 27 Subject to any other provision of the Access Conditions and Underlying Contract, the determining expert may make such orders in his determination as he considers necessary to resolve the dispute, including, without limitation, that:
- (a) one Dispute Party shall pay an amount of money (including damages) to another Dispute Party, whether that amount is specified in the determination or calculated in accordance with such procedure as the determining expert shall specify;
 - (b) one Dispute Party should take or not take specified action;
 - (c) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination;
 - (d) any Document, certificate, invoice, report or record be amended or reissued in a manner specified in the determination; or
 - (e) any principal sum the determining expert may order one party to pay to another shall carry interest at such rate and over such period as he shall determine.

Issue of expert determination

- 28 The determining expert shall send a copy of his determination to the parties, the Allocation Chair and the Secretary.

Costs

Discretion to order payment of Costs

- 29 Whether or not the expert determination reaches the stage of a final determination, the determining expert may order any party to pay some or a specified proportion of any party's Costs incurred in the expert determination, assessed in such manner as the determining expert shall determine. The

Joint and several liability of parties to Determining Experts for fees and expenses

- 30 The Dispute Parties are jointly and severally liable to pay the determining expert's reasonable fees and expenses.

Confidentiality

- 31 Subject to Rule C and Rules I32, I33 and G68, all Documents produced or disclosed in the course of an expert determination including all awards shall be treated as confidential by the determining expert, the Allocation Chair, the Secretary and all parties and shall not be published.

- 32 Unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an expert determination including all awards shall only be used:

(a) for the purposes of the expert determination, including any appeal against the determination (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 or any subsequent stages of the determination procedure;

(b) for enforcing the determination; or

(c) in support of a plea of estoppel (or, for determinations taking place in Scotland, of res judicata) in any subsequent proceedings.

- 33 The confidentiality obligations under Rule I31 shall not apply to Documents which are:

(a) agreed in writing by all the Dispute Parties to be disclosed (including in any Underlying Contract between them);

(b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;

(c) disclosed on a confidential basis to the ORR or the appropriate franchising authority in the normal course of business; or

(d) required to be disclosed pursuant to the order of a court of competent jurisdiction.

Communications

- 34 Communications for the purposes of the expert determination may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

Exclusion of liability

- 35 None of the Allocation Chair, the Secretary or any determining expert shall be liable to any party for any act or omission (including negligence) in connection

with any expert determination under these Rules unless the act or omission is shown to have been in bad faith.

Jurisdiction and governing law

- 36 Expert determinations shall take place in England or Wales and be subject to English law, except where the Underlying Contract in respect of which the dispute has arisen confers permission to use railway assets situated entirely in Scotland or the Underlying Contract in question is governed by Scottish law, in which case the expert determination shall take place in Scotland and be subject to Scottish law. In either case the determining expert may order otherwise. For the purposes of this Rule, 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.

Interim relief granted by the Court

- 37 In an appropriate case, a party to a dispute which has been or may be submitted to expert determination may apply to the Court for interim relief (whether negative or positive), notwithstanding that the relief sought may overlap with the interim relief which is, or may be, claimed in the expert determination.

CHAPTER J – CONSTITUTION, GOVERNANCE AND FUNDING

- 1 This section establishes the Committee to oversee the operation of the disputes processes set out in these Rules, handle funding and procure delivery of the disputes service and deal with appointment and termination of consultants. It sets out the Committee's constitution and role as well as the roles of other consultants required by these Rules. It also deals with the funding arrangements for the Committee.
- 2 The Committee is established by this Rule J2.
- 3 The purpose of the Committee is to exercise management and administrative oversight of the disputes processes set out in these Rules. In particular it shall:
 - (a) appoint and remove the Allocation Chair;
 - (b) appoint and remove the Secretary and any staff of the Secretariat;
 - (c) appoint and remove any Hearing Chairs and Industry Advisors;
 - (d) produce and oversee any guideline standard terms for retaining arbitrators, evaluators, determining experts and mediators;
 - (e) determine and collect levies, costs or charges from each Resolution Service Party in accordance with Rules G53 and J45;
 - (f) supervise and allocate funding for the work of the Committee (including ADA and TTP processes);
 - (g) monitor and report at least annually to the Resolution Service Parties upon the work of the Committee;
 - (h) satisfy itself that the Principles are being observed in the way in which disputes are being managed and determined and (if they are not) require the Allocation Chair to take all necessary action to correct that position; and
 - (i) take any other step reasonably required in connection with its management and oversight role.
- 4 The Committee shall not:
 - (a) determine any dispute; or
 - (b) involve itself in the merits or conduct of any dispute prior to the determination of that dispute by the appropriate Forum; or
 - (c) interpret or advise upon the legal effect of these Rules.
- 5 The Committee shall consist of the Committee Members from whom it shall elect one to be the Committee Chair.
- 6 The Committee Members (each of whom shall be employed by a relevant Resolution Service Party) shall be appointed by the following Bands and Classes:

- (a) one member by each of the three Bands of the Franchised Passenger Class;
 - (b) one member by each of the two Bands of the Non-Passenger Class; and
 - (c) one member by the Non-Franchised Passenger Class,
- by the method used to appoint members of the Class Representative Committee under Part C of the Network Code
- together with
- (d) two members appointed by Network Rail.
- 7 If the numbers of individuals nominated for election under Rule J6 exceeds the numbers specified then one or more election(s) shall be held as required, in each case in accordance with the relevant provisions of Part C of the Network Code.
 - 8 The quorum for meetings of the Committee shall be 5 Committee Members. Any Committee Member may participate in a meeting of the Committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. Any Committee Member participating in a meeting in this manner shall be deemed to be present in person at such meeting.
 - 9 Any Committee Member who has or may have a Conflict of Interest in respect of any matter, decision or issue shall declare such Conflict of Interest to the Committee and shall take no part in any discussions, decisions, negotiation or votes relating to such matter, decision or issue. Where any Committee Member or Members who are present at a meeting have declared a Conflict of Interest such Committee Members shall be counted in the quorum required for such matter, decision or issue.
 - 10 If the Committee Chair is unable to be present at a meeting or is present and has declared a Conflict of Interest, the Committee Members present shall elect one of their number to chair that meeting or part of the meeting as appropriate.
 - 11 If the Committee cannot reach agreement on any issue then that issue may be decided by vote. Subject to any express requirement in these Rules governing the size of the required majority or of unanimity, the vote shall be decided by simple majority. The Committee Chair may vote but will not additionally have a casting vote.
 - 12 The Committee may decide an issue by correspondence. Such correspondence must be sent to all members of the Committee. If agreement to any proposal in such correspondence is endorsed by the signature of at least five Committee Members then it shall be treated as if it was a decision of the Committee made at a Committee meeting.
 - 13 The secretary to the Committee shall, as soon as reasonably practicable following the appointment of a new member, notify all other Committee Members of that appointment.

14 Subject to Rules J13 and 16, unless he shall have been re-elected, a Committee 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.

15 A Committee Member appointed in accordance with Rules J6(a) to J6(c):

- (a) may be removed from office and a replacement member appointed 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, or suffers any physical or mental incapacity which prevents him from discharging his duties for a period of three months or longer; and
- (c) shall be treated as having resigned from office if he ceases to be employed by a company within the Band to which he is appointed.

If appointed by Network Rail, a Committee Member:

- (d) may be removed from office and a replacement member appointed in his place through Network Rail informing the secretary in writing; and
- (e) shall be treated as having resigned from office if he dies or becomes of unsound mind, or suffers any physical or mental incapacity which prevents him from discharging his duties for a period of three months or longer; and
- (f) shall be treated as having resigned from office if he ceases to be employed by Network Rail.

16 Notwithstanding Rule J15, Committee Members appointed in accordance with Rules J6(a) to J6(c) shall retire in rotation on 1 April in each year in the following order:

- (a) on 1 April in odd numbered years:
 - (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; and
 - (iii) the member appointed by the Band of the Non-Franchised Passenger Class.
- (b) on 1 April in even numbered years, the Committee Members appointed in accordance with Rules J6(a) to J6(c) who shall not have retired pursuant to Rule J16(a).

- 17 The Committee may, where reasonable to do so, delegate the performance of any of its functions to the Committee Chair or to the secretary to the Committee but such delegation shall not affect the obligations and responsibilities of the Committee set out in this Chapter J.

Committee Chair

- 18 The role of the Committee Chair is to ensure that the business of the Committee is dealt with effectively and that the purpose of the Committee is discharged.
- 19 At the first meeting after 1 April in every year the Committee Members shall elect from amongst their number a Committee Chair who shall remain as Committee Chair for the ensuing year unless he retires in accordance with Rules J15 and 16, or is otherwise unable to perform the role of Committee Chair in which case the Committee Members may elect one of their number as a replacement Committee Chair either temporarily for the circumstances described in Rule J10 or permanently until the meeting following the next 1 April.

Appointment of the Allocation Chair

- 20 The Committee shall appoint the Allocation Chair who shall:
- (a) preferably have suitable experience of the railway industry;
 - (b) not, during his term of office, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise his impartiality;
 - (c) preferably have qualified as a lawyer and mediator (or have experience as a mediator) and shall have extensive professional and practical experience (at a senior level) of significant commercial disputes and commercial disputes processes but shall not be required to hold a current practising certificate; and
 - (d) not during his term of office be the Chair of the committee established pursuant to Rule A2 of the Non-Access Dispute Resolution Rules.
- 21 The appointment and any re-appointment of the Allocation Chair shall be made by unanimous resolution.
- 22 The Allocation Chair shall upon appointment, declare to the Secretary any relevant connection which he has or has had with the railway industry, and, subject to Rule J20(b), shall during his term of office promptly disclose any new connection of that kind. The Secretary shall provide a copy of any disclosure made under this Rule to each Committee Member and to any Resolution Service Party which requests it.
- 23 In the event that the Allocation Chair has or may have any Conflict of Interest in respect of any dispute he shall identify such Conflict of Interest to the Secretary who shall nominate a Hearing Chair from the pool referred to in Rule J29 to act as Allocation Chair for that dispute.

- 24 The Allocation Chair shall hold office on such terms as the Committee shall determine. Where the terms on which he 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.
- 25 The terms on which the Allocation Chair 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.
- 26 The Allocation Chair shall be appointed (as a consultant) for a term of two years, and may be reappointed. The Committee may terminate the appointment on the motion of any Committee 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 to the Allocation Chair.
- 27 A resolution to terminate the appointment of the Allocation Chair shall be passed on the positive resolution of at least five Committee Members acting at their discretion and without the need to provide reasons for their decision.
- 28 If, within 60 days of the termination (for whatever reason) of the appointment of the Allocation Chair, the Committee shall have failed to appoint a new Allocation Chair pursuant to Rules J20 and 21, the Committee shall:
- (a) by unanimous resolution, determine a list of three candidates for the role of Allocation Chair;
 - (b) send the list to the ORR and provide such information in relation to the candidates and the preferences of the Committee Members as the ORR may request; and
 - (c) be deemed to have appointed as Allocation Chair the candidate then selected by the ORR.

Hearing Chairs and Industry Advisors

- 29 The Committee shall (in addition to the appointment of the Allocation Chair) appoint (as consultants) a pool of Hearing Chairs to sit on Timetabling Panels and ADAs and a pool of Industry Advisors to sit on ADAs as appropriate.
- 30 Hearing Chairs shall:
- (a) preferably have suitable experience of the railway industry;
 - (b) not, during their terms of office, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise impartiality;
 - (c) preferably have qualified as a lawyer or hold a similar professional background and shall have professional and practical experience (at a senior level) of significant commercial disputes and commercial disputes processes but shall not be required to hold a current practising

certificate (where Hearing Chairs are not legally qualified the Rules provide for assessors to be appointed as required);

- (d) be appointed and be liable to termination of appointment in the same way as the Allocation Chair;
 - (e) have such skills and experience as are deemed necessary by the Committee to discharge effectively the role for which the appointment is intended; and
 - (f) chair TTP or ADA hearings or discharge any other function otherwise falling within these Rules as directed by the Allocation Chair or Secretary or under any Procedure Agreement under Chapter B.
- 31 In the event that any Hearing Chair is appointed in respect of any dispute and has or may have any Conflict of Interest in respect of that dispute he shall identify such Conflict of Interest to the Secretary who shall nominate an alternative Hearing Chair from the pool to act as Hearing Chair for that dispute.
- 32 Industry Advisors shall:
- (a) have such skills, experience and qualifications as are deemed necessary by the Committee to discharge effectively the role for which the appointment is intended;
 - (b) not, during their terms of appointment, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise impartiality;
 - (c) be appointed and be liable to termination of appointment in the same way as the Allocation Chair;
 - (d) participate in ADA hearings or discharge any other function otherwise falling within these Rules as directed by the Allocation Chair.
- 33 In the event that any Industry Advisor is appointed in respect of any dispute and has or may have any Conflict of Interest in respect of that dispute he shall identify such Conflict of Interest to the Secretary who shall nominate an alternative Industry Advisor from the pool to take part in that dispute.

The Secretary

- 34 The Committee shall appoint the Secretary (as a consultant) to discharge the following separate and distinct roles:
- (a) secretary to the Committee;
 - (b) the Secretary for the purposes of these Rules;
 - (c) secretary to an ADA;
 - (d) secretary to a Timetabling Panel.

- 35 Subject to Rule J29 the Committee shall specify the Secretary's remit and terms of appointment in such terms as it shall (from time to time) think fit but such remit shall include the following tasks:
- (a) facilitating the work of the Committee and ensuring the efficient administration of its business;
 - (b) running the Secretariat efficiently and cost effectively;
 - (c) communicating with Dispute Parties conducting a dispute under these Rules and effecting the appointment of suitable and appropriately qualified mediators, evaluators, arbitrators or determining experts as required;
 - (d) implementing efficiently any instruction given to the Secretary by the Allocation Chair or any Hearing Chair;
 - (e) liaising with the secretary of the Class Representative Committee as necessary and appropriate;
 - (f) appointing an appropriate ADA and Timetabling Panel in each relevant dispute;
 - (g) ensuring that the access disputes website is up to date, accurate and accessible;
 - (h) maintaining a register of persons who are suitably qualified, willing and able to act as mediators, arbitrators, experts, evaluators, assessors and of organisations which are qualified to suggest such persons;
 - (i) sourcing external legal advice as requested or directed by the Committee, the Committee Chair, the Allocation Chair or a Hearing Chair;
 - (j) administering the Committee's finances and bank account on behalf of the Committee;
 - (k) determine and collect levies from each Resolution Service Party in accordance with Rule J45; and
 - (l) liaising with the RIDR Secretary.
- 36 The Secretary may:
- (a) delegate the performance of any of his functions to any member of the Secretariat but such delegation shall not affect his responsibilities to ensure that all matters falling within his remit are properly discharged;
 - (b) in the discharge of his tasks, duties and obligations under these Rules seek guidance from the Committee Chair or the Allocation Chair (as appropriate) at any time and in relation to any matter, issue or question, as he sees fit, prior to taking (or not taking) any relevant action;
 - (c) be removed from office by the Committee in the same manner as the Allocation Chair.

- 37 The Secretary shall not be a Member of the Committee, the Allocation Chair, a Hearing Chair, an Industry Advisor, arbitrator, mediator, determining expert or evaluator or a member of any Timetabling Panel.
- 38 The Secretary shall be appointed upon such terms as the Committee shall determine. Where the terms on which the Secretary is appointed include provision for the payment of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Committee.

The Secretariat

- 39 The Committee may appoint additional consultants to assist the Secretary to discharge his duties (together, from time to time, the "Secretariat").
- 40 The Secretariat shall be appointed upon such terms as the Committee shall determine.
- 41 The terms upon which the Secretariat are retained may, in addition to providing for remuneration, include provision for the payment of such pensions, allowances or gratuities or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Committee.

Funding

- 42 The Committee's financial year shall commence on 1 April.
- 43 The work of the Committee shall be funded by payments from the Resolution Service Parties. In respect of its funding and financial position the Committee shall be run as a going concern.
- 44 The required payments from the Resolution Service Parties shall be calculated in respect of each financial year and (subject to Rules G53 and J43) shall reflect the estimated costs and expenses of the Committee (including ADA and TTP) together with appropriate allowance for contingencies and for meeting cashflow requirements into the ensuing year. In abnormal circumstances additional payments may be required during a financial year to meet unplanned or unexpected costs.
- 45 The Resolution Service Parties shall make payments as follows:
- (a) any Resolution Service Party which does not pay the Railway Safety Levy shall make a payment in an amount to be assessed by the Committee which shall be fair and reasonable taking into account such factors as the Committee in its discretion believes to be appropriate which may include the turnover of the Resolution Service Party in relation to the mainline railway in Great Britain and the need to allow potential access parties and others reasonable access to the dispute resolution service;
 - (b) where incorporation of these Access Dispute Resolution Rules into a contractual arrangement is a matter of commercial choice and not a requirement of a regulated contract, and the parties are not already Resolution Service Parties, the parties to that contractual arrangement

shall become Resolution Service Parties upon agreement with the Committee of the payment to be made by them in each financial year which shall be fair and reasonable to all Resolution Service Parties;

- (c) the remaining funding in addition to those sums paid under (a) and (b) above which is required by the Committee in accordance with J43 and 44 shall be paid by those Resolution Service Parties which pay the Railway Safety Levy. Each such Resolution Service Party shall pay a proportion of the remaining funding equal to the proportion which the amount of Railway Safety Levy most recently determined as payable by it (subject to such rebate as the Committee chooses to apply in its absolute discretion to take account of a Resolution Service Party's business and operations which do not relate to matters subject to these Rules) bears to the aggregate Railway Safety Levy payable by all Resolution Service Parties (as adjusted to take account of the Resolution Service Parties' business and operations which do not relate to matters subject to these Rules);
 - (d) in each financial year the Committee shall, for that financial year, assess the payments to be made by any party which does not fall within the above provisions and which, in that financial year, becomes or remains in a dispute registered with the Secretary and such party shall make such payments upon request from the Secretary; the amount of which (in any one financial year) shall not be less than £1,000.
- 46 The Committee may from time to time publish and/or amend a statement of the additional charges it will require Dispute Parties to pay in relation to the services provided in connection with disputes which have been referred for resolution under these Rules and may require Dispute Parties to pay such charges (including as a precondition to releasing determinations).
- 47 The Secretary shall receive and hold amounts paid pursuant to these Rules on behalf of the Committee and shall be entitled to exercise all relevant legal rights in respect of entitlement to, ownership of, or control of those amounts including to make demands and bring actions in his own name or that of the Committee in relation to them.
- 48 Any request for payment from the Secretary shall be settled within 30 days.
- 49 Without prejudice to any other rights available to the Secretary and/or the Committee under this Chapter J including the right to enforce such payments as a debt, in the event that any party fails to pay to the Secretary the required amount pursuant to Rule J45 within 30 days of being requested to do so by the Secretary, that party shall pay interest (incurred daily and compounded monthly) on the required amount from the due date to the date of actual payment at the rate 8% above the base lending rate of Barclays Bank plc as varied from time to time during the period in which the required amount remains unpaid. Any such interest due may be invoiced as an addition to the amount payable by the relevant party in the following year.
- 50 The Committee shall manage its finances such that funds are held to meet all reasonably foreseeable liabilities including building up funds for payments of property charges including dilapidations and in accordance with Rule J43. To the extent that the actual costs and expenses of the Committee shall have been

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

- 51 Any Resolution Service Party shall be entitled to require the Secretary to provide him with a certificate from a firm of chartered accountants in relation to the costs and expenses of the Committee in respect of any financial year. The Secretary shall promptly comply with any such request.
- 52 The Committee shall review and approve its accounts annually. The Committee may at any stage commission such additional audit examination as may be considered appropriate.

Capacity of Committee to enter into Contracts

- 53 In making any appointment or otherwise exercising the powers under this Chapter J the Committee Members are authorised to act on behalf of the Resolution Service Parties.
- 54 None of the Allocation Chair, any Hearing Chair, any Industry Advisor, the Secretary or any member of the Secretariat shall by virtue of his office be an employee of the Committee or any person.
- 55 A Resolution Service Party, on becoming such, shall indemnify those who are already Resolution Service Parties ("the Existing Resolution Service Parties") against its share of any liability which arises:
- (a) while it is a Resolution Service Party; and
 - (b) under any contract of appointment and or other contract that is entered into by the Committee Members on behalf of the Existing Resolution Service Parties (or some of them, and whether or not with others) before it became a Resolution Service Party.

A Resolution Service Party's share shall be the appropriate proportion of the liability calculated in accordance with Rule J45(d), applied to the Resolution Service Parties at the time the liability arises.

- 56 A Resolution Service Party that ceases to be such shall be indemnified by the Resolution Service Parties which remain against any liability which arises:
- (a) after it ceases to be a Resolution Service Party; and
 - (b) under a contract of appointment and or other contract entered into by the Committee on behalf of it (with other Resolution Service Parties) while it was a Resolution Service Party,

such that the Resolution Service Parties as at the date the liability arises shall bear it in the proportion applied to them as set out in Rule J45.

Publication of Information

- 57 The Committee shall require the Secretary to ensure that the access disputes website shall be maintained. It shall be up to date at all times so as to contain, by means of conspicuous and easily accessible links:
- (a) the identity and telephone contact number for the Secretary, all Committee Members and members of the Timetabling Pool;
 - (b) copies of the approved minutes of every meeting of the Committee;
 - (c) copies of the annual report and any other reports of the Committee, and of all other general communications to Resolution Service Parties in relation to its affairs;
 - (d) subject to determinations of commercial confidentiality, copies of every reference to the ORR under these Rules and all responses from the ORR; and
 - (e) all other Documents including determinations and awards as specified for publication on the access disputes website in these Rules.

Liability of Committee Members, Panel Members and officers

- 58 Subject to Rule J59 none of the Committee Members, the Committee, Panel Members (TTP or ADA), Committee Chair, the Allocation Chair, any Hearing Chair, Industry Advisors and the Secretary or any member of the Secretariat shall be liable in contract or tort or otherwise to any party for any act or omission (including negligence) in connection with any Committee proceedings or dispute determined by a Timetabling Panel or by a Hearing Chair under these Rules except in respect of any act or omission shown to constitute bad faith and/or dishonest conduct.
- 59 The exclusion of liability in Rule J58 does not extend to the obligations of the Committee Chair, the Allocation Chair, any Hearing Chair, Industry Advisors and the Secretary, or member of the Secretariat contained in any contract of appointment.
- 60 The Resolution Service Parties shall (subject to Rule J61) jointly and severally indemnify, and keep indemnified, the Committee Members, Committee Chair, the Allocation Chair, any Hearing Chair, Panel Members (TTP or ADA), Industry Advisors, the Secretary and any member of the Secretariat against any liability incurred (or alleged to have been incurred) by them to any Dispute Party or any third party in connection with any of their duties under these Rules except in respect of any act or omission which is shown to constitute bad faith and/or dishonest conduct or which would be a breach of any obligation contained in any contract of appointment.
- 61 The indemnity obligation of a specific Resolution Service Party under Rule J60 shall exclude any individual who is an appointed officer of that Resolution Service Party or of any affiliate if (and only to the extent that) such indemnity would be precluded under the Companies Acts. For the avoidance of doubt such exclusion shall not however affect:

- (a) the joint and several obligation of that Resolution Service Party under Rule J60 to indemnify other relevant individuals;
- (b) the joint and several obligation of all other Resolution Service Parties to indemnify any individual not entitled to an indemnity from any Resolution Service Party by virtue of a directorship; and
- (c) any lawful right of contribution by indemnifying Resolution Service Parties against a Resolution Service Party not required to indemnify by reason of this Rule J61.

Other Administrative Issues

- 62 These Rules may be amended in accordance with the provisions of Part C of the Network Code.
- 63 No amendment of these Rules shall have effect unless approved by the ORR.
- 64 Any dispute arising out of the operation or interpretation of these Rules including this Chapter J shall be referred to the ORR for determination in accordance with such process as the ORR shall specify. In the event that the ORR determines that a reference made to it under this Rule J64 does not relate to the operation or interpretation of these Rules, it shall decline to hear the reference.
- 65 These Rules are subject to English law except as otherwise provided as being subject to Scottish law.
- 66 These Rules form part of the Network Code.

CHAPTER K – (MIXED DISPUTES AND CONTESTED JURISDICTION)

- 1 If there is a disagreement as to whether a dispute is required by any of Rules D3, F4, G7, H1 or I4 to be dealt with under the Non-Access Dispute Resolution Rules:
 - (a) each Dispute Party shall submit its argument in writing to the Allocation Chair and to the other Dispute Parties before the reference is served or within seven days of its service; and
 - (b) the Allocation Chair shall rule on the disagreement within seven days of receiving the submissions.
- 2 If any party writes to the Secretary within seven days of the Allocation Chair's ruling informing him that that party does not accept the ruling of the Allocation Chair, the issue shall be determined within 21 days by the Chair of the Committee established pursuant to Rule A2 of the Non-Access Dispute Resolution Rules and such determination shall be final.