

# **The Network Code**

**(with Explanatory Notes)**

**1 August 2004**

**with amendments**

**10<sup>th</sup> January 2005**

**14 March 2005**

**01 April 2005**

**Note:**

This document is available on the Network Rail website at <http://www.networkrail.co.uk/CompanyInformation/NetworkCode>. Two complimentary copies, in loose-leaf format, are supplied to each Industry 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 7557 9183.

01 April 2005



## 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:

“Act”	means the Railways Act 1993;
“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 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 Holder”	means any person who may exercise an access option (as defined in section 17(6) of the Act): <ul style="list-style-type: none"><li>(a) in respect of a railway facility which is not a station or a light maintenance depot; and</li><li>(b) in respect of which the facility owner is Network Rail;</li></ul>
“Access Parties”	means, in respect of an Access Agreement, the parties to that agreement;
“Affiliate”	means, in relation to any company: <ul style="list-style-type: none"><li>(a) a company which is either a holding company or a subsidiary of such company; or</li><li>(b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,</li></ul>

and for these purposes, “holding company” and “subsidiary” have the meanings ascribed to them in section 736 of the Companies Act 1985;

“Change of Law”

means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to:

(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 and the Strategic Rail Authority) 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;

“Counsel to the ADRC”

means the person appointed as Counsel to the Committee (as that term is defined in the Access Dispute Resolution Rules);

“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;

“HSE”

means the Health and Safety Executive as referred to in the Health and Safety at Work etc. Act 1974;

“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"><li>(a) from which sensitive information has been excised; and/or</li><li>(b) in which sensitive information has been replaced by a summary containing no sensitive information;</li></ul>
“Passenger Transport Executive”	has the meaning ascribed to it in section 9 of the Transport Act 1968;
“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 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 ADRC tribunal”	means the tribunal established for the resolution of a dispute under the Access Dispute Resolution Rules, and may, at the discretion of Counsel to the ADRC, include: <ul style="list-style-type: none"><li>(a) in respect of timetabling matters, a standing</li></ul>

tribunal to deal with references under Part D;  
and

- (b) in respect of network or vehicle change matters, a standing tribunal to deal with references under Parts G or F;

“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;

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

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

“sensitive information”

means a relevant item, the publication of which by Network Rail:

- (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:

- (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;

“Train Crew” means those persons on a train responsible for the operation of that train;

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

“Working Timetable” 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.**

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, be in accordance with the notice requirements set out in the Access Agreement and the words “notify”, “consent” or “approve” (and cognate expressions) shall be construed accordingly.

## **1.5    *Good faith***

The Access Parties shall, in exercising their respective rights and complying with their respective obligations under 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 Strategic Rail Authority has designated as eligible for provision under franchise agreements pursuant to section 23 of the Act;
- (b) railway passenger services provided by a concession operator within the meaning of the Merseyrail Electrics Network Order 2003;
- (c) railway passenger services provided by a person in the same or substantially the same position as the concession operator under the Merseyrail Electrics Network Order 2003 in relation to any other network; and
- (d) railway passenger services provided by the Strategic Rail Authority, or another person on behalf of the Strategic Rail 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, each Access Option Holder, each Passenger Transport Executive and the Scottish Executive, the Office of Rail Regulation and the Strategic Rail Authority; and
- (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 *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 A3.3(a)(ii).

### **3.3A *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 A3.3A(a)(ii).

### **3.4 *Determination***

3.4.1 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 A3.5.1; and
- (b) in relation to any other relevant item, by Network Rail.



- 3.4.2 A determination as to whether any relevant item is hard copy information may be made by Network Rail.

### **3.5 *Non-sensitive versions***

- 3.5.1 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.
- 3.5.2 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.

### **3.6 *Appeals***

- 3.6.1 If any Access Party or Access Option Holder is dissatisfied with a determination made by:
- (a) Network Rail under Condition A3.4.1(b) or A3.4.2; or
  - (b) any other person under Condition A3.4.1(a),
- it may refer the matter to the relevant ADRC tribunal for determination under Part A of the Access Dispute Resolution Rules.
- 3.6.2 If any Access Party or Access Option Holder is dissatisfied with any decision of the relevant ADRC tribunal in relation to any matter referred to it under Condition A3.6.1, that Access Party or Access Option Holder may refer the matter to the Office of Rail Regulation for determination under Part M.

## **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 Network Rail, every Train Operator, every Access Option

Holder, every Passenger Transport Executive and the Scottish Executive, the Strategic Rail Authority, and every other person who has notified the Office of Rail Regulation that he or 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; and
- (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).

#### **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 Access Parties can, however, agree a more onerous Performance Monitoring System than that contemplated by Part B. The model set out in Part B is therefore a minimum standard.*
- E. *Part B also incorporates the Performance Data Accuracy Code which encompasses defined standards of accuracy of performance data.*
- F. *Provision is made for the setting up of a Delay Attribution Board whose purpose, constitution and procedures are set out in Conditions B6 and B7.*
- 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;
“Industry Party”	means a facility owner or a beneficiary which in either case is a party to an Access Agreement;

“licence fee”	in relation to an Industry Party, means any amount payable by that Industry Party to the Office of Rail Regulation in respect of a licence which it holds pursuant to section 8 of the Act, and “licensed Industry Party” shall be construed accordingly;
“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; and
“unlicensed Industry Party”	means an Industry Party which does not hold a licence pursuant to section 8 of the Act by reason of it being exempt from the requirement to be a licence holder.

## **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 *Performance Data Accuracy Code***

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

### **1.3 *The Delay Attribution Guide***

The Delay Attribution Guide is incorporated into and shall form a part of 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 to the Industry Committee in accordance with the Access Dispute Resolution Rules.

### **2.4.5 Precedence**

For the purposes of operating the procedures set out in this Condition B2.4, in any Access Agreement 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**

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

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

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

### **2.5.2 Notice of Proposal for Amendment**

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

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

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

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

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

### **2.5.4 Material modification of Proposal for Amendment**

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

### **2.5.5 Clarification**

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

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

### **2.6.1 Voting passmark**

The Board shall consider and may approve each Proposal for Amendment. A Proposal for Amendment shall have been approved only if seven or more Members (including at least two Members representing 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 Proposal for Amendment to the Office of Rail Regulation, together with a written memorandum:

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

### **2.7.2 Requirement for 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 Industry Parties;
- (b) arrange for the approved amendment to be incorporated into a revised version of the Delay Attribution Guide; and
- (c) publish and circulate the revised version of the Delay Attribution Guide to all Industry Parties and to the 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 Access Parties shall, for a period of not less than six years, keep summaries of all material information relating to the monitoring of train performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **6.1.3** *Guidance*

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

### **6.2** *Establishment and composition of the Board*

#### **6.2.1** *General*

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

- (a) six Members by 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 Industry Party, as soon as is reasonably practicable notify the Board Secretary, and may continue as a Member until such time as that Class or Band has elected his successor pursuant to Condition B6.2.4(a); and
- (d) shall, if he ceases to be an employee of an Industry Party, resign from office; or, if he fails to resign, shall be treated as having resigned.

#### 6.2.5 *Retirement by rotation*

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

- (a) on 1 April 2004:
  - (i) the Member appointed by the Band of the Franchised Passenger Class which is highest by value of relevant annual Track Charges payable by the Bands of that Class at the relevant time;
  - (ii) the Member appointed by the Band of the Non-Passenger Class which is the higher of the two by value of relevant annual Track Charges payable by them at the relevant time;
  - (iii) the Member appointed by the Non-Franchised Passenger Class; and



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

### **6.3 *The Chairman, Deputy Chairman and Board Secretary***

#### **6.3.1 *Appointment of Chairman and Deputy Chairman***

The Board shall appoint:

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

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

#### **6.3.2 *Declaration of connections***

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

#### 6.3.3 *Fees, expenses and allowances of Chairman*

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

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

#### 6.3.4 *Duration of appointment of Chairman*

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

- (a) in the case of removal on the ground of the incapacity or misbehaviour of the Chairman, be passed on the positive resolution of at least seven Members (including at least two Members representing 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 Industry Parties*

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

6.4.2 *Board to estimate costs*

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

6.4.3 *Adjustments of estimates*

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

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

#### **6.4.4 Accountants' certificate**

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

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

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

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

#### **6.6.1 New Industry Parties**

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

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

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

#### **6.6.2 Retiring Industry Parties**

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

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

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

## **6.7 Sub-committees**

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

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

### **6.7.2 *Membership***

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

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

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

### **6.7.4 *Procedural rules***

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

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

### **7.1 *Board Meetings***

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

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

The Board Secretary shall:

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

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

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

#### **7.1.2 Meetings previously arranged**

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

#### **7.1.3 Waiver of notice periods**

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

### **7.2 Conduct of Delay Attribution Board Meetings**

#### **7.2.1 Regulation of business**

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

- (a) any resolution in respect of such business, adjournment or regulation shall only be approved if at least seven Members (including at least two Members representing 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 three shall be Members representing Network Rail and three shall be Members representing the other Classes.

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



### 7.2.3 *Adjournment without a quorum*

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

### 7.2.4 *Written resolutions*

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

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

### 7.3.1 *Board to make rules*

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

### 7.3.2 *Power to delegate power to make rules*

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

### 7.3.3 *Consultation with Chairman*

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

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

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

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

#### **7.3.4 *Part B to prevail***

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

### **7.4 *Minutes***

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

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

### **7.5 *Liability of Officers***

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

## Part C - Modifications to the Network Code

### Explanatory Note

- A. *Part C provides for a democratic process by which the Network Code and the Access Dispute Resolution Rules 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 second and last of these groups are subdivided into Bands reflecting the relative size and nature of those groups and their respective members.*
- B. *A Train Operator can only be a member of one class, which is determined by the type of railway services in respect of which it pays the greatest part of its Track Charges.*
- C. *Each of the Classes (and, where appropriate, Bands) is given the right, annually, to elect Class Representatives to a Class Representative Committee. The Committee is charged with responsibility for considering and, if it thinks fit, approving proposals for changing the 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, an Access Option Holder 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, Access Option Holder, 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 Access Conditions. This right of veto is subject to an additional appeal procedure.*

- H. *Any Class Member, Access Option Holder, 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 HSE, the SRA 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 such as the Strategic Rail Authority.*
- L. *The Access Dispute Resolution Rules 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 consisting respectively of those members whose annual Track Charges relating to the provision of services for the carriage of goods by railway amount as nearly as practicable to the first 75% and the final 25% of the aggregate relevant annual Track Charges payable by all of the members, listed at the relevant time on the basis of descending value of the relevant annual Track Charges payable by them at that time; and
  - (b) in relation to the Franchised Passenger Class, any one of the three bands of members of that Class consisting respectively of those members whose annual Track Charges relating to the provision of Franchised Services amount as nearly as practicable to the first 40%, the next 40% and the final 20% of the aggregate relevant annual Track Charges payable by all of the members, listed at the relevant time on the basis of descending value of the relevant annual Track Charges payable by them at that time;
- “Band Meeting” means, in respect of any Band, a meeting of members of that Band called in accordance with Condition C1.4.1;
- “Class” means any one of 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 Meeting”	means, in respect of any Class, a meeting of that Class other than an Annual Class Meeting;
“Franchised Passenger Class”	means all Train Operators whose Access Agreements are, at least in part, in respect of the provision of Franchised Services, as a class;
“Non-Franchised Passenger Class”	means all Train Operators whose Access Agreements are, at least in part, in respect of the provision of railway passenger services (other than Franchised Services), as a class;
“Non-Passenger Class”	means all Train Operators whose Access Agreements are, at least in part, in respect of the provision of services for the carriage of goods by railway, as a class;
“Proposal for Change”	means any proposal (other than a notice issued by the Office of Rail Regulation under Condition C8) to change this code (including this Part C) or the Access Dispute Resolution Rules, 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.

#### **I.5.4 *Chairman***

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

#### **I.5.5 *Proxies***

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

#### **I.5.6 *Votes***

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

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

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.

#### **I.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.

#### **I.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***

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

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

- 1.7.1 Nominations in accordance with Condition C1.1.2(c), C1.3.1(e) or C1.4.1(e) for each Class, or each Band of a Class, may be made only by members of that Class, or that Band, respectively.
- 1.7.2 Nominees for election as a representative of a Class or Band shall, at the time of the election, be employees or officers of a company that is a member of that Class or Band respectively.
- 1.7.3 A Class Member may vote only in the election for a representative of a Class, or of a Band, of which he is a member.
- 1.7.4 If no nominations are received in accordance with the timescales specified in Condition C1.1.2(c), C1.3.1(e) or C1.4.1(e), a written nomination signed by an officer or employee of a Class Member may be presented in writing to the chairman of the relevant Class Meeting or Band Meeting.
- 1.7.5 If no nominations are received in accordance with Condition C1.1.2(c), C1.3.1(e), C1.4.1(e) or C1.7.4, the Managing Director of the company which pays the highest annual Track Charges in the Class or the relevant Band shall be deemed to be elected.
- 1.7.6 If an elected representative ceases to be an employee of the Class Member which employed him at the time of his election, he may, providing he is an employee of an Industry Party, continue as representative.

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

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

The Class Representative Committee shall comprise two Class Representatives appointed by 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 14 days, and not more than 28 days, notice specifying:

- (a) the date, venue and time of that meeting; and

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

### 3.1.2 *Waiver of notice periods*

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

### 3.1.3 *Attendance at Committee Meetings*

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

- (a) Class Members;
- (b) Access Option Holders; and
- (c) any person who proposes in good faith to enter into an Access Agreement or become the holder of an access option in respect of a railway facility which is not a station or a light maintenance depot,

and their professional advisers.

## 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, not later than 2 days before a Committee Meeting and signed by the Class Representative making or revoking the appointment.

### 3.2.7 *Rights of Alternates*

An Alternate Representative shall be entitled:

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

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

### 3.2.8 *Loss of office of Alternates*

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

### 3.2.9 *Written decisions*

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

### 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, an Access Option Holder or any person referred to in Condition C3.1.3(c) 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, an Access Option Holder or any person referred to in Condition C3.1.3(c) 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, an Access Option Holder or any person referred to in Condition C3.1.3(c) does not consider that any revision made to the rules of procedure addresses its objection,

the Class Member, an Access Option Holder or any person referred to in Condition C3.1.3(c) 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.

## **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 Access Dispute Resolution Rules, 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 Access Dispute Resolution Rules (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 all information under Condition C4.1.2(h)(i) and (ii) at least 14 days prior to the date of the Committee Meeting called in respect of the relevant Proposal for Change.

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, Access Option Holder, any person referred to in Condition C3.1.3(c) 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
- (c) be supported by an explanation in reasonable detail of the reasons for the proposed change.

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

Network Rail shall, within 7 days following receipt of a Proposal for Change from any Class Member, Access Option Holder, any person referred to in Condition C3.1.3(c), 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 Access Option Holder, each person referred to in Condition C3.1.3(c), the HSE, the Office of Rail Regulation and the Strategic Rail Authority, 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 fewer than 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, 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,

and, in each case, 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.

5.4.4 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 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 Access Dispute Resolution Rules,

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 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); and
- (c) stating the reasons for any dissent from that decision by any Class Representative.

- 7.1.2 Class Members shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Proposal for Change by the Office of Rail Regulation.
- 7.1.3 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.
- 7.1.4 Network Rail shall, if the Office of Rail Regulation gives its approval of the Proposal for Change, publish details of the approved change within the period of 14 days following that notification in accordance with Condition C9.

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

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 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 before the effective date or dates of any change determined under Condition C9.1.3 and approved by the Office of Rail Regulation under Condition C9.1.4, 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.

### **CONDITION C8 - MODIFICATION BY THE OFFICE OF RAIL REGULATION**

- 8.1 The Network Code and the Access Dispute Resolution Rules 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 C8.3 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition C8.4.
- 8.2 A notice given by the 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 by an arbitrator in accordance with the Dispute Resolution Rules within 180 days of the date upon which the affected operator shall have given notice to the 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 Strategic Rail Authority, the HSE, 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, an Access Option Holder and any other person who, in the opinion of the Office of Rail Regulation, shall be likely to be a Class Member or Access Option Holder.

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***

Network Rail shall notify any change made in accordance with this Part C other than Condition C8 to all Class Members and Access Option Holders as well as to the HSE, the Office of Rail Regulation and the Strategic Rail Authority.

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

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

#### **9.1.3 *Effective date of Change***

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

#### **9.1.4 *Approval of the Office of Rail Regulation***

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

### **9.2 *Provision of revised texts***

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



## Part D - Timetable Change

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

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

#### **Explanatory Note**

- A. *This Part D printed on white paper sets out the procedures by which the Working Timetable, Rules of the Route and Rules of the Plan may be changed in respect of the timetables that will operate until 23.59 on 22 May 2004. Although changes may be made to the Working Timetable at any time, significant changes in the Passenger Timetable may be made only three times a year, namely at the dates when the summer and the two winter Passenger Timetables come into effect.*
- B. *The development of a robust timetable demands dialogue between 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 initial discussion between Bidders and Network Rail at least two years in advance; provision is therefore made for this in Condition D2.2 headed 'Major Changes to the Timetable'.*
- 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 passenger Train Operator's Train Slots are fully protected insofar as they are based on Firm Contractual Rights which are not inconsistent with the applicable Rules of the Route and/or applicable Rules of the Plan, provided that the Firm Contractual Rights have been declared no later than the Priority Date. Any such flexibility will operate within the confines of the applicable Rules of the Route and applicable Rules of the Plan which, like the service specification, will constrain Network Rail's ability to flex the timetable.*
- E. *Each year, at the start of the process for development of the summer timetable, 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 summer timetable and the ensuing two winter timetables. In addition each year, at the start of the process for development of each winter timetable, 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 Timetabling Committee in accordance with the procedure described in paragraph N below.*

- F. Each year at or before the start of the detailed process for development of the summer timetable there will be preliminary dialogue between Network Rail and Bidders regarding the train services which the Bidder aspires to run in that summer timetable or ensuing two winter timetables. Each Bidder will make a formal declaration of those Contractual Rights (as set out in the Bidder's Access Agreement with Network Rail) that the Bidder will wish to exercise in support of these services and give an indication of the Train Slots which will be sought. This may be expressed in the form of variation to the services currently running. The declaration must be made on or before the Priority Date.
- G. To facilitate the proper processes of dialogue and consultation 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 summer and ensuing two winter timetables, and to discuss any concerns they may have regarding the preliminary Rules of the Route/Plan (as described in paragraph E above). Following the Timetabling Conference, which will include bi-lateral and multi-lateral dialogue between Industry Parties, Network Rail will lead a joint industry process with Bidders to prepare and issue a Draft Timetable, taking account of the consultation held before, during and after the Timetabling Conference. Network Rail will also issue its final proposals for the Rules of the Route/Plan. All Network Rail's decisions must take account of the Decision Criteria in Access Condition D4.
- H. On receipt of the Draft Timetable, Bidders will prepare their formal Bids for Train Slots; these may confirm, amend, or delete the slots shown in the Draft Timetable. It is not intended that the formal Bidding stage should be used to effect significant service changes; however, to ensure appropriate discipline, it should be noted that rights which have not been declared by the Priority Date are protected only in respect of service quantum. Network Rail in considering the relative claims of conflicting Bids will give precedence to those Bids supported by rights which have been declared by no later than the Priority Date, followed by Bids supported by other rights where the existing quantum of services is not exceeded, and thereafter will consider any other Bids.
- I. In respect of each Timetable Development Period, where Network Rail is required to undertake major engineering work on the Network, Network Rail is required to notify Bidders and Qualified Persons of the dates by which Network Rail will require Train Operators to submit revised bids to enable Network Rail to carry out relevant possessions for the work. Train Operators can thereby consider the options for amendments which become necessary to their services. A process for revising Bids is prescribed to enable a revised train plan to be prepared and published.
- J. Spot Bids may be made during the period of operation of a Working Timetable or during the preceding Supplemental Period. As a general rule, Spot Bids are given priority on a first in time basis; however, 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. A new criterion 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 major engineering, maintenance or renewal project requiring a possession or series of possessions of one or more sections of track extending over a period of more than one year or a period containing a Summer Change Date and a Winter One Change Date, Network Rail is obliged to give notice to Train Operators affected by the major project and to consult, and if possible agree, with the relevant Train Operator the method for its implementation. 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 Train Operator will be by negotiation and agreement. However, to deal with those cases where agreement cannot be reached, provision is made for Train Operators to appeal against any relevant Network Rail decision. An appeal is, in the first instance, made to the Timetabling Sub-Committee of the Access Dispute Resolution Committee (established under the Access Dispute Resolution Rules). If either Network Rail or the Train Operator is dissatisfied with the decision of that Committee, 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;
“Bid”	means a bid made to Network Rail for one or more Train Slots;
“Bidder”	means each Train Operator, each Access Option Holder and each other person who has been allowed to participate in the procedure set out in this Part D pursuant to Condition D1.2;
“Bidding Cycle”	means, in respect of any Timetable Development Period, a period of 8 weeks comprising, in chronological order, a Bidding Period and a Decision Period;
“Bidding Information”	means the applicable Rules of the Route and the applicable Rules of the Plan and the Draft Timetable to be issued by Network Rail pursuant to Condition D3.1;
“Bidding Period”	means a period of 3 weeks commencing on the first day of a Bidding Cycle;
“Decision Criteria”	means those decision criteria set out in Condition D4;
“Decision Period”	means a period of 5 weeks commencing on the expiry of the last day of the Bidding Period;
“Development Commencement Date”	means the first day of a Timetable Development Period;
“Draft Timetable”	means the most recent draft of the Working Timetable, which Network Rail has drawn up in accordance with Condition D2.1;

- “European Timetable Change Date” means any of the dates upon which significant timetable changes for international trains may be made, being those dates specified by the European Passenger Timetable Conference;
- “Firm Contractual Right” 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 Plan or the applicable Rules of the Route
- which is not expressed to be subject to any contingency outside the control of the holder of the right, except, in a case within paragraph (a) above, the applicable Rules of the Plan or the applicable Rules of the Route;
- “Flexing Right” means a right, exercisable by Network Rail, either
- (a) pursuant to Condition D3.6.1, to vary a Bid in any way within and consistent with the Firm Contractual Rights (if any) of the Bidder; or
  - (b) pursuant to Condition D3.6.2, to vary a Train Slot or a Bid as the case may be;
- “Initial Development Period” means a period of up to 18 weeks commencing on the Development Commencement Date and ending on the day immediately prior to the first day of the Bidding Period;
- “Last Appeal Period” means, in respect of any Timetable Development Period, a period of 6 weeks commencing on the expiry of the Bidding Cycle;
- “Major Project” means any engineering, maintenance or renewal project which requires a possession or series of possessions of one or more sections of track extending over:
- (a) a period of more than one year; or
  - (b) a period which contains two or more Passenger Change Dates but excluding, for the purpose of counting, any Winter Two Change Date;

“Non-Compliant Bid”	means any Bid which either: <ul style="list-style-type: none"> <li>(a) is not within or is inconsistent with the rights of the Bidder under an Access Agreement; or</li> <li>(b) conflicts with either of the applicable Rules of the Route or the applicable Rules of the Plan;</li> </ul>
“Passenger Change Date”	means any of the dates upon which significant changes may be made to a Passenger Timetable, being those dates decided by Network Rail after consultation with each Bidder pursuant to Condition D1.4 and taking due cognisance of the dates specified by the European Passenger Timetable Conference;
“Passenger Timetable”	means any timetable of railway passenger services published or procured to be published to the public by Network Rail;
“Preliminary Rules of the Route/ Plan Proposal”	means a proposal made by Network Rail pursuant to Condition D2.4.2;
“Priority Date”	means the date, occurring not more than 4 weeks after the Development Commencement Date relating to a Timetable Development Period ending on a Summer Change Date, by which Bidders, in accordance with Condition D2.1.2, must notify their rights to Network Rail;
“Qualified Person”	means a person whose business comprises or includes the provision, to operators of trains, Access Option Holders and persons who intend to apply for a licence under section 8 of the Act, of services in relation to the acquisition of permission to use the Network;
“Revised Bid”	means any Spot Bid seeking to revise a previously accepted Bid, as submitted to Network Rail by a Train Operator in accordance with Condition D3.8.3;
“Revision Bid Date”	means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Network Rail in accordance with Condition D3.8.1 and occurring no less than 4 weeks and no more than 8 weeks prior, in each case, to the relevant Revision Period End Date;

“Revision Notification Date”	means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Network Rail in accordance with Condition D3.8.1 and occurring no less than 8 weeks and no more than 12 weeks prior, in each case, to the relevant Revision Period End Date;
“Revision Offer Date”	means, in respect of any Supplemental Timetable Revision Period, the date occurring 2 weeks prior to the relevant Revision Period End Date; or, when Christmas Day falls no more than 14 days prior to the relevant Revision Period End Date, the date occurring 3 weeks prior to the relevant Revision Period End Date;
“Revision Period End Date”	means, in respect of any Supplemental Timetable Revision Period, the date occurring 12 weeks prior to the commencement of the Timetable Week to which that period relates;
“Revision Response Date”	means, in respect of any Supplemental Timetable Revision Period, the date occurring one week after the relevant Revision Offer Date;
“Rules of the Route/Plan Proposal”	means the proposals made by Network Rail in respect of the applicable Rules of the Route or the applicable Rules of the Plan referred to in Condition D2.4.4;
“Short Notice Spot Bid”	means a Spot Bid for a Train Slot made to 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 Saturdays in respect of day A and, in the case of Sundays, in respect of both day A and day B) and day C is the third day of any 3 consecutive days from (and including) the day on which the Spot Bid is made;
“Spot Bid”	means any Bid made during the period of operation of a Working Timetable to which that Bid relates or during the Supplemental Period immediately prior to that period;
“Summer Change Date”	means the first Passenger Change Date falling after the first day of April in any calendar year;

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



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

**Note:**

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

## **CONDITION D1 - GENERAL**

### **1.1 *Establishment of systems***

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 the holder of an access option, shall be entitled to participate in the procedure set out in this Part D, provided that such person has first undertaken to Network Rail to be bound (as a Bidder) by the provisions of this Part D.

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

### **1.5 *Working Timetable***

1.5.1 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.

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

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

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

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

- 2.1.1.0 Bidders should hold appropriate consultation with Passenger Transport Executives, User Representatives and other parties with rights of representation regarding proposals for development of services.
- 2.1.1.1 Network Rail shall consult with Bidders before the Priority Date to establish their aspirations for development of their services in the relevant Timetable Development Period.
- 2.1.1.2 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.
- 2.1.1.3 Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to development of its services.

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

Bidders shall, on or before the Priority Date, notify Network Rail in respect of the Timetable Development Periods ending on the next following Summer Change Date and the next two following Winter Change Dates:

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

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

### 2.1.3 *Draft Timetable*

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

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

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

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

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

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

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

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

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

- (a) In order to facilitate effective development of the Draft Timetable where Network Rail considers that major timetable changes may be required, for example to accommodate growth in demand for railway services or to deal with Major Projects, Network Rail may decide to invoke a pre-bidding consultation process at an earlier stage than would otherwise be the case with a view to increasing the period for consultation and ensuring that the timetable changes are implemented in a co-ordinated fashion.
- (b) In such circumstances, 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.
- (c) 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.

## **2.3 Major Projects**

### **2.3.1 Notice of proposed Major Project**

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

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

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

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

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

- (a) in deciding such proposed method of implementation, 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 D2.3.2.

### **2.3.4 Right of appeal**

If any Bidder is dissatisfied as to:

- (a) any matter concerning the operation of the procedure in this Condition D2.3; or
- (b) the method of implementation of the proposed Major Project as notified by Network Rail pursuant to Condition D2.3.3 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 D2.3.3 of the proposed method of implementation, refer the matter to the Industry Committee for determination.

### 2.3.5 *Applicability of appeal procedure*

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

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

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

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

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

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

### 2.4.1 *Review by Network Rail*

Network Rail shall, before the Development Commencement Date:

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



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

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

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

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

and, in either case, its reasons.

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

#### *2.4.3 Consultation with Bidders*

Each Bidder shall:

- (a) consider the notice served on it by Network Rail in accordance with Condition D2.4.2 and discuss any concerns it may have in respect of the Preliminary Rules of the Route/Plan Proposal with Network Rail;
- (b) on or before the Priority Date give notice to Network Rail of any representations or objections it wishes to make in relation to the Preliminary Rules of the Route/Plan Proposal and any alternative proposals it may have for the applicable Rules of the Route or the applicable Rules of the Plan; and

- (c) in respect of any Winter Rules Revision give notice to Network Rail within 4 weeks after the Development Commencement Date relating to the relevant Winter Change Date of any representations or objections it wishes to make, and any alternative proposals it may have.

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

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

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

Notwithstanding the provisions of D2.4.3 and D2.4.4 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 subject to the application of the Decision Criteria to facilitate optimisation of the Draft Timetable; and Network Rail shall promptly notify the Bidders thus affected.

#### 2.4.6 *Referral to Timetabling Committee*

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

- (a) not been referred to the Industry Committee for determination prior to the date referred to in Condition D2.3.4;
- (b) been finally determined by either the Industry Committee or the Office of Rail Regulation pursuant to that Condition; or

- (c) been determined by the Industry Committee and is not the subject of an appeal to the Office of Rail Regulation pursuant to that Condition.

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

Notwithstanding the provisions of Condition D2.4.6, 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.

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

Network Rail shall consult with each Bidder:

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

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

#### *2.4.9 Contents of amendment procedure*

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

- (a) shall provide that no amendment shall be made to the applicable Rules of the Plan or the applicable Rules of the Route or that no revision shall be made to an accepted Bid (as the case may be) unless:
  - (i) 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 7 days of the relevant procedure being sent to it, have referred any aspect of it to the Timetabling Committee for determination in accordance with Condition D5.

## **CONDITION D3 - THE BID AND OFFER PROCESS**

### **3.1 Bidding Information**

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

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

the applicable Rules of the Route or the applicable Rules of the Plan.

- 3.1.2 Network Rail shall, prior to the Bidding Period, provide the Bidding Information to:
- (a) each Bidder; and
  - (b) each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of Network Rail in providing that information.

### **3.2 Making of Bids**

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

### **3.3 Contents of a Bid**

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

- (a) dates on which the Train Slots are intended to be used;
- (b) start and end points of the train movement;

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

### **3.4 Priorities in Considering Bids**

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

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

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

each of paragraphs (i) and (ii) above having equal priority;
- (b) second, to the satisfaction of any rights or expectations of rights which fall within the description set out in Condition D2.1.4(b), and which have been notified to Network Rail on or prior to the Priority Date in accordance with Condition D2.1.2(c);
- (c) third, having due regard to the Decision Criteria, to the satisfaction of any other rights or expectations of rights which:
  - (i) a Bidder:

- (A) may have under an Access Agreement which is in force at the time the Bid is received by Network Rail; or
- (B) may seek pursuant to Condition D1.2 but which are not, at the time the Bid is received by Network Rail, under an Access Agreement which is in force at that time;

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

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

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

- (d) thereafter, having due regard to the Decision Criteria, to the satisfaction of any other rights or expectations of rights which a Bidder:

- (i) may have under an Access Agreement which is in force at the time the Bid is received by Network Rail; or
- (ii) may seek pursuant to Condition D1.2 but which are not, at the time the Bid is received by Network Rail, under an Access Agreement which is in force at that time

but which, in either case, have not been notified to Network Rail on or prior to the Priority Date in accordance with Condition D2.1.2(c).

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

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

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

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

- (a) if it is a Bid other than a Spot Bid, give notice to the Bidder of its acceptance, modification or rejection of that Bid by no later than the end of the Decision Period; or

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

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

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

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

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

3.5.3 If a Spot Bid for a Train Slot which is to be used for the carriage of passengers in connection with a sporting or other public event would, if accepted, conflict with any Train Slot in the Working Timetable, 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 operator gives its consent, exercise such Flexing Right.



- 3.5.4 A Train Operator which is consulted by Network Rail pursuant to Condition D3.5.3 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 Route and on the days and times of day in question.
- 3.5.5 If, as a result of exercising its Flexing Right pursuant to Condition D3.5.3, 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.
- 3.5.6 Network Rail shall accept and give effect to a Non-Compliant Bid only in accordance with directions issued or an approval given by the Office of Rail Regulation in the exercise of its powers under section 17, 18 or 22 of the Act.

### **3.6 Flexing rights**

3.6.1 Network Rail may:

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

provided that

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

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

- (a) in the circumstances referred to in Condition D3.5.3 or Condition D3.8.6; or

- (b) in order to give effect to a decision of the Timetabling Committee or the 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.

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

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

- (a) in respect of any Bid other than a Spot Bid, within 14 days following the date of receipt by it of notice of:
  - (i) the rejection of that Bid; or
  - (ii) the exercise of a Flexing Right by Network Rail
 notify Network Rail whether it accepts or disputes that decision of Network Rail;
- (b) 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 whether it accepts or disputes that decision of Network Rail:
  - (i) no later than 7 days after receipt by the Bidder of that notice, or
  - (ii) by 15.00 hours on day A in respect of any notice received by the Bidder by 10.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C, or
  - (iii) by 17.00 hours on day A in respect of any notice received by the Bidder by 15.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C
 whichever of paragraph (i), (ii) or (iii) is the earliest to occur, where day A, day B and day C are three consecutive days (excluding, in the case of day A, Saturdays and Sundays and, in the case of day B, Sundays) and
  - (iv) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by the Bidder of that notice.

**3.7.2** A Bidder shall, where it fails to notify Network Rail in accordance with Condition D3.7.1, 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 Timetabling Committee or the Office of Rail Regulation pursuant to Condition D5.1 or D5.2.

**3.7.3** Once a Bidder has accepted, or is deemed to have accepted, a decision of Network Rail under Condition D3.7.1 or D3.7.2 or Network Rail has

accepted a Bidder's Bid in accordance with Condition D3.5, both the Bidder and Network Rail shall, subject to Condition D3.6.2 and Condition D3.7.5, be bound by that decision.

- 3.7.4 Upon acceptance or deemed acceptance of a Bid pursuant to Condition D3.7.3 or a final determination pursuant to Condition D5, Network Rail shall enter the Train Slots in question in the Working Timetable.
- 3.7.5 An accepted Bid may be varied by Network Rail:
- (a) in accordance with the procedures provided for in Condition D2.4.8(b), D3.1.1(b)(iii) and D3.8;
  - (b) by agreement between 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 Timetabling Committee or the Office of Rail Regulation as provided for in Condition D5.

### **3.8 Supplemental Timetable Revision Process**

- 3.8.1 Network Rail shall, in respect of any Timetable Development Period and at least 26 weeks prior to the Passenger Change Date to which this period relates (and having previously consulted with each affected Bidder), provide to all those persons referred to in Condition D3.1.2, its specific proposals as to the Revision Notification Dates and Revision Bid Dates applicable to the period of operation of the Working Timetable commencing on that Passenger Change Date.
- 3.8.2 Network Rail shall, where it wishes to amend any Timetable Week Slot that is the subject of an accepted Bid in order to enable it to take possessions for the purpose of carrying out work included in the Rules of the Route applicable to that Timetable Week Slot, notify, prior to the relevant Revision Notification Date, the relevant Bidder of the requirement to amend the Timetable Week Slot in question.
- 3.8.3 The Train Operator shall, following receipt of notification from Network Rail under Condition D3.8.2 in respect of a particular Timetable Week Slot, submit:
- (a) a Revised Bid in respect of that Timetable Week Slot; and
  - (b) a Revised Bid in respect of any other Timetable Week Slot, if any, which is materially affected by the revision of the Timetable Week Slot to which the notification under Condition D3.8.2 relates;
- in each case following the applicable Revision Notification Date and prior to the applicable Revision Bid Date.
- 3.8.4 Network Rail shall, in respect of any Revised Bid submitted to it by the Train Operator under Condition D3.8.3 or in respect of any other Spot Bid submitted to it by the Train Operator, in each case, in respect of a relevant

Timetable Week which has been submitted to Network Rail prior to the Revised Bid Date, give notice to the Train Operator of its acceptance, modification or rejection of that Revised Bid or other Spot Bid (as the case may be) by no later than the Revision Offer Date.

3.8.5 Network Rail shall, where it is in receipt of a Revised Bid submitted to it in accordance with the provisions of this Condition D3.8, in determining whether to accept, modify or reject a Revised Bid which it considers to have been properly submitted to it in accordance with Condition D3.8.3:

- (a) not accept such Revised Bid if to do so would give rise to any conflict with any Train Slot in the Working Timetable to which the Revised Bid relates or with the applicable Rules of the Route or applicable Rules of the Plan (as amended, if relevant, in accordance with Condition D2.4); and
- (b) otherwise have due regard to the Decision Criteria

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

3.8.6 Network Rail shall be entitled to exercise its Flexing Right to amend any Timetable Week Slot in relation to which no Revised Bid has been submitted to Network Rail by the Train Operator in accordance with the provisions of this Condition D3.8 in order to enable Network Rail to take possessions for the purpose of carrying out work included in the Rules of the Route applicable to that Timetable Week Slot and the Train Operator shall not, in respect of that decision, be entitled to make a reference to the Timetabling Committee or the Office of Rail Regulation pursuant to Condition D5.1 or D5.2.

3.8.7 The Train Operator shall, following the date of receipt by it of notice of the modification or rejection by Network Rail of any Revised Bid made by it, 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 D3.7.2 to D3.7.4 (inclusive) shall apply, *mutatis mutandis*.

3.8.8 Where, in respect of any Timetable Week or any day therein, Network Rail receives any Spot Bid at least 8 weeks prior to the commencement of the relevant Timetable Week, Network Rail shall not be obliged to notify to the Train Operator its decision as to whether that Spot Bid is accepted, modified or rejected until the date falling 5 weeks prior to the commencement of the relevant Timetable Week.

3.8.9 The Train Operator shall, following the date of receipt by it of notice of the modification or rejection of any Spot Bid referred to in Condition D3.8.8, notify Network Rail whether it accepts or disputes that decision of Network

Rail no later than 7 days following the date of that decision and the provisions of Conditions D3.7.2 to D3.7.4 (inclusive) shall apply, *mutatis mutandis*.

3.8.10 Network Rail shall provide details of the revisions to the Working Timetable that will be operative in the relevant Timetable Week to all persons referred to in Condition D3.1.2 at least 3 weeks prior to the commencement of that Timetable Week.

## **CONDITION D4 - DECISION CRITERIA**

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

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

- (j) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;
- (k) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services; and
- (l) taking into account the commercial interests of 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 D4, Network Rail shall not be entitled to determine that its possessions of any part of the Network shall be as contemplated by any relevant maintenance contract by reason only of the terms and conditions of that contract. In this paragraph, "relevant maintenance contract" is a contract which 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.

## **CONDITION D5 -TIMETABLE APPEAL PROCEDURE**

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

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

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

- (a) the application by 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 Timetabling Committee pursuant to Condition D2.4.6 or D2.4.9

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

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

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

- (c) A reference to the Industry Committee in accordance with Condition D2.3.4 shall be made within the timescale prescribed in Condition D2.3.4.

## **5.2 *Right of appeal to the Office of Rail Regulation***

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

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

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

Without prejudice to Condition D5.5, where Network Rail or a Bidder refers a matter to the Timetabling Committee or the Office of Rail Regulation pursuant to Condition D5.1 or D5.2, the person making the reference shall:

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

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

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

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



## **5.5 Power of appeal bodies**

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

- 5.5.1 to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other; except to the extent specified in sub-paragraphs (a) and (b) of paragraph A5.3.5 of the Access Dispute Resolution Rules, directions given by the Timetabling Committee pursuant to this Condition D5.5.1 shall not be inconsistent with paragraphs A3.6.2, A5.1, A5.2 or A5.4 to A5.11 inclusive of those Rules;
- 5.5.2 in the case of the Office of Rail Regulation, 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;
- 5.5.3 in determining the matter in question:
  - (a) in the case of either appeal body:
    - (i) 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”); or
    - (ii) to direct the parties to accept any submissions made by Network Rail as to any Train Slots; and
  - (b) in the case of the Office of Rail Regulation, to specify the Train Slots and other matters which Network Rail should have determined in its decision made pursuant to Condition D3,

any such directions under paragraph (a) or (b) being, in the case of the Timetabling Committee, only by final determination, but in the case of the Office of Rail Regulation, either by interim order or final determination;
- 5.5.4 having given general directions, on the application of Network Rail within 7 days (or 14 days if Christmas Day falls within such period of 7 days) of the determination of the matter in question (or such longer period as the appeal body shall allow), to make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions; and
- 5.5.5 to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the relevant appeal body shall determine) which shall be borne by either or both of the parties.

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

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

## **5.7 *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.

## **5.8 *Additional powers and immunities of the Office of Rail Regulation***

Where any Access Party shall have made a reference to the Office of Rail Regulation under Condition D5.2, the Office of Rail Regulation shall:

5.8.1 be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the Timetabling Committee, it shall determine that the reference should not proceed, including on the grounds that:

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

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

## **5.9 *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.

## Part D - Timetable Change

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

### 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 June).*
- 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 initial discussion between Bidders and Network Rail at least two years in advance; provision is therefore made for this in Condition D1.5 headed 'Major Changes to the Timetable'.*
- 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 Timetabling Committee in accordance with the procedure described in paragraph N below.*

- F. Each year at or before the start of the timetable development process there will be preliminary dialogue between Network Rail and Bidders regarding the train services which the Bidder aspires to run in that timetable year. Each Bidder will notify Network Rail of those 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 and give an indication of the Train Slots which will be sought. This may be expressed in the form of variation to the services currently running. The notification must be made on or before the Priority Date.
- G. To facilitate the proper processes of dialogue and consultation 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 Industry Parties, Network Rail will lead a joint industry process with Bidders to prepare and issue a Draft Timetable, taking account of the consultation held before, during and after the Timetabling Conference. Network Rail's decisions must take account of the Decision Criteria, where applicable, in Access 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 Development Period, where Network Rail is required to undertake major engineering work on the Network, Network Rail is required to notify Bidders and Qualified Persons of the dates by which Network Rail will require Train Operators to submit Revised Bids to enable Network Rail to carry out relevant possessions for the work. Train Operators can thereby consider the options for amendments which become necessary to their services.
- J. Spot Bids may be made during the period of operation of a Working Timetable or during the preceding Supplemental Period. As a general rule, Spot Bids are given priority on a first in time basis; however, 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. 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 major engineering, maintenance or renewal project requiring a possession or series of possessions of one or more sections of track extending over a period of more than one year or a period containing a Principal Change Date and a Subsidiary Change Date, Network Rail is obliged to give notice to Train Operators affected by the major project and to consult, and if possible agree, with the relevant Train Operator the method for its implementation. 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 Timetabling Sub-Committee of the Access Dispute Resolution Committee (established under the Access Dispute Resolution Rules). If either Network Rail or the Bidder is dissatisfied with the decision of that Committee, 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 day following the end of the Finalisation Period and forming part of the Supplemental Period;
“Bid”	means a 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 most recent draft of the Working Timetable, which Network Rail has drawn up in accordance with Condition D3.2;

“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 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 day following the end of the Drafting Period;
“Firm Right”	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in the case of a Bidder, a right under its Access Agreement in respect of the quantum, timing or any other characteristic of a train movement; and</li> <li>(b) in the case of Network Rail, a right under the applicable Rules of the Route or the applicable Rules of the Plan</li> </ul> <p>which is not expressed to be subject to any contingency outside the control of the holder of the right, except, in a case within paragraph (a) above, the applicable Rules of the 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”;</p>
“First Working Timetable”	means the version of the Working Timetable in respect of which Network Rail gives notice pursuant to Condition D1.6.3(a), as that version may be amended in accordance with Condition D1.6.3(b);
“Flexing Right”	<p>means a right, exercisable by Network Rail, either</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> </ul>
“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;
“Major Project”	means any engineering, maintenance or renewal project which requires a possession or series of possessions of one or more sections of track extending over: <ul style="list-style-type: none"> <li>(a) a period of more than one year; or</li> <li>(b) a period which contains two or more Passenger Change Dates;</li> </ul>
“Passenger Change Date”	means 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;
“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 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 D2.1.2;
“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 7 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



	<p>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;</p>
“Qualified Person”	<p>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;</p>
“Revised Bid”	<p>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;</p>
“Revision Bid Date”	<p>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;</p>
“Revision Notification Date”	<p>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 notification by Network Rail of the scheduled Train Slots to be amended in the Timetable Week to which that Revision Notification Date relates;</p>
“Revision Offer Date”	<p>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 2 weeks prior to the relevant Revision Period End Date, or, when Christmas Day falls no more than 14 days prior to the relevant Revision Period End Date, the date occurring 3 weeks prior to the relevant Revision Period End Date, being the last date for notification by Network Rail of its decisions to accept, modify or reject Revised Bids for the Timetable Week to which that Revision Offer Date relates;</p>

“Revision Period End Date”	means, in respect of any Supplemental Timetable Revision Period, the date occurring 12 weeks prior to the commencement of the Timetable Week to which that period relates;
“Revision Response Date”	means, in respect of any Supplemental Timetable Revision Period, the date occurring one week after the relevant Revision Offer Date;
“Short Notice Spot Bid”	means a Spot Bid for a Train Slot made to 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 Saturdays in respect of day A and, in the case of Sundays, in respect of both day A and day B) and day C is the third day of any 3 consecutive days from (and including) the day on which the Spot Bid is made;
“Spot Bid”	means any Bid made during the Timetable 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 next following the second Saturday in June 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;
“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>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> <li>b) is material in nature but the need for which was not reasonably foreseeable when the applicable Rules of the Route or applicable Rules of the Plan were previously revised;</li> </ul>

“Supplemental Period”	means the period, to be notified by Network Rail in accordance with Condition D1.4, normally of 22 weeks, commencing on the first 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 Notification Date and ending on the relevant Revision Period End Date;
“Timetable Development Period”	means, in respect of any Passenger Change Date, the period of development of the Working Timetable to be implemented on that date, being a period, 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"> <li>(a) a Preliminary Period;</li> <li>(b) a Drafting Period;</li> <li>(c) a Finalisation Period; and</li> <li>(d) a Supplemental Period;</li> </ul>
“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;
“Timetabling Committee”	means the sub-committee of the Industry Committee referred to in paragraph A4.1(b) of the Access Dispute Resolution Rules;
“Train Slot”	means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement;

“User Representative”	means any of the Rail Passengers’ Committees established under Section 2 of the Act, or, where appropriate, the London Transport Users’ Committee; and
“Working Day”	means each of Monday to Friday (inclusive) excluding common law and statutory public holidays.

Note 1:

When Christmas Day or, where Christmas Day falls on a Saturday or a Sunday, the public holiday which is established in lieu of Christmas Day occurs in any of the Appeal Period, Drafting Period, Finalisation Period, Preliminary Period, or Supplemental Period, 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:

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

Note 3:

In this Note 3 references to the Access Conditions shall be construed as references to the Railtrack Track Access Conditions 1995.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **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 the holder of an access option, shall be entitled to participate in the procedure set out in this Part D, provided that such person has first undertaken to Network Rail to be bound (as a Bidder) by the provisions of this Part D.

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

### **1.5 *Major changes to the timetable***

- (a) In order to facilitate effective development of the Draft Timetable where Network Rail considers that major timetable changes may be required, for example to accommodate growth in demand for railway services or to deal with Major Projects, 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.
- (b) 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 such a consultation process and, if so, in deciding when that process should begin.

- (c) 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 consultation process in respect of the affected Timetable Development Periods.

## **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:
  - (a) on or before the last day of the Finalisation Period and in accordance with Condition D3.2.7, give notice to each Bidder of the version of the Working Timetable which is to apply from the relevant Passenger Change Date; and
  - (b) as soon as possible after the expiry of the Appeal Period, give notice to each Bidder of the changes (if any) to that version of the Working Timetable which it has made as a result of appeals determined pursuant to Condition D5.
- 1.6.4 Network Rail shall not be obliged to publish details of any Spot Bid which it accepts in any Passenger Timetable.

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

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

#### **2.1.1 *Review by Network Rail***

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 Major Project which is the subject of a notice issued in accordance with Condition D2.2); and
- (b) in respect of any Timetable Period commencing on a Subsidiary Change Date, review the applicable Rules of the Route and the applicable Rules of the Plan and decide as to whether any Subsidiary Rules Revisions should be made to either or both sets of Rules.

In conducting its review in accordance with this Condition D2.1.1 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.

#### **2.1.2 *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.

#### 2.1.3 *Consultation with Bidders*

Each Bidder shall:

- (a) consider the notice served on it by Network Rail in accordance with Condition D2.1.2 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.

#### 2.1.4 *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 D2.1.3, review the Preliminary Rules of the Route/Plan Proposal or, as appropriate, the Subsidiary Rules Revision and, having due regard to the Decision Criteria, decide what amendments if any should be made to the applicable Rules of the Route and the applicable Rules of the Plan.
- (b) 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 D2.1.4(a) or, where no amendments are proposed, that fact.

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

Notwithstanding the provisions of D2.1.3 and D2.1.4 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.

#### *2.1.6 Referral to Timetabling Committee*

Following notification of Network Rail's decisions in accordance with Condition D2.1.4(b) or D2.1.5 a Bidder may refer any aspect of those decisions (including any decision of 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 Timetabling Committee under Condition D5, provided that such referral is made within the period specified in Condition D5.1. No such reference shall be made in respect of any aspect of a Major Project which is within and consistent with its method of implementation established pursuant to Condition D2.2 and which has:

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

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

Notwithstanding the provisions of Condition D2.1.6, but subject to Condition D2.1.8, 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.

#### *2.1.8 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 D2.1.7, 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.

#### **2.1.9** *Contents of amendment procedure*

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

- (a) shall provide that no amendment shall be made to the applicable Rules of the Plan or the applicable Rules of the Route or that no revision shall be made to an accepted Bid (as the case may be) unless:
  - (i) 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 7 days of the relevant procedure being sent to it, have referred any aspect of it to the Timetabling Committee for determination in accordance with Condition D5.

## **2.2 Major Projects**

#### **2.2.1** *Notice of proposed Major Project*

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

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

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 project on those Bidders and shall consult with them concerning the method of implementation for the proposed project.

### 2.2.3 *Notice of proposed method of implementation*

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

- (a) in deciding such proposed method of implementation, 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.

### 2.2.4 *Right of appeal*

If any Bidder is dissatisfied as to:

- (a) any matter concerning the operation of the procedure in this Condition D2.2; or
- (b) the method of implementation of the proposed Major Project as notified by 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 proposed method of implementation, refer the matter to the Industry Committee for determination.

### 2.2.5 *Applicability of appeal procedure*

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

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

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

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

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

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

#### **3.1 Consultation**

- 3.1.1 Bidders should hold appropriate consultation with Passenger Transport Executives, User Representatives and other parties with rights of representation regarding proposals for development of services.
- 3.1.2 Network Rail shall consult with Bidders before the Priority Date to establish their aspirations for development of their services in the relevant Timetable Development Period. Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to development of the Bidder's services.
- 3.1.3 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:

- (a) those Firm Rights that they intend to exercise;
  - (b) those Firm Rights that they do not intend to exercise;
  - (c) any other rights which they intend to exercise or wish to negotiate;
- and:
- (i) in the case of paragraphs (a) and (c) above, shall give an indication of the Train Slots that they aspire to operate in exercising those rights and the rights, if any, applicable to each of the Train Slots, which

indication shall include the extent of its requirements (if any) as to the matters set out in Condition D3.3; and

- (ii) in the case of paragraph (c) above, shall distinguish between
  - (A) Train Slots for which they would be seeking priority in the Draft Timetable in accordance with Condition D3.2.3(b);
  - (B) Train Slots for which they would be seeking priority in the Draft Timetable in accordance with Condition D3.2.3(c); and
  - (C) other Train Slots.

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

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; and
- (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.

### 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.

#### 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 aspirations 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, 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, 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 14 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 Timetabling Committee. 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 Timetabling Committee or the Office of Rail Regulation pursuant to Condition D5.

## 3.3 ***Contents of a Bid***

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

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

- (j) any relevant commercial and service codes.

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

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

- (a) 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.

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

- (a) in order to give effect to a decision of the Timetabling Committee 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 Spot Bids, accord priority, to the extent that the Spot Bid in question falls to be considered under Condition D4.8, as provided for in that Condition and, in all other cases, in the order in which they are received by 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 Timetabling Committee 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 or 22 of the Act.

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

4.5.1 Without prejudice to Conditions D2.1 and D4.4, 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) no later than 5 Working Days after receipt of that Spot Bid; or
- (b) by 10.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on the day preceding day A which, if accepted, would be planned to operate on day C; or

- (c) by 15.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on day A which, if accepted, would be planned to operate on day C,

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

- (d) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by 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 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 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 7 days after receipt by the Bidder of that notice; or
- (b) by 15.00 hours on day A in respect of any notice received by the Bidder by 10.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C; or
- (c) by 17.00 hours on day A in respect of any notice received by the Bidder by 15.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C,

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 Timetabling Committee 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 and to Part J of this Code.

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 D2.1.8, 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 Timetabling Committee 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 Notification Dates, Revision Bid Dates and Revision Offer Dates applicable to the Timetable Period commencing on that Passenger Change Date.
- 4.8.2 Network Rail shall, where it wishes to amend any Timetable Week Slot scheduled in the relevant Working Timetable in order to enable it to take possessions for the purpose of carrying out work included in the Rules of the Route applicable to that Timetable Week Slot, notify, prior to the relevant Revision Notification Date, the relevant Bidder of the requirement to amend the Timetable Week Slot in question.
- 4.8.3 The Train Operator shall, following receipt of notification from Network Rail under Condition D4.8.2 in respect of a particular Timetable Week Slot, submit:
  - (a) a Revised Bid in respect of that Timetable Week Slot; and
  - (b) a Revised Bid in respect of any other Timetable Week Slot, if any, which is materially affected by the revision of the Timetable Week Slot to which that notification relates;

in each case following the applicable Revision Notification Date and prior to the applicable Revision Bid Date.
- 4.8.4 Network Rail shall, in respect of any Revised Bid or in respect of any other Spot Bid which has been submitted to it prior to the Revision Bid Date in respect of a relevant Timetable Week, give notice to the Train Operator of its acceptance, modification or rejection of that Revised Bid or Spot Bid (as the case may be) by no later than the Revision Offer Date.
- 4.8.5 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, in determining whether to accept, modify or reject that Revised Bid:

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

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

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

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

4.8.7 The Train Operator shall, following the date of receipt by it of notice of the modification or rejection by Network Rail of any Revised Bid made by it, 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*.

## **CONDITION D5 -TIMETABLE APPEAL PROCEDURE**

### **5.1 Right of appeal to relevant ADRC tribunal**

#### **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, other than in the circumstances prescribed in Condition D2.2.4, 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 ADRC tribunal under Condition D2.1.6 or D2.1.9,



it may refer the matter to the relevant ADRC tribunal for determination.

#### 5.1.2 Timescales for making an appeal to the relevant ADRC tribunal

- (a) A reference to the relevant ADRC tribunal under Condition D5.1.1 shall, save as shown in paragraph (b) below, be made within 7 working days of receipt of the relevant decision from Network Rail.
- (b) A reference to the relevant ADRC tribunal in respect of a decision by Network Rail regarding Train Slots notified to Train Operators in accordance with Condition D3.2.7 shall be made within 14 days of receipt of the relevant decision.

### 5.2 Right of appeal to the Office of Rail Regulation

If Network Rail or any Bidder is dissatisfied with any decision of the relevant ADRC tribunal in relation to any matter referred to it under Condition D5.1, that person may, within 7 working days of receipt of the relevant ADRC tribunal's written reasoned determination, refer the matter to the Office of Rail Regulation for determination under Part M.

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

Without prejudice to Condition D5.5, where Network Rail or a Bidder refers a matter to the Timetabling Committee or the Office of Rail Regulation pursuant to Condition D5.1 or D5.2, the person making the reference shall:

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

### 5.4 *Obligation to provide evidence*

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

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

reference use their respective reasonable endeavours to procure that the Office of Rail Regulation is furnished with sufficient evidence so as properly to consider any matters referred to it under Condition D5.2.

## **5.5 Power of appeal bodies**

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

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

5.5.2 in the case of the Office of Rail Regulation, 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;

5.5.3 in determining the matter in question:

- (a) in the case of either appeal body:
  - (i) 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”); or
  - (ii) to direct the parties to accept any submissions made by Network Rail as to any Train Slots; and
- (b) in the case of the Office of Rail Regulation, to specify the Train Slots and other matters which Network Rail should have determined in its decision made pursuant to this Part D,

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

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

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

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

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

**5.7 *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 Timetable Period 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 Timetable Period.

**5.8 *Additional powers and immunities of the Office of Rail Regulation***

Where any Access Party shall have made a reference to the Office of Rail Regulation under Condition D5.2, the Office of Rail Regulation shall:

- 5.8.1 be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the Timetabling Committee, it determines that the reference should not proceed. The grounds on which the Office of Rail Regulation may make such a determination shall include, but not be limited to:
- (a) the matter in question not being of sufficient importance to the industry;
  - (b) the reference to it being frivolous or vexatious; or
  - (c) the conduct of the party making the reference being such as ought properly to preclude its being proceeded with; and
- 5.8.2 not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the reference.

## **5.9 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) 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;
- (c) maintaining and improving the levels of service reliability;
- (d) maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (e) maintaining and improving connections between railway passenger services;
- (f) avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria;
- (g) ensuring that, where the demand of passengers to travel between two points is evenly spread over a given period, the overall pattern of rail services should be similarly spread over that period;
- (h) ensuring that where practicable appropriate provision is made for reservation of capacity to meet the needs of Bidders whose businesses require short term flexibility where there is a reasonable likelihood that this capacity will be utilised during the currency of the timetable in question;
- (i) enabling operators of trains to utilise their railway assets efficiently and avoiding having to increase the numbers of railway assets which the operators require to maintain their service patterns;

- (j) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;
- (k) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services;
- (l) encouraging the efficient use of capacity by considering a Bidder's previous level of utilisation of Train Slots;
- (m) avoiding, unless absolutely necessary, changes to provisional International Paths following issue of the applicable Rules of the Plan; and
- (n) 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 possessions of any part of the Network shall be as contemplated by any relevant maintenance contract by reason only of the terms and conditions of that contract. In this paragraph, "relevant maintenance contract" is a contract which 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 therefor. If an affected Train Operator disagrees with Network Rail's assessment, it may appeal to the Industry Committee and then refer the matter to arbitration.*
- E. *If a Train Operator fails to take any action required of it to prevent, remedy or mitigate Environmental Damage within a reasonable time or to the reasonable satisfaction of 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"

means:

- (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

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;

"Environmental Damage"

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;

"relevant liability"

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

"relevant steps"

in relation to a Train Operator, means the steps of the kind referred to in Condition E2.1.3(e)(i).

## **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 Train Operator with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the 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 to the Industry Committee and thereafter to arbitration pursuant to the Access Dispute Resolution Rules. It shall lose that entitlement if it fails to make the reference within 120 days of the later of:

- (a) the date of its receipt of 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 by which changes may be made to railway vehicles, the use of which is permitted in the access contract, from the specifications in the access contract (“Vehicle Change”). Vehicle Change includes any alteration to the physical characteristics of the vehicles, any increase in the length of any trains beyond that specified in the relevant access contract and any introduction of different vehicles on to the relevant routes which, in any case, is likely materially to affect the maintenance 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 Train Operators 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 Access Dispute Resolution Rules) in favour of the change being implemented.*
- 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 Train Operators 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 a Train Operator wishes to make a Vehicle Change proposal, the procedure is as follows:*
- (i) The Train Operator (the “Sponsor”) gives a notice of proposal to Network Rail. Condition F2.2 prescribes the contents of such a notice: for example, proposals as to how Network Rail or other affected Train Operators 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 Train Operators and other relevant persons about the effects of the proposal.*
  - (ii) Within 30 days, 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 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.*
- (iv) *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.*
- (v) *In responding formally to a Vehicle Change proposal, Network Rail must state whether it, or another Train Operator, 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 Network Rail or the Train Operator 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.*
- (vi) *The Sponsor must then either reach agreement with Network Rail and other Train Operators to the extent that they raise objections to the proposal, refer the matters in dispute to the relevant ADRC tribunal or abandon the proposal. Implementation will then depend on whether the ADRC proceedings and any subsequent appeal to the Office of Rail Regulation 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.*
- (vii) *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. *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;
- “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(c)(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 Train Operators,
- 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 Train Operator 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 respect of a Train Operator, any change to the Specified Equipment including by way of:

- (a) alteration to the physical characteristics of Specified Equipment;
- (b) any increase in the length of any trains beyond that specified in the Access Agreement to which it is party; or
- (c) the inclusion in Specified Equipment of any railway vehicle which is not so included



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

## **CONDITION F1 - 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 a Train Operator 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 Train Operator may reasonably request in connection with the development of a proposal for Vehicle Change (whether the proposal is made by that Train Operator or another person);
- (b) the publication on its website of:
  - (i) every proposal for Vehicle Change made by a Train Operator 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 to the relevant ADRC tribunal or the Office of Rail Regulation under Condition F5.1 or F5.2;

- (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 a Train Operator or Network Rail under Condition F2;
- (c) the provision of a preliminary response to a Train Operator'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 a Train Operator 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 a Train Operator 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.

#### **1.4 *Compliance with Railway Group Standards***

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

### **CONDITION F2 - INITIATION OF VEHICLE CHANGE PROCEDURE BY A TRAIN OPERATOR**

#### **2.1 *Submission of proposal***

If a Train Operator wishes to make a Vehicle Change, it shall:

- (a) submit to Network Rail a proposal for such change;
- (b) notify:
  - (i) each Train Operator that may be affected by the implementation of the proposed Vehicle Change;
  - (ii) the Strategic Rail Authority;
  - (iii) the HSE;
  - (iv) the Office of Rail Regulation; and
  - (v) each Passenger Transport Executive that may be affected, Transport for London if it may be affected, and the Scottish Executive if it may be affected, by the implementation of the proposed Vehicle Change,

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

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

## **2.2 Content of notice of proposal by a Train Operator**

A notice of proposal for Vehicle Change given by a Train Operator 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 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 vehicle;
  - (v) the proposed timetable for implementing the change;
  - (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 Train Operators or Network Rail 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 person specified in Condition F2.1(b),

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.

## **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) consult with each person specified in Condition F2.1(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 F2.3.1(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 Condition F2.1(b), with a copy to the Sponsor, inviting them to submit comments 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 Train Operators and Network Rail under Conditions F2 and F3;
  - (ii) the reasons given by the Sponsor under Condition F2.2(a)(i) for proposing to make the change;

- (iii) the matters required to be stated by the Sponsor in its notice under Condition F2.2(a)(ii), (iii) and (iv);
- (iv) Network Rail's estimate of the likely impact of the change on the operation and performance of the Network; and
- (v) 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.

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

- (a) shall comply with the standard specified in Condition F2.2(b); and
- (b) in respect of each of the matters specified in Condition F2.3.1(c)(v):
  - (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(c)(v); 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.

## **2.4 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, with:

- (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(c) was given; and
  - (ii) the request is made within 7 days of the Sponsor receiving Network Rail's notice under Condition F2.3.1(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.

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

## **2.5 Reimbursement of costs**

Subject to Conditions F2.4 and F3, Network Rail shall be entitled to reimbursement by a Train Operator of 75% of all costs incurred by Network Rail in assessing any Vehicle Change proposed by that operator. 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 a Train Operator from time to time, provide the Train Operator with written estimates of the costs of assessing a proposal for Vehicle Change submitted by that operator (as referred to in Condition 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 a Train Operator at any time, incur no further costs (except any costs that cannot reasonably be avoided) in respect of any proposal for Vehicle Change made by that Train Operator.

## **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.



## **CONDITION F3 - RESPONSE BY NETWORK RAIL 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 Train Operator which has made the relevant proposal 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 Train Operator 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; 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.

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**

If:

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

the proposed Vehicle Change shall not be implemented. In any other case and subject to the other provisions of the Network Code, the Sponsor shall be entitled to implement it.

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

Where a Train Operator is required (other than at the request or instigation of the Train Operator) to implement a Vehicle Change as a result of any Change of Law or any Direction of any Competent Authority other than the Office of Rail Regulation:

- (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(c)(v)(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 or the consequences thereof.

#### **CONDITION F5 - APPEAL PROCEDURE**

##### **5.1 *Right of appeal to relevant ADRC tribunal***

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 to the relevant ADRC tribunal for determination under Part A of the Access Dispute Resolution Rules.

## **5.2 *Right of appeal to the Office of Rail Regulation or the Court***

If any Access Party is dissatisfied with any decision of the relevant ADRC tribunal in relation to any matter referred to it under Condition F5.1, that Access Party may refer the matter to the Office of Rail Regulation for determination under Part M.

## **5.3 *Implementation of Vehicle Change***

5.3.1 The referral of any matter under Condition F5.1 or F5.2 concerning:

- (a) the amount of costs to be reimbursed under Condition F2.5, but not
- (b) the method by which such costs are to be calculated,

shall not entitle a person other than the Sponsor to delay the implementation of the Vehicle Change pending the determination of the matter without the consent of the Sponsor.

5.3.2 The Sponsor may implement a Vehicle Change which, but for this Condition F5.3.2, would not be an established Vehicle Change if:

- (a) the amount of any compensation referred to in Condition F3.2 has not been agreed;
- (b) the method by which such compensation is to be calculated has been agreed or resolved under this Condition F5;
- (c) each Access Party which was given a notice of the proposal for Vehicle Change, having been given a reasonable opportunity to object to such implementation, has not objected to it; and
- (d) there is no other dispute (whether under this Condition F5 or otherwise) as regards the proposed change between the Sponsor and any other Access Party.

# Part G - Network Change

## Explanatory Note

- A. *Part G is concerned with the procedures which Network Rail and Train Operators 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 condition or layout of track) or operational (e.g. the introduction of a speed restriction on a section of track, or a change to the way Network Rail maintains track), 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 sections 39 and 40 of the Act (i.e. lines which are, or have in the preceding five years been, used for passenger services) and changes to the Systems Code are not Network Changes; and*
  - (v) closures of lines which are not covered by the statutory procedures under sections 39 and 40 of 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 a Train Operator. All Network Changes, whether proposed by Network Rail or by a Train Operator, 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 Train Operators whom it will affect (and, where the change is proposed by a Train Operator, 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 Access Dispute Resolution Rules) 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 Network Rail and Train Operators under Part G do not apply (see further Condition G5).*

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 Train Operators 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 Train Operators. Condition G5 is concerned with mandatory changes (resulting from a Change of Law or a Direction of a Competent Authority). Condition G6 is concerned with dispute resolution in connection with Network Change proposals.*

H. *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 Train Operators 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 proposals both as to how the implementation of the change should be funded (whether by Network Rail or by Train Operators) and as to how affected Train Operators 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 Train Operators 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) Train Operators are entitled to be reimbursed 75% of their reasonable costs of assessing a Network Change proposal by Network Rail. Network Rail may require Train Operators to provide it with estimates of such assessment costs, or to cease incurring such costs.
  - (v) In responding formally to a Network Change proposal, Train Operators must either accept the proposal in its entirety or object to it on one or more of the grounds specified in Condition G2.1(a) or (b). These fall into three categories: objections to the proposed change in principle; objections to the change proposal on the grounds that it does not contain sufficient information to allow the Train Operator to make an informed response; and objections to the terms on which Network Rail proposes to compensate the Train Operator for costs, losses and expenses which it may incur as a result of the implementation of the proposed change. The benefits of the change to the Train Operator 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 Train Operators, refer the matters in dispute to the relevant ADRC tribunal or abandon the proposal. Implementation will then depend on whether the ADRC proceedings and any subsequent appeal to the Office of Rail Regulation result in a determination that the change should be implemented on terms which are acceptable to Network Rail. If no Train Operator objects to a Network Change proposal, Network Rail is entitled to implement it.
- I. Where a Train Operator wishes to make a Network Change proposal, the procedure is as follows:
- (i) The Train Operator ("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 proposals both as to how the implementation of the change should be funded (whether by Network Rail or by Train Operators) and as to how Network Rail and affected Train Operators 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 Train Operators 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 whether it, or another Train Operator, objects to the proposal in principle or on the grounds that it contains insufficient information; or whether it or any other operator of railway assets objects on compensation grounds. The benefits of the change to Network Rail or any other Train Operator 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 Train Operators to the extent that they raise objections to the proposal, refer the matters in dispute to the relevant ADRC tribunal or abandon the proposal. Implementation will then depend on whether the ADRC proceedings and any subsequent appeal to the Office of Rail Regulation (see further Condition G6) result in a determination that the change should be implemented on terms which are acceptable to Network Rail. If there are no objections to the proposal the Sponsor is entitled to require Network Rail to implement it.*
- (vii) *Where a proposal for Network Change proposed by a Train Operator requires the implementation of a Vehicle Change, that Train Operator must follow the required procedures under Part F as well as those under Part G.*

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



## DEFINITIONS

In this Part G, unless the context otherwise requires:

“authorised variation” means a variation to an established Network Change, where:

- (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;

“established Network Change” means a change falling within paragraphs (i) to (iii) of 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 a Train Operator, Network Rail is required by this Part G to carry out,

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

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

“Network Change” means, in relation to a Train Operator:

- (i) any change (including any improvement or enlargement) to:
  - (a) any part of the Network; or

- (b) the format of any operational documentation (other than Railway Group Standards) owned or used by Network Rail or a Train Operator,

which is likely materially to affect the operation of the Network, or of trains operated by that operator on the Network; or

- (ii) any material change to the location of any of the specified points referred to in Condition B1.1(a); or
- (iii) any change (not being a change within paragraph (i) or (ii) above) to the operation of the Network (including a temporary speed restriction) or series of such changes which has lasted for more than six months (or such other period as may be specified in that operator's Access Agreement) and which is likely materially to affect the operation of trains by that operator on the Network; or
- (iv) any material change to a previously agreed network change (and for the purposes of this definition a previously agreed network change means any change as referred to in paragraph (i), (ii) or (iii) above which has not yet been implemented by Network Rail but in respect of which the procedure set out in this Part G has been initiated),

and shall not include a closure (as defined in section 39(1)(a)-(c) or 40(1) of the Act) or any change to any System or System Interface of any System owned or used by Network Rail or a Train Operator;

“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 a Train Operator 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 Train Operator,

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 Train Operators,

and which shall not be:

- (x) less than 60 days; or
- (y) 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;

“Sponsor”

means, in relation to a proposal for a Network Change under Condition G3.1, the Train Operator which has made the proposal;

“System”

means any configuration of computer hardware, software and related communications equipment, whether or not the components are located on one site;

“System Interface”	means that part (whether logical, electrical, mechanical or otherwise) of any System which enables that System to interface with any other System, including but not limited to interfacing for the purpose of passing data or other information between them;
“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”	means, in relation to an established Network Change, a procedure which: <ul style="list-style-type: none"> <li>(a) forms part of the terms and conditions on which the Network Change is established; and</li> <li>(b) provides for the established Network Change itself to be varied after it has been first established.</li> </ul>

## **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 a Train Operator 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 Train Operator may reasonably request in connection with the development of a proposal for Network Change (whether the proposal is made by that Train Operator or another person);
- (b) the publication on its website of:
  - (i) every proposal for Network Change made by Network Rail under Condition G1.1 or by a Train Operator under Condition G3.1;
  - (ii) every response to a proposal for Network Change made by a Train Operator under Condition G2.1 or by Network Rail under Condition G4.1;
  - (iii) every determination of matters which have been referred to the relevant ADRC tribunal or the Office of Rail Regulation under Condition G6.1 or G6.2;
  - (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 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 a Train Operator under Condition G3;
- (c) the provision of a preliminary response to a proposal for Network Change by a Train Operator under Condition G3.4;
  - (d) such consultation before a notice of a proposal for a Network Change is submitted by a Train Operator 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 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 a Train Operator 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.

#### **A4 Compliance with Railway Group Standards**

The obligations to comply with the requirements of this Part G are without prejudice to the obligations of the Access Parties to comply with Railway Group Standards.

### **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 Train Operator that may be affected by the implementation of the proposed Network Change;

- (ii) the Strategic Rail Authority;
  - (iii) the HSE;
  - (iv) the Office of Rail Regulation; and
  - (v) each Passenger Transport Executive that may be affected, Transport for London if it may be affected, and the Scottish Executive if it may be affected, by the implementation of the proposed Network Change; and
- (b) without delay publish on its website the notice 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 Train Operators and Network Rail under Conditions G1 and G2;
- (b) invite the persons specified in Condition G1.1(a)(ii)-(v) to submit comments by the relevant response date;
- (c) 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 Train Operators in respect of the change; and

- (v) any additional terms and conditions which Network Rail proposes should apply to the change, including any proposed variation procedure; and
- (d) 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.

### **I.3 Consultation**

- I.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.
- I.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.

### **I.4 Obligations on Train Operators to facilitate Network Change**

- I.4.1 Except in the circumstances and to the extent specified in Condition G1.4.2, a Train Operator 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 Train Operator, unless the Train Operator indicates otherwise; and
    - (ii) if it is negative, include reasons.



**1.4.2** A Train Operator 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 Train Operator 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 Train Operator shall be entitled to reimbursement by Network Rail of 75% of all costs incurred by that Train Operator in assessing any Network Change proposed by Network Rail. Those costs shall be the minimum reasonably necessary for that Train Operator to carry out that assessment.

### **1.6    *Further information regarding costs***

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

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

A Train Operator 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 (iii) 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 Train Operator 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 (i) 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 (or such longer period as may be specified in the relevant Train Operator's Access Agreement). 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 TRAIN OPERATOR TO NETWORK CHANGE PROPOSAL**

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

The Train Operator shall give notice to Network Rail if it considers that either:

- (a) one or more of the following conditions has been satisfied:
  - (i) the implementation of the proposed change would necessarily result in Network Rail breaching an access contract to which that Train Operator is a party;

- (ii) Network Rail has failed, in respect of the proposed change, to provide sufficient particulars to that Train Operator under Condition G1.2; or
  - (iii) the implementation of the proposed change would result in a material deterioration in the performance of that Train Operator's trains which cannot adequately be compensated under this Condition G2; or
- (b) it should be entitled to compensation from Network Rail for the consequences of the implementation of the change.

Any notice of the kind referred to in paragraph (a) above shall include the reasons for the Train Operator's opinion. Any notice of the kind mentioned in paragraph (b) above shall include a statement of the amount of compensation required and the means by which the compensation should be paid, including any security or other assurances of payment which Network Rail should provide. Any such statement shall contain such detail as is reasonable to enable Network Rail to assess the merits of the Train Operator's decision.

## **2.2 *Amount of compensation***

Subject to Condition G2.3, the amount of the compensation referred to in Condition G2.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred by the Train Operator as a consequence of the implementation of the proposed change.

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

There shall be taken into account in determining the amount of compensation referred to in Condition G2.1:

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

## **2.4 Rights in relation to implementation of Network Change**

If:

- (a) a Train Operator shall have given notice to Network Rail pursuant to Condition G2.1(a) and Network Rail shall have failed to refer the matter for determination pursuant to the Access Dispute Resolution Rules; or
- (b) a Train Operator shall have given notice to Network Rail pursuant to Condition G2.1(b) and Network Rail shall have failed either:
  - (i) to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or
  - (ii) to refer the matter for determination pursuant to the Access Dispute Resolution Rules within 14 days of the date of the notice in question,

the proposed Network Change shall not be implemented. In any other case and subject to the other provisions of the Network Code, Network Rail shall be entitled to implement the Network Change.

## **CONDITION G3 - NETWORK CHANGE PROPOSAL BY TRAIN OPERATOR**

### **3.1 Notice of proposal**

A Train Operator 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 Train Operator that may be affected by the implementation of the proposed Network Change;
  - (ii) the Strategic Rail Authority;
  - (iii) the HSE;
  - (iv) the Office of Rail Regulation; and
  - (v) each Passenger Transport Executive that may be affected, Transport for London if it may be affected, and the Scottish Executive 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 by a Train Operator**

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 Train Operator 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 from a Train Operator, 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 Train Operators and Network Rail 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 Train Operators 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; 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 a Train Operator of 75% of all costs incurred by Network Rail in assessing any Network Change proposed by that operator. 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 a Train Operator from time to time, provide the Train Operator with written estimates of the costs of assessing a proposal for Network Change submitted by that operator (as referred to in Condition G3.5) including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that assessment before commencing such work; and
- (b) upon request from the 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 a Train Operator at any time, incur no further costs (except any costs that cannot reasonably be avoided) in respect of any proposal for Network Change made by that Train Operator.

### **3.9 Relationship with Vehicle Change**

If the implementation of a Network Change proposed by a Train Operator also requires the implementation of a Vehicle Change in respect of the trains operated by that Train Operator, the Sponsor 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**

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 of the proposed change has failed in a material respect to comply with its obligations under Condition G3.1 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;

- (b) any Train Operator 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; 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.

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

#### **4.2 *Amount of compensation***

Subject to Condition G4.3, the amount of the compensation referred to in Condition G4.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred by 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.

#### **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) the benefit (if any) to be obtained or likely in the future to be obtained by Network Rail or any other Train Operator as a result of the proposed Network Change; and

- (b) the ability or likely future ability of Network Rail or any such other Train Operator to recoup any costs, losses and expenses from third parties including passengers and customers.

#### **4.4 *Rights in relation to implementation of Network Change***

If:

- (a) Network Rail shall have given notice to the Sponsor pursuant to Condition G4.1(a) or (b) and the Sponsor shall have failed to refer the matter for determination pursuant to the Access Dispute Resolution Rules; or
- (b) Network Rail shall have given notice to the Sponsor pursuant to Condition G4.1(c) or (d) and the Sponsor shall have failed either:
  - (i) to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or
  - (ii) to refer the matter for determination pursuant to the Access Dispute Resolution Rules within 14 days of the date of the notice in question,

the proposed Network Change shall not be implemented. In any other case, and subject to the other provisions of the Network Code, the Sponsor shall be entitled to have it implemented by Network Rail.

#### **CONDITION G5 - 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:

- (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(c)(iv)) in respect of that Network Change;
- (b) each Train Operator shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that Network Change and shall, except to the extent that the relevant Change of Law or Direction otherwise

requires, comply with Conditions F2.1, F2.2 and F2.3 (other than Conditions F2.2(a)(vi) and F2.3.1(c)(v)(B) and (D)); and

- (c) each Access Party shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof.

## **CONDITION G6 - APPEAL PROCEDURE**

### **6.1 *Right of appeal to relevant ADRC tribunal***

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 or G4.1 (and, in particular, the amount of any compensation referred to in those Conditions); or
- (c) any estimate referred to in Condition G1.6 or G3.6,

that Access Party may refer the matter to the relevant ADRC tribunal for determination under Part A of the Access Dispute Resolution Rules.

### **6.2 *Right of appeal to the Office of Rail Regulation or the Court***

If any Access Party is dissatisfied with any decision of the relevant ADRC tribunal in relation to any matter referred to it under Condition G6.1, that Access Party may refer the matter to the Office of Rail Regulation for determination under Part M.

### **6.3 *Implementation of Network Change***

6.3.1 The referral of any matter under Condition G6.1 or G6.2 concerning:

- (a) the amount of costs to be reimbursed under Condition G1.5 or G3.5, but not
- (b) the method by which such costs are to be calculated,

shall not entitle any person other than the Sponsor to delay the implementation of the Network Change pending the determination of the matter without the consent of the Sponsor.

6.3.2 Network Rail may implement a Network Change which, but for this Condition G6.3.2, would not be an established Network Change if:

- (a) the amount of any compensation referred to in Conditions G2.1 or G4.1 has not been agreed;
- (b) the method by which such compensation is to be calculated has been agreed or resolved under this Condition G6;
- (c) each Train Operator which was given a notice of the proposal for that Network Change, having been given a reasonable opportunity to object to such implementation, has not objected to it; and
- (d) there is no other dispute (whether under this Condition G6 or otherwise) as regards the proposed change between Network Rail and any such Train Operator.

# Part H - Operational Disruption

## Explanatory Note

- A. *The current provisions of Part H are to be replaced, over time, by a new Part H, as set out in Condition HA. The key elements of the new provisions are the establishment by Network Rail, in consultation with the industry, of a Railway Operational Code (the “ROC”), which will have 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 to cover 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. *The ROC is to be established in accordance with a ROC plan established by Network Rail and approved by the Office of Rail Regulation. Provision is made for the coming into effect of Condition HA to be deferred by the Office of Rail Regulation.*
- D. *Part H provides procedures and plans for minimising the effects of operational disruption. Operational disruption is categorised as either a Disruptive Event or a case of minor disruption. The dividing line is materiality and different regimes apply to each category of disruption.*
- E. *A Disruptive Event materially prevents or materially disrupts the operation of trains on any part of the Network and in those circumstances Network Rail is required to decide the most appropriate action after the occurrence of a Disruptive Event, taking into account certain principles, Codes of Practice and Contingency Plans and with a view to minimising the inconvenience of passengers but having due regard to the interests of operators of non-passenger trains. If a Disruptive Event only affects one Train Operator, Network Rail is required to take such action as the Train Operator reasonably requires to restore the operation of trains over the affected part of the Network.*
- F. *There are provisions for the development and implementation of Contingency Plans and Codes of Practice, for minimising the effects of an extended period of disruption and for any consequential amendment to the Working Timetable including a consultation process with the Train Operators affected by a Disruptive Event and those likely to be affected.*
- G. *A Train Operator is required to comply with Network Rail's instructions in the event of a failure of one of its trains provided such request does not contravene any Railway Group*

*Standard. Any Train Operator may be commissioned to assist a failed train of another Train Operator.*

- H. In adverse weather conditions or where the track is obstructed, a Train Operator may be requested by Network Rail to provide Network Rail with any of its equipment and with reasonable assistance.*
- I. Network Rail is required after the end of a Disruptive Event or extended period of disruption to restore the Working Timetable as soon as is reasonably practicable and if Network Rail has reasonable grounds to believe that it is not reasonably practicable so to do, Network Rail is required to give notice to the Train Operators affected or likely to be affected and to repeat the procedures for determining a Disruptive Event and implementing an amendment to the Working Timetable.*
- J. Part H also deals with train regulation, which is in effect the means whereby operations are restored to normal following cases of minor disruption. Network Rail is obliged to establish and comply with a train regulation statement in respect of each discrete part of the Network which is a statement specifying the procedures to be followed in such circumstances taking into account certain specified objectives.*
- K. The train regulation statement will be issued annually by Network Rail at the Principal Change Date occurring in each calendar year and will be preceded by a notification and consultation process with Train Operators affected or likely to be affected by any minor disruption commencing 240 days prior to the Principal Change Date. During such period, if a Train Operator disagrees with the train regulation statement, it has a right of appeal to the Timetabling sub-Committee of the Access Dispute Resolution Committee (established under the Access Dispute Resolution Rules). If either Network Rail or the Train Operator is dissatisfied with the decision of that Committee, it may appeal to the Office of Rail Regulation or refer the matter to arbitration depending on the matter in dispute. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.*
- L. This Explanatory Note does not form part of the Network Code.*

## DEFINITIONS

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

“access rights”	means permission to use track for the purpose of or in connection with the operation of railway assets by a Train Operator;
“affected train operator”	means a Train Operator which is reasonably likely to be affected by the implementation of the train regulation statement in question;
“appeal body”	means the Timetabling Committee, an arbitrator or the Office of Rail Regulation determining a matter referred to it or him pursuant to Condition H11.9;
“appellant”	means an affected train operator making a reference to the Timetabling Committee, an arbitrator or the Office of Rail Regulation pursuant to Condition H11.9;
“applicable train regulation statement”	means the train regulation statement which applies to a part or parts of the Network in respect of which the affected train operator in question has access rights;
“Appropriate Location”	<p>means the nearer of:</p> <ul style="list-style-type: none"><li>(a) the nearest point at which it is reasonably practicable to attach an alternative locomotive to a Failed Train; and</li><li>(b) <ul style="list-style-type: none"><li>(i) in respect of a Failed Train which is a passenger train, the nearest point at which it is reasonably practicable for its passengers to alight so as to continue with their forward journeys; and</li><li>(ii) in respect of a Failed Train which is a non-passenger train, the nearest point at which it is reasonably practicable to stable it;</li></ul></li></ul>
“case of minor disruption”	means the occurrence or existence of an event or circumstance which prevents or disrupts the operation of trains on any part of the Network in accordance with the Working Timetable (including an amended Working Timetable established pursuant to Condition H7.3) and which is not a Disruptive Event;



“Code of Practice”	means, in relation to any Route, a code of practice established pursuant to Condition H4 and designed to deal with a Disruptive Event in circumstances where either: <ul style="list-style-type: none"> <li>(a) no Contingency Plan has been developed; or</li> <li>(b) an existing Contingency Plan does not adequately deal with the Disruptive Event in question;</li> </ul>
“Contingency Objective”	has the meaning ascribed to it in Condition H3.1;
“Contingency Plan”	means a plan of action developed in accordance with the procedures set out in Condition H5;
“Control Point”	means that person or section within a Train Operator’s organisation whose responsibility includes dealing with Disruptive Events;
“deal with”	in relation to a Disruptive Event or an Extended Disruption, includes dealing with the consequences of the disruption in question;
“Disruptive Event”	has the meaning ascribed to it in Condition H1;
“Extended Disruption”	has the meaning ascribed to it in Condition H7.1;
“Failed Train”	means a train which is the subject of a Train Failure;
“first consultation notice”	means the notice given pursuant to Condition H11.4.1;
“freight customer”	means a person to whom services for the carriage of goods by railway are or are to be provided;
“Network Rail Operations Control”	means, in relation to a Route, that part of Network Rail’s organisation which is responsible for dealing with Disruptive Events on that Route;
“non-passenger train”	means a train which is not a passenger train;
“passenger train”	means a train which provides services for the carriage of passengers by railway;
“Plan Route”	means, in respect of a Train Operator, any of its Routes covered by a Contingency Plan;

“Principal Change Date”	has the meaning given to that term in Part D [applicable to preparation of the timetable commencing on 23 May 2004 and of subsequent timetables] of this Network Code;
“relevant third party”	means an affected train operator which the relevant appeal body shall have required to provide evidence or make submissions to it pursuant to Condition H11.10.3(b);
“through journey”	means a journey during which the passenger in question will require to change trains at least once;
“time sensitive goods”	means goods carried by railway in respect of which the time at which they are delivered to their intended destination is a matter of material importance: <ul style="list-style-type: none"> <li>(a) to either or both of the consignor and the consignee, whether because of their perishable nature, the terms of the contract for their sale, other disposal or transportation, or in any other respect; or</li> <li>(b) in the interests of safety or security;</li> </ul>
“Train Failure”	means any failure of a train to move under its own power (including as a result of breakdown or any failure properly to load the train) which adversely affects either the operation of other trains on the Network or any works carried out or to be carried out by or on behalf of Network Rail during a possession to which Network Rail is entitled pursuant to this Network Code or any Access Agreement;
“train regulation objective”	has the meaning ascribed to it in Condition H11.1; and
“train regulation statement”	means a policy and set of procedures established pursuant to Condition H11.2.

## CONDITION HA – RAILWAY OPERATIONAL CODE

### DEFINITIONS

In this Condition HA of 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 Condition HA to make a reference in that respect to an Appeal Body;

“Appeal Body” means the relevant ADRC tribunal or the Office of Rail Regulation, as the case may be;

“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, that the ROC Section has come into effect whether:

- (a) following publication of the ROC Section (or if publication is not required notification of the ROC Section 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 HA7; or
- (ii) variation under Condition HA8,

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 HA2.2;
“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 HA5.4;
“Railway Operational Code”	has the meaning ascribed to it in Condition HA2.1;
“ROC Plan”	<p>means a plan for the establishment of the Railway Operational Code which shall:</p> <ul style="list-style-type: none"> <li>(a) comply in all respects with this Condition HA;</li> <li>(b) be consistent with the ORR ROC Criteria;</li> <li>(c) specify a clear and achievable timetable for the establishment of each ROC Section and the full Railway Operational Code; and</li> <li>(d) show in reasonable detail the proposed organisation of the Railway Operational Code; and</li> </ul>
“ROC Section”	means a section of the Railway Operational Code covering one or more of the matters specified in Condition HA4 or any part of them.

## **CONDITION HA - RAILWAY OPERATIONAL CODE**

### **HA1 *Replacement of Part H***

#### **HA1.1 *General***

This Condition HA1 has effect from 10 January 2005.

#### **HA1.2 *Effective date of Conditions HA2-HA8***

The remaining provisions of this Condition HA shall have effect from the date specified for their commencement in a notice given by the Office of Rail Regulation after consultation with Network Rail, every Train Operator, Access Option Holder, Passenger Transport Executive, the Scottish Executive and the Strategic Rail Authority.

#### **HA1.3 *Alternative CRC proposals***

No notice may be given under Condition HA1.2 if:

- (a) the Class Representative Committee has approved and submitted to the Office of Rail Regulation for approval a different entire Part H of the Network Code; and
- (b) that different Part H has been approved by the Office of Rail Regulation.

#### **HA1.4 *Repeal of existing Part H***

Subject to Condition HA1.6, this Part H shall cease to have effect:

- (a) when, and to the extent that:
  - (i) the requisite conditions have been satisfied; and
  - (ii) the Office of Rail Regulation gives notice that they have been satisfied; or
- (b) when the Office of Rail Regulation has approved a different entire Part H submitted to it under Condition C7.

#### HA1.5 *Requisite conditions*

The requisite conditions are that:

- (a) the remaining provisions of this Condition HA have come into force in accordance with a notice given under Condition HA1.2; and
- (b) ROC Sections corresponding to the relevant provisions of Part H have been established.

#### HA1.6 *Saving*

In the circumstances specified in Condition HA1.4(a), Condition HA1.4 shall not apply to this Condition HA.

### **HA2 *Railway Operational Code and its Objective***

#### HA2.1 *Railway Operational Code*

The Railway Operational Code is a code to be established under this Condition HA and references to the Railway Operational Code include each ROC Section when it is established and all plans, procedures and documents which are produced under the code.

#### HA2.2 *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's 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.

#### HA2.3 *Relationship to the Network Code*

The Railway Operational Code, including each ROC Section and all subsidiary documentation:

- (a) is the code specified in Condition HA of the Network Code;
- (b) may only be varied under Condition HA of the Network Code;
- (c) shall provide for any matter concerning or in connection with the establishment of a ROC Section or any variation of a ROC Section or the production, review and approval of any subsidiary documentation to be referred to the relevant ADRC tribunal under Condition HA7.1 or the Office of Rail Regulation under Condition HA7.2; but

the Railway Operational Code, including each ROC Section and all subsidiary documentation, as established, does not form part of the Network Code.

### **HA3 *Obligation to observe the Railway Operational Code***

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

### **HA4 *Scope of Railway Operational Code***

The Railway Operational Code shall contain:

- (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 documents, including contingency plans and operational procedures which are required to be produced under the Railway Operational Code.

## **HA5 *Establishment and publication of the Railway Operational Code***

### **HA5.1 *Establish in sections***

The Railway Operational Code shall be established in sections as specified in the ROC Plan.

### **HA5.2 *Consistency with Objective***

Network Rail shall ensure that each ROC Section is consistent with and promotes achievement of the Objective and that the Railway Operational Code, when fully established, covers all matters specified in Condition HA4 to the extent necessary to promote the achievement of the Objective.

### **HA5.3 *Publication***

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



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

#### HA5.4 *Permitted Exemptions*

Permitted Exemptions are any matters contained in a ROC Section in respect of which the ORR's ROC Criteria provide that general publication under Condition HA5.3 is not required.

#### HA5.5 *ROC Plan*

Network Rail shall:

- (a) after consultation with the persons specified in Condition HA1.2 produce a draft ROC Plan and seek the approval of the Office of Rail Regulation to its form and content under Condition HA5.6;
- (b) upon such approval, publish on its website the ROC Plan within 30 days of Part HA coming into effect or such longer period as may be approved by the Office of Rail Regulation; and
- (c) produce and publish on its website regular quarterly reports showing progress in establishing the Railway Operational Code against the ROC Plan.

#### HA5.6 *Approval of ROC Plan by the Office of Rail Regulation*

Network Rail shall:

- (a) submit the draft of the ROC Plan and a draft of any variation to the ROC Plan to the Office of Rail Regulation for approval before publication; and
- (b) make such modifications to the draft ROC Plan or such draft variation as the Office of Rail Regulation may require as a condition of its approval.

#### **HA5.7 *Variations to ROC Plan***

Network Rail may from time to time propose variations to the ROC Plan which shall:

- (a) be subject to the approval of the Office of Rail Regulation under Condition HA5.6;
- (b) upon such approval, be published on its website; and
- (c) take effect accordingly.

#### **HA6 *Establishment of a ROC Section***

##### **HA6.1 *Draft of a ROC Section***

In accordance with the ROC Plan Network Rail shall publish and send a draft of each ROC Section to each affected Train Operator, containing:

- (a) details of any procedures of the kind specified in Condition HA4 which Network Rail proposes should be included in the ROC Section;
- (b) a statement of:
  - (i) any subsidiary documents including contingency plans and operational procedures which are required to be produced under the ROC Section; and
  - (ii) the timetable for the production and approval of such subsidiary documents; and
- (c) a statement of:
  - (i) the parts of Part H which will be replaced by the ROC Section; and
  - (ii) any relevant transitional measures or procedures which will be required on establishment of the new ROC Section.

#### *HA6.2 Adequacy of a draft ROC Section*

Each draft ROC Section shall be prepared to a standard and in such detail as is reasonably necessary to enable a Train Operator to assess the effect of the ROC Section on the operation of its trains and its adequacy to promote achievement of the Objective.

#### *HA6.3 Consultation on draft ROC Section*

As soon as reasonably practicable after the date on which Network Rail publishes and sends a draft ROC Section to each relevant Train Operator, Network Rail shall:

- (a) consult each affected Train Operator in relation to the parts of the draft ROC Section relevant to such Train Operator, and invite the submission to it of representations or objections in respect of the draft ROC Section;
- (b) if the Strategic Rail Authority, the HSE, the Office of Rail Regulation, any Passenger Transport Executive or the Scottish Executive gives notice to Network Rail that it wishes to be consulted on any matter concerning the ROC Section, consult with such body;
- (c) schedule and attend a meeting to which all of the Train Operators whose Services may be affected by the implementation of the ROC Section, or any part of it, are invited with a view to establishing the specification of the procedures and other matters of common interest;
- (d) specify a date for concluding such consultation which is consistent with the ROC Plan; and
- (e) conclude such consultation by the date specified under Condition HA6.3(d).

#### *HA6.4 Response on consultation*

Each Train Operator or other body consulted under Condition HA6.3 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 under Condition HA6.3(d).

#### HA6.5 *Decision and establishment*

Following consideration of all representations and objections received under Condition HA6.4, Network Rail shall:

- (a) decide on the content of the ROC Section; and
- (b) subject to Condition HA5.3, publish the ROC Section and send a copy to each affected Train Operator,

and thereby establish the ROC Section in question.

#### HA6.6 *Timing*

Network Rail shall publish each ROC Section not later than the time set in the ROC Plan for establishing that ROC Section.

#### HA6.7 *Saving*

The obligations in this Condition HA6 are without prejudice to Conditions HA7 (Appeals) and HA8 (Variations to Railway Operational Code).

#### HA6.8 *Subsidiary Documents*

All subsidiary documents which are required to be produced under the Railway Operational Code shall:

- (a) be produced in a timely manner in accordance with the ROC Plan;
- (b) be of a standard which is consistent with promoting the achievement of the Objective and the requirement for compliance under Condition HA3 and
- (c) shall be subject to procedures for review and approval which are in accordance with the ORR's ROC Criteria.

## **HA7 Appeals**

### *HA7.1 Right of appeal to relevant ADRC tribunal*

Subject to Condition HA7.3, if any Train Operator is dissatisfied as to any matter concerning or in connection with:

- (a) the establishment of a ROC Section, including the provisions of any ROC Section concerning the production, review or approval of subsidiary documentation; or
- (b) any variation of a ROC Section issued under Condition HA8; or
- (c) any decision by Network Rail not to implement a variation proposed by a Train Operator under Condition HA8.2,

the Train Operator may refer the matter to the relevant ADRC tribunal for determination under the Access Dispute Resolution Rules (as supplemented or varied by this Condition HA7).

### *HA7.2 Appeal to the Office of Rail Regulation*

If any Access Party is dissatisfied with any decision of the relevant ADRC tribunal in relation to any matter referred to it under Condition HA7.1, that Access Party may refer the matter to the Office of Rail Regulation under Part M.

### *HA7.3 Time limits for appeal*

A Train Operator's right of appeal under Condition HA7.1 shall lapse if the relevant matter is not referred to the relevant ADRC tribunal:

- (a) in the case of a new ROC Section, 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 HA6.5(b); and
- (b) in the case of a variation under Condition HA8, 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 HA8.5(a).

#### *HA7.4 Information to be sent in relation to the appeal*

Without prejudice to Condition HA7.6, if there has been a reference under Condition HA7.1 or HA7.2:

- (a) in the case of a referral to the relevant ADRC tribunal under Condition HA7.1, Network Rail shall provide the Train Operator and the relevant ADRC tribunal with the name and address of every other Train Operator who Network Rail reasonably considers may be affected by the ROC Section within 7 days of the making of the reference; and
- (b) in the case of a referral to either the relevant ADRC tribunal or the Office of Rail Regulation, 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 HA7.4(b)(i).

#### *HA7.5 Criteria for appeal*

Any matter referred under Condition HA7.1 or HA7.2 shall be determined by reference to the most effective manner of promoting the achievement of the Objective.

#### *HA7.6 Issue of adjusted ROC Section*

When any appeal brought under this Condition HA7 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, in the case of an appeal concluded in the relevant ADRC tribunal, with a copy to the Office of Rail Regulation) the ROC Section as adjusted by the outcome of such appeal.

### **HA8 Variations to Railway Operational Code**

#### *HA8.1 Mandatory Variations*

Network Rail shall propose changes 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.

#### *HA8.2 Variations proposed by a Train Operator*

A Train Operator may propose a change to the Railway Operational Code if it reasonably considers that this is necessary in order better to promote the achievement of the Objective by giving notice to Network Rail stating:

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

#### *HA8.3 Procedure for variations proposed by a Train Operator*

Following receipt of a notice of a proposed variation to the Railway Operational Code from a Train Operator under Condition HA8.2 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 HA8.4; or

- (ii) propose a change under Condition HA8.1 to implement the proposed variation; or
- (iii) give notice to the Train Operator that Network Rail does not propose to implement the proposed variation, giving reasons for its decision.

#### HA8.4 *Variations by agreement*

If Network Rail and any relevant Train Operator agree a variation to a ROC Section which affects only that Train Operator:

- (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 be not less than 7 days from the date of Network Rail's notice under Condition HA8.4(a)).

#### HA8.5 *Variations*

If Network Rail proposes a variation to a ROC Section under Condition HA8.1:

- (a) Network Rail shall notify each Train Operator which may reasonably be expected to be affected by such variation (with a copy to the Office of Rail Regulation) of the proposed variation and the timing for implementing the variation (which shall not be less than 30 days from the date of such notice) and shall specify the reason for the variation;
- (b) Network Rail shall:
  - (i) follow, in respect of the proposed variation, the procedure for establishing a ROC Section under Condition HA6; or
  - (ii) if the variation falls within any modification procedure contained in the relevant ROC Section as established, follow that procedure; and
- (c) the variation shall become effective in accordance with the relevant procedure subject to a Train Operator bringing an appeal in relation to the



variation under Condition HA7 within 30 days of receiving notification under Condition HA8.5(a), in which event the variation shall come into effect upon the final determination of the reference (including the withdrawal of any appeal), subject to any adjustments under Condition HA7.6.

#### **HA8.6 *Issue of varied ROC Section***

Network Rail shall publish on its website in accordance with Condition HA5.3 any variation to the Railway Operational Code.

### **CONDITION HI - DISRUPTIVE EVENTS AND ESTABLISHMENT OF COMMUNICATIONS**

#### **I.1 *Definition***

A Disruptive Event is any event or circumstance which materially prevents or materially disrupts the operation of trains on any part of the Network in accordance with the Working Timetable.

#### **I.2 *Notification by Train Operators***

Each Train Operator shall notify Network Rail of the occurrence of a Disruptive Event as soon as reasonably practicable after it becomes aware of it.

#### **I.3 *Notification by Network Rail***

Network Rail shall notify a Train Operator of the occurrence of a Disruptive Event which is likely to affect the operation of trains by that operator, as soon as reasonably practicable after it becomes aware of it.

#### **I.4 *Notification of expected Disruptive Events***

The Access Parties shall use their reasonable endeavours to provide one another of as much notice as is reasonably practicable of any Disruptive Event which they believe is likely to occur.

#### **I.5 *Information to be provided in notices of Disruptive Events***

Each notice given pursuant to Conditions HI.2, HI.3 and HI.4 shall, as far as reasonably practicable, include a specification of the nature and extent of the Disruptive Event in question and its likely duration, in an amount of detail as shall be reasonably required so as to enable the person receiving the notice to inform his

staff, passengers and other associates of the disruption in question and minimise the inconvenience and disruption which is likely to be caused to them.

#### **1.6 *Designation of Network Rail Operations Controls***

Network Rail shall designate and notify to each Train Operator the location and contact details of the Network Rail Operations Control in relation to its Routes.

#### **1.7 *Train Operator's Control Points***

Each Train Operator shall liaise with Network Rail in relation to the identity and location of its Control Point and the setting up of communication arrangements sufficient to ensure proper contact with the relevant Network Rail Operations Control. Any such communication shall, in the case of the Train Operator, be through its Control Point and, in the case of Network Rail, be through the relevant Network Rail Operations Control.

#### **1.8 *Conflict with Railway Group Standards***

If there is any conflict between this Part H and the provisions of any Railway Group Standard, the provisions of the relevant Railway Group Standard shall, to the extent of any inconsistency, prevail.

#### **1.9 *Relationship with performance regimes***

The provisions of this Condition H shall have effect without prejudice to any regime established between Network Rail and a Train Operator in or pursuant to their Access Agreement in relation to any incentives and payments associated with the performance of their respective obligations under that agreement.

### **CONDITION H2 - ACTION FOLLOWING A DISRUPTIVE EVENT**

#### **2.1 *Determination by Network Rail***

Network Rail shall, as soon as reasonably practicable following the occurrence of a Disruptive Event:

- (a) determine the most appropriate action to be taken to restore the operation of trains on the Network in accordance with the Working Timetable and, in making its determination, shall take account (in the order of priority in which they are listed where there is any inconsistency) of the following:
  - (i) any Contingency Plan which applies to the Disruptive Event in question;

- (ii) any Code of Practice which applies to the Disruptive Event in question; and
  - (iii) the Contingency Objective; and
- (b) consult as fully and regularly as reasonably practicable with each Train Operator affected or likely to be affected by the Disruptive Event as to the action which Network Rail proposes to take in connection with that event.

## **2.2 *Disruptive Events affecting only one operator of trains***

If the action to be taken to deal with a Disruptive Event is not likely to affect the operation of trains of more than one Train Operator, that Train Operator shall be entitled to require Network Rail to take such actions as the Train Operator shall reasonably specify in relation to the restoration of the operation of the affected part of the Network so as to permit the operation of trains on that part in accordance with the Working Timetable.

## **CONDITION H3 - CONTINGENCY OBJECTIVE**

### **3.1 *Definition***

The Contingency Objective is the minimisation of the inconvenience of passengers following the occurrence of a Disruptive Event, having due regard to the interests of operators of non-passenger trains.

### **3.2 *Relevant considerations***

In signalling and otherwise controlling the train movements over or along any track, Network Rail shall use all reasonable endeavours to achieve the Contingency Objective. In doing so, Network Rail shall have due regard to the need to strike a fair and reasonable balance between the interests of both passengers and freight customers in relation to:

- (a) the maximisation of the number of passengers carried by available railway vehicles (provided that, so far as reasonably practicable, a balance shall be maintained between the level of overcrowding of railway vehicles and the time and distance involved in the relevant railway passenger services);
- (b) the minimisation of journey times;
- (c) the completion of through journeys;
- (d) the need to keep passengers moving towards their destinations by such means as are appropriate (including bus links and the diversion of passengers on to alternative routes);

- (e) the need to keep time sensitive goods moving towards their destinations by such means as are appropriate (including by diversion and, if appropriate, change of mode of transport);
- (f) the minimisation of costs to each Train Operator affected by the Disruptive Event in question; and
- (g) safety and security.

## **CONDITION H4 - CODE OF PRACTICE**

### **4.1 *Development and establishment***

Each Train Operator shall, as soon as reasonably practicable following the date on which its Access Agreement comes into effect, participate, in conjunction with Network Rail, in the development and establishment of a Code of Practice complying with Condition H4.2.

### **4.2 *Contents***

Each Code of Practice shall:

- (a) conform with the Contingency Objective;
- (b) establish in general terms the roles and responsibilities of Network Rail and operators of trains in responding to a Disruptive Event; and
- (c) in particular, include provisions dealing with the following matters:
  - (i) communications between Network Rail and operators of trains following a Disruptive Event;
  - (ii) the identity of any relevant diversionary routes;
  - (iii) arrangements as to the utilisation of railway vehicles and requirements as to any relevant route and traction knowledge of Train Crews;
  - (iv) arrangements as to the provision of alternative bus services or alternative means of transporting time sensitive goods;
  - (v) the involvement of persons engaged to repair, renew or maintain the Network; and
  - (vi) the names and contact numbers of personnel to be contacted in the event of protracted disruption.

## **CONDITION H5 - DEVELOPMENT AND ESTABLISHMENT OF CONTINGENCY PLANS**

### **5.1    *Development and establishment***

The Access Parties shall, as soon as reasonably practicable following the date of signature of their Access Agreement, use all reasonable endeavours to procure, with the agreement of other operators of trains, the development and establishment of appropriate Contingency Plans in relation to particular types of Disruptive Event which may affect the Routes which they have permission to use.

### **5.2    *Conformity with Contingency Objective***

Each Contingency Plan shall conform with the Contingency Objective.

### **5.3    *Information***

Network Rail shall ensure that each Train Operator is kept informed both of the Plan Routes which are relevant to it and of the identity of the other operators of trains to whom those Plan Routes are also relevant, together with any changes to those routes or those other operators.

### **5.4    *Copies***

Network Rail shall, following agreement of a Contingency Plan with all relevant operators of trains, promptly send a copy of it to each Train Operator affected by the plan.

## **CONDITION H6 - APPLICATION OF CONTINGENCY PLANS etc.**

### **6.1    *Implementation***

Subject to any determination by Network Rail to the contrary pursuant to Condition H2.1, the Access Parties shall, on the occurrence of a Disruptive Event for which a Contingency Plan has been established, proceed to implement that plan so far as reasonably practicable.

### **6.2    *Train Crew knowledge***

Each Train Operator shall ensure that its Train Crews have an adequate route and traction knowledge of any diversion set out in an applicable Contingency Plan to the extent that the Contingency Plan in question so provides.

### **6.3    *Adaptation of plan***

Each of the Access Parties shall use all reasonable endeavours to adapt a Contingency Plan to the specific circumstances arising out of the Disruptive Event.

### **6.4    *Application of Code of Practice***

Subject to any determination by Network Rail to the contrary pursuant to Condition H2.1, where no Contingency Plan exists or adequately deals with a particular Disruptive Event, Network Rail shall apply the applicable Code of Practice (if any) in such a manner as it considers to be reasonable and appropriate in the circumstances.

### **6.5    *Contingency Objective***

Subject to any determination by Network Rail to the contrary pursuant to Condition H2.1, where no Contingency Plan exists or adequately deals with a particular Disruptive Event and no Code of Practice exists, Network Rail shall use all reasonable endeavours to secure the Contingency Objective in such a manner as it considers to be reasonable and appropriate in the circumstances.

## **CONDITION H7 - EXTENDED DISRUPTION - EMERGENCY TIMETABLING PROCEDURE**

### **7.1    *Definition***

An Extended Disruption is a Disruptive Event which is likely to be of sufficient duration as to make it practicable to adopt a revised timetable.

### **7.2    *Agreed amendment of Working Timetable***

Network Rail and any Train Operator which is affected by an Extended Disruption shall use all reasonable endeavours to agree an amendment of the Working Timetable so as to minimise the effects of an Extended Disruption. If such an amended Working Timetable shall have been agreed, the provisions of Condition H7.3 shall have effect accordingly.

### **7.3    *Network Rail to establish amended Working Timetable***

Subject to Condition H7.2, where an amended Working Timetable shall have been agreed, in the case of an Extended Disruption, Network Rail shall promptly produce a revised Working Timetable:

- (a) complying, to the extent reasonably practicable, with the procedures set out in Part D and having due regard, in particular, to the Decision Criteria (as defined in Part D); and
- (b) consulting, to the extent reasonably practicable, with each Train Operator affected or likely to be affected by the Extended Disruption

and shall keep the operation of the revised timetable under review, modifying it, where it reasonably considers necessary and after due consultation with Train Operators affected or likely to be affected by the Extended Disruption as far as reasonably practicable, to comply with the Decision Criteria.

#### **7.4 *Rights of appeal***

The procedures set out in Condition D5 shall apply *mutatis mutandis* to any changes or proposed changes to the Working Timetable pursuant to this Condition H7.

### **CONDITION H8 - CLEARANCE OF TRACK BLOCKAGES**

#### **8.1 *Failure of Train Operator's Train***

##### **8.1.1 *Notification of Train Failure***

If a Train Failure occurs in respect of a train operated by a Train Operator, it shall promptly notify Network Rail of the location of the Failed Train and any other details reasonably required by Network Rail in respect of the Failed Train.

##### **8.1.2 *Network Rail's obligation to consult operators***

On becoming aware that a Train Failure has occurred in respect of a train operated by a Train Operator, Network Rail shall promptly:

- (a) consult with the operator of the Failed Train in order to ascertain the reason for the Train Failure and to obtain such other information as may be necessary in order to effect a safe and expeditious removal of the Failed Train; and
- (b) consult with other operators of trains whose trains are or are likely to be in the vicinity of the Failed Train in order to assess the capability of those trains or the locomotives coupled to them to move the Failed Train.

##### **8.1.3 *Movement of failed train by its operator***

If, after consultation in accordance with Condition H8.1.2(a), Network Rail reasonably believes that the Train Failure in question can be remedied by action taken by or on behalf of the Train Operator's Train Crew at the site of the Train Failure, it may permit the Train Operator to take such action as is necessary to

move the Failed Train. Such permission may be subject to such time limits as Network Rail shall reasonably specify to the Train Operator having due regard to the effect of the Train Failure on trains on the same or adjoining sections of track.

#### **8.1.4** *Consultation where assistance required*

If, after consultation in accordance with Condition H8.1.2 and, if relevant, the expiry of any time limit specified by Network Rail pursuant to Condition H8.1.3, Network Rail reasonably believes that the Failed Train can only be moved with the assistance of another train or locomotive or other equipment, Network Rail shall consult with the Train Operator operating the Failed Train as to the capabilities of any trains or locomotives which are available to assist the Failed Train or the nature of other assistance.

#### **8.1.5** *Compliance with Network Rail's instructions*

The Train Operator shall, subject to Network Rail having consulted with it in accordance with Conditions H8.1.2 and H8.1.4, comply with any reasonable instructions of Network Rail for the purpose of ensuring, with any such assistance as is referred to in Condition H8.1.4, the prompt removal of the Failed Train to an Appropriate Location.

### **8.2 Assistance to a Failed Train**

#### **8.2.1** *Use of following train*

If, after consultation in accordance with Condition H8.1, Network Rail reasonably believes that the train, or the locomotive coupled to a train, immediately following a Failed Train is able to move the Failed Train by pushing or pulling it, Network Rail may commission the operator of such train or locomotive to use it to push or pull the Failed Train under the guidance and control of the operator of the Failed Train to such Appropriate Location as Network Rail shall notify to that operator.

#### **8.2.2** *Commissioning of other trains*

If a Failed Train cannot, in the opinion of Network Rail, be moved by the train or locomotive immediately following the Failed Train, Network Rail may commission any Train Operator in control of a train or locomotive in the vicinity of the Failed Train to move the Failed Train to such Appropriate Location as Network Rail shall notify to it. Network Rail may only commission the Train Operator's train or locomotive if, having had due regard to all relevant factors (including the factors set out in Condition H8.2.3), it reasonably believes the Train Operator's train or locomotive is the most appropriate means to move the Failed Train.



### 8.2.3 *Relevant factors*

The factors referred to in Condition H8.2.2 are, in relation to the relevant locomotive or train:

- (a) its fuel reserves;
- (b) the current use of the train or, in the case of a locomotive, the train to which it is coupled and, if relevant, the goods carried on the train;
- (c) the route knowledge of its Train Crew; and
- (d) the length of any delay to any assisting train or train to which an assisting locomotive is coupled (taking account of the time necessary to return an assisting locomotive or to provide a suitable replacement locomotive).

### 8.2.4 *Consent to commissioning required*

Network Rail may commission the train or locomotive of a Train Operator under this Condition H8 only with the consent of that Train Operator (which consent may not be unreasonably withheld or delayed).

### 8.2.5 *Compliance with directions*

Where it provides an assisting train or locomotive, a Train Operator shall comply with any directions given by Network Rail to move that Failed Train to such Appropriate Location as has been notified to him and, subject to such directions, that operator's Train Crew shall, during the course of moving the Failed Train, act under the guidance and control of the operator of the Failed Train. Nothing in this Condition H8.2.5 shall oblige any Train Operator to contravene any Railway Group Standard.

### 8.2.6 *Movement to Appropriate Location*

Network Rail shall use all reasonable endeavours to ensure that a Failed Train is moved to the Appropriate Location notified to the Train Operator in accordance with this Condition H8.2. A Train Operator commissioned to move a Failed Train under this Condition H8.2 shall be obliged to move such Failed Train only to an Appropriate Location notified to the Train Operator in accordance with this Condition H8.2.

### 8.2.7 *Timeous release of assisting train*

Network Rail shall use all reasonable endeavours to release the assisting train or locomotive to the assisting Train Operator within a period of 3 hours from the time at which such train or locomotive was commissioned by Network Rail in accordance with this Condition H8.2.

#### 8.2.8 *Assistance in reaching intended destination*

Network Rail shall use all reasonable means to assist a Train Operator whose train or locomotive has been commissioned to move a Failed Train, to reach its intended destination, as soon as reasonably practicable.

### 8.3 **Compensation for moving Failed Trains**

#### 8.3.1 *Obligation to reimburse Network Rail*

Except as provided for in Condition H8.3.4, if one of a Train Operator's trains is subject to Train Failure due to a mechanical defect or other cause attributable to the Train Operator and such train is moved in accordance with Conditions H8.1 and H8.2, the Train Operator shall pay Network Rail the sum of the amounts payable under Condition H8.3.2.

#### 8.3.2 *Right to payment for assisting Failed Train*

Except as provided for in Condition H8.3.4, if a Train Operator is commissioned to use one of its trains or locomotives to assist a Failed Train in accordance with Condition H8.2, Network Rail shall pay to the Train Operator:

- (a) £2,090; and
- (b) £210 for every hour which the locomotive is assisting the Failed Train over and above 3 hours.

#### 8.3.3 *Price Variation*

- (a) The amounts specified in Condition H8.3.2. shall remain in force until 31<sup>st</sup> March 2001.
- (b) On 1st April each year commencing with 1<sup>st</sup> April 2001 the amounts specified in Condition H8.3.2. which applied in the immediately preceding year shall be adjusted by multiplying them by the Adjustment Factor rounded to three decimal places to be calculated in accordance with the following formula:

$$\text{Adjustment Factor} = 1 + \frac{(\text{RPI}_{t-1} - \text{RPI}_{t-2})}{\text{RPI}_{t-2}} - 0.02$$

where:

RPI<sub>t-1</sub> means the average monthly value of the Retail Prices Index All Items ("RPI") issued by the Office for National Statistics for the 12 months up to and including the month of December immediately preceding the relevant 1<sup>st</sup> April.

RPI<sub>t-2</sub> means the average monthly value of the Retail Prices Index referred to above applicable for the 12 months up to and including the month of December which is 12 months before the month of December immediately preceding the relevant 1<sup>st</sup> April.

- (c) The amounts calculated in accordance with paragraph (b) above shall be rounded to the nearest £10.
- (d) As soon as reasonably practicable after 1<sup>st</sup> April each year, Network Rail shall give notice to each Train Operator of the adjusted amounts calculated in accordance with paragraph (b) above.

#### **8.3.4 *Alternative financial arrangements***

The provisions of Conditions H8.3.1, H8.3.2 and H8.3.3 shall apply subject to any alternative financial arrangements which may be agreed between Train Operators who are to pay and receive amounts under those conditions, provided such alternative arrangements have first been notified to and approved by Network Rail (such approval not to be unreasonably withheld or delayed).

#### **8.3.5 *Liability of assisting Train Operator for payments to Network Rail***

Without prejudice to any obligation arising as a result of its failure to perform any obligation or its negligence, no Train Operator shall be liable to pay to Network Rail any amount (whether in respect of permission to use track, signalling or other equipment or the provision of electricity or any service or otherwise) which it would, but for this Condition H8.3.5, have become liable to pay as a result of assisting a Failed Train.

### **CONDITION H9 - ADVERSE WEATHER CONDITIONS AND OBSTRUCTIONS**

#### **9.1 *Provision of equipment and assistance***

Subject to Condition H9.2, if a Train Operator holds any equipment which, in the reasonable opinion of Network Rail, may assist it in dealing with disruption to the operation of trains on the Network caused by either or both adverse weather conditions and obstructions of the track, it shall, where reasonably requested to do so by Network Rail, make that equipment available and otherwise provide reasonable assistance to Network Rail in remedying that disruption where requested to do so.

#### **9.2 *Payment***

Any equipment or assistance referred to in Condition H9.1 shall only be made available or provided to, or used in the assistance of, Network Rail on the payment of such fees as shall be agreed between the parties from time to time.

## **CONDITION H10 - RESTORATION OF WORKING TIMETABLE**

### **10.1 *Obligation to restore normal operation***

Subject to Condition H10.2, as soon as reasonably practicable after the end of a Disruptive Event or Extended Disruption, Network Rail shall:

- (a) procure that the operation of the Network shall be restored so as to permit the operation of trains in accordance with the Working Timetable; and
- (b) give to each Train Operator affected by the disruption in question as much notice of such restoration as is reasonably practicable.

### **10.2 *Continuation of emergency timetable***

As soon as reasonably practicable after Network Rail has reasonable grounds for believing that it is not likely to be reasonably practicable for it to procure that the operation of the Network shall be restored so as to permit the operation of trains in accordance with the Working Timetable after the end of a Disruptive Event or Extended Disruption, Network Rail shall:

- (a) give to each Train Operator affected or likely to be affected by the disruption in question notice of its opinion together with its reasons;
- (b) take into account any representations or objections which any of them shall make in relation to the matter; and
- (c) having regard to the fact that the amended timetable established pursuant to Condition H2 or H7 is likely to be in operation for a period which is longer than the period of operation expected when it was established, reconsider that timetable and re-comply with the procedures specified in Condition H2 or H7 (as the case may be).

The timetable established after compliance by Network Rail with this Condition H10.2 shall become the Working Timetable for the part or parts of the Network in question.

## **CONDITION H11 - TRAIN REGULATION**

### **11.1 *Train regulation objective***

The train regulation objective is the striking of a fair and reasonable balance between:

- (a) minimising overall delay to train movements (including Ancillary Movements);
- (b) minimising overall delay to passengers travelling or intending to travel by railway and the movement of time-sensitive goods, both in respect of the

aggregate delay to any one of them and the aggregate numbers of passengers and goods delayed;

- (c) maintaining connections between railway passenger services; and
- (d) avoiding undue discrimination between any person and any other person.

The interests of safety and security, as set out in Condition A1.1, are at all times paramount.

## **11.2 *Network Rail's obligation to establish and comply with train regulation statements***

Network Rail shall establish and thereafter comply with a train regulation statement in respect of each discrete part of the Network in accordance with the provisions of this Condition H11.

## **11.3 *Contents of train regulation statements***

Each train regulation statement:

- (i) shall contain:
  - (a) a specification of the cases of minor disruption in which it shall apply; and
  - (b) the procedures which Network Rail shall follow in cases of minor disruption when signalling and otherwise controlling train movements over or along any track comprised in the part or parts of the Network to which it applies; and
- (ii) may contain provisions for its own amendment provided that in all cases due regard shall be had to the train regulation objective.

## **11.4 *Consultation of affected train operators prior to notice of proposed train regulation statement***

11.4.1 Not later than 240 days before the Principal Change Date in each calendar year, Network Rail shall give notice to each affected train operator inviting it to make representations to it in relation to the manner in which train regulation should be carried out in cases of minor disruption in the year beginning on such Passenger Change Date in respect of each part of the network in respect of which such train operators have access rights.

11.4.2 Each affected train operator so consulted shall use all reasonable endeavours to provide to Network Rail such representations as it shall wish to make in respect of such train regulation within 30 days after receipt of the first consultation notice.

### **11.5 *Notice of proposed train regulation statement***

Not later than 60 days after giving the first consultation notice, Network Rail shall give notice to each affected train operator of its proposed applicable train regulation statement. Each such notice shall include:

- (a) the text of the proposed train regulation statement;
- (b) the part or parts of the Network to which it shall be intended to apply;
- (c) a statement of Network Rail's reasons for the proposed train regulation statement; and
- (d) such other information as it shall be reasonable for Network Rail to provide in order properly to inform affected train operators of the proposed train regulation statement and its likely effect on their operations.

### **11.6 *Consultation with affected train operators***

As soon as reasonably practicable after the date upon which Network Rail shall have given the first consultation notice, Network Rail shall consult each affected train operator in relation to the proposed train regulation statement, and shall invite the submission to it of representations or objections in respect of it.

### **11.7 *Establishment of train regulation statement***

Network Rail shall:

- (a) take into account all representations or objections received from affected train operators pursuant to Condition H11.6;
- (b) make such modifications to the proposed train regulation statement as it shall reasonably consider appropriate so as to ensure, so far as reasonably practicable, that the proposed train regulation statement complies with the train regulation objective; and
- (c) not later than 120 days after the date of the first consultation notice, establish the applicable train regulation statement by sending a copy of it to each affected train operator.

### **11.8 *Duration of train regulation statement***

A train regulation statement established pursuant to this Condition H11 shall have effect for the period from the relevant Principal Change Date until the next succeeding Principal Change Date.

## **11.9     *Right of appeal against train regulation statements***

If any affected train operator is dissatisfied with a train regulation statement established by Network Rail under Condition H11.7, it may:

- (a)     in the case of an allegation that the statement in question does not achieve the train regulation objective:
  - (i)     refer the matter for determination to the relevant ADRC tribunal under Part A of the Access Dispute Resolution Rules; and
  - (ii)    if it is dissatisfied with that determination, refer the matter to the Office of Rail Regulation for determination under Part M; and
- (b)     in any other case, refer the matter:
  - (i)     for determination to the relevant ADRC tribunal under Part A of the Access Dispute Resolution Rules; and
  - (ii)    if it is dissatisfied with that determination, to arbitration under Part C of the Access Dispute Resolution Rules.

## 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. These processes are illustrated in the flow charts appended to this Explanatory Note.*
- B. *Condition J1 (application of this Part J) provides that 'subject to any relevant law, nothing in this Part J shall prevent to a material extent the exercise of, or receipt of the benefit of, a protected right'. This provision aims to safeguard the position of operators with protected rights (for the purposes of Condition C8 of the network code), other than to the extent that a provision of Part J implements a relevant law (e.g. the use it or lose it mechanism in Condition J5 implementing Article 27 of Directive 2001/14).*
- C. *Condition J2 (adjustment of access rights) is based very closely on Part 8 of Schedule 7 of passenger track access agreements and Schedule 13 of freight track access agreements. It 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, including compensation where applicable. The two main changes from provisions in existing access agreements are:*
- (i) a requirement on Network Rail, following a request from a train operator for information about the surrender or adjustment of rights, to consult more widely than is currently required. In particular, Network Rail must consult any funders that may be directly affected by the relevant adjustment or surrender, which will include the SRA, Passenger Transport Executives, local authorities and the Scottish Executive (Condition J2.5); and*
  - (ii) where the train operator is dissatisfied with the terms on which Network Rail proposes to permit the adjustment or surrender of rights, the parties can go to expert determination if they prefer, rather than going to arbitration (Condition J 2.11).*
- D. *Condition J3 (confidentiality) is also taken from existing passenger and freight track access agreements. It 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, including other train operators who have provided information to Network Rail under an access agreement where disclosure would or might, in Network Rail's reasonable opinion, seriously and prejudicially affect the interests of that train operator.*



- E. Condition J4 (failure to use) is one of two elements to the use it or lose it (UIOLI) mechanism in Part J. It empowers Network Rail to initiate a process leading to the loss of an operator's rights, but does not require Network Rail to do so. As such, it differs from the use it or lose it mechanism in Condition J5.
- F. Condition J4.2.1 provides that a failure to use in respect of a quantum firm right shall occur:
- (a) if in any first working timetable established by Network Rail after the commencement date the train operator fails to secure one or more train slots in respect of that quantum firm right; or
  - (b) the train operator fails to make use of a train slot in the working timetable, which relates to that quantum firm right.
- G. A train operator will fail to make use of a train slot if it uses it for less than the use quota during the relevant use period. Both the use quota and the use period are to be determined and revised from time to time by the Office of Rail Regulation, after such consultation as it considers appropriate. Following such a determination or revision, details of the use quota and use period must be published by Network Rail in its network statement. A period of non-use which would otherwise count under the UIOLI mechanism must be disregarded if and to the extent that it is attributable to non-economic reasons beyond the train operator's control or if it is due to a strike or other industrial action. The non-use must also be continuing, so that Network Rail cannot initiate the mechanism where the non-use happened some time in the past, but was no longer continuing. This means that where a train operator has failed to use a train slot to the extent required by the use quota, but then uses the relevant train slot and achieves the quota, Network Rail must initiate the UIOLI process within 20 working days of the use quota being met.
- H. The UIOLI mechanism starts with Network Rail serving a failure to use notice on the train operator and copying it to the Office of Rail Regulation. The notice must specify details of the failure to use and the rights which Network Rail requires the train operator to surrender. If the operator accepts Network Rail's request to surrender the right then the rights are surrendered subject to the consent of the Office of Rail Regulation. If the train operator disagrees and wishes to retain the rights, within 10 working days of receipt of the failure to use notice it must serve a counter notice on Network Rail and copy it to the Office of Rail Regulation specifying that: there had been no failure to use; and/or that the failure to use was not continuing at the date the failure to use notice was served; and/or that there are grounds for objection to the proposed surrender.

- I. *If the train operator believes that it has grounds for objection to the proposed loss of rights, it must specify them. For a passenger train operator, the grounds for objection could be that the rights specified by Network Rail are essential for the fulfilment of the train operator's obligations under a franchise agreement. For a freight train operator, they could be that the operator has a reasonable on-going commercial need in respect of the rights in question. Both classes of operator could also argue that the rights in question relate to an enhancement to the network which the train operator is contracted to pay for through access charges.*
- J. *If the parties agree that a failure to use did not occur or did not come within the scope of the UIOLI mechanism, Network Rail's request to surrender the relevant rights falls. If the parties cannot agree, there is provision for the matter to go to arbitration or, if the parties prefer, expert determination. In all cases the surrender of rights is subject to the consent of the Office of Rail Regulation. The Office of Rail Regulation can give its consent to the surrender of part only of the rights.*
- K. *Condition J5 (failure to use: third party application) is the second element of the UIOLI mechanism in Part J. It 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. In many respects the procedure is the same as that under Condition J4, but there are some important differences:*
- (a) if Network Rail receives an application from a third party train operator (the applicant), it must initiate the UIOLI mechanism if the train slot requested: relates to a section of congested infrastructure as defined in Directive 2001/14/EC<sup>1</sup>; was secured in exercise of an incumbent operator's quantum firm right; and there has been a continuing failure to use by the incumbent operator. This is unlike Condition J4, where Network Rail can choose whether to initiate the mechanism;*
  - (b) the incumbent operator cannot cite the grounds for objection available under Condition J4 (e.g. that the right is essential for the fulfilment of the its franchise agreement or, in the case of a freight train operator, that it has a reasonable on-going commercial need to the right); and*
  - (c) whilst any dispute is between the incumbent train operator and Network Rail, the applicant is bound to accept that the award or determination will dispose of the matter as between the applicant and Network Rail as well.*

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<sup>1</sup> 'Congested infrastructure' is defined in Article 2 of Directive 2001/14/EC as 'a section of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity'.

- L. Condition J6 (cordon cap reduction (failure to use)) provides for the reduction of the incumbent operator'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 right<sup>2</sup>. Condition J6.1 provides that Condition J6 cannot apply in isolation from the use it or lose it mechanism. So, for example, if Network Rail initiates the UIOLI mechanism in respect of level 2 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.
- M. The process in Condition J6.2 is intended to ensure that any changes to cordon caps can be dealt with as part of the related UIOLI mechanism. Network Rail must initially specify any reduction to an existing cordon cap that it considers should be made if the train operator's associated rights are surrendered. In doing so, Network Rail must consider what is reasonable in all the circumstances, having regard to any rules or criteria on the interpretation of the expression 'reasonable on-going commercial need' (see Condition J13). The proposed reduction must be specified in a notice to the train operator and the train operator can agree or disagree with the proposed reduction. If the train operator disagrees, there is provision for disputes to be resolved by arbitration or expert determination. As with the UIOLI mechanism, any reduction in the incumbent's cordon cap must be subject to the Office of Rail Regulation's consent. The Office of Rail Regulation can, instead of giving its consent to, or rejecting, the reduction submitted to it, determine the appropriate reduction itself, after consultation with the parties.
- N. Condition J7 (freight transfer mechanism) applies only to freight train operators. It is based on the existing transfer mechanism in freight track access agreements, but has been amended in a number of material respects. The purpose of the mechanism is to ensure the smooth transfer of rights where an operator wins existing freight traffic from an incumbent freight train operator.

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<sup>2</sup> 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 2 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.

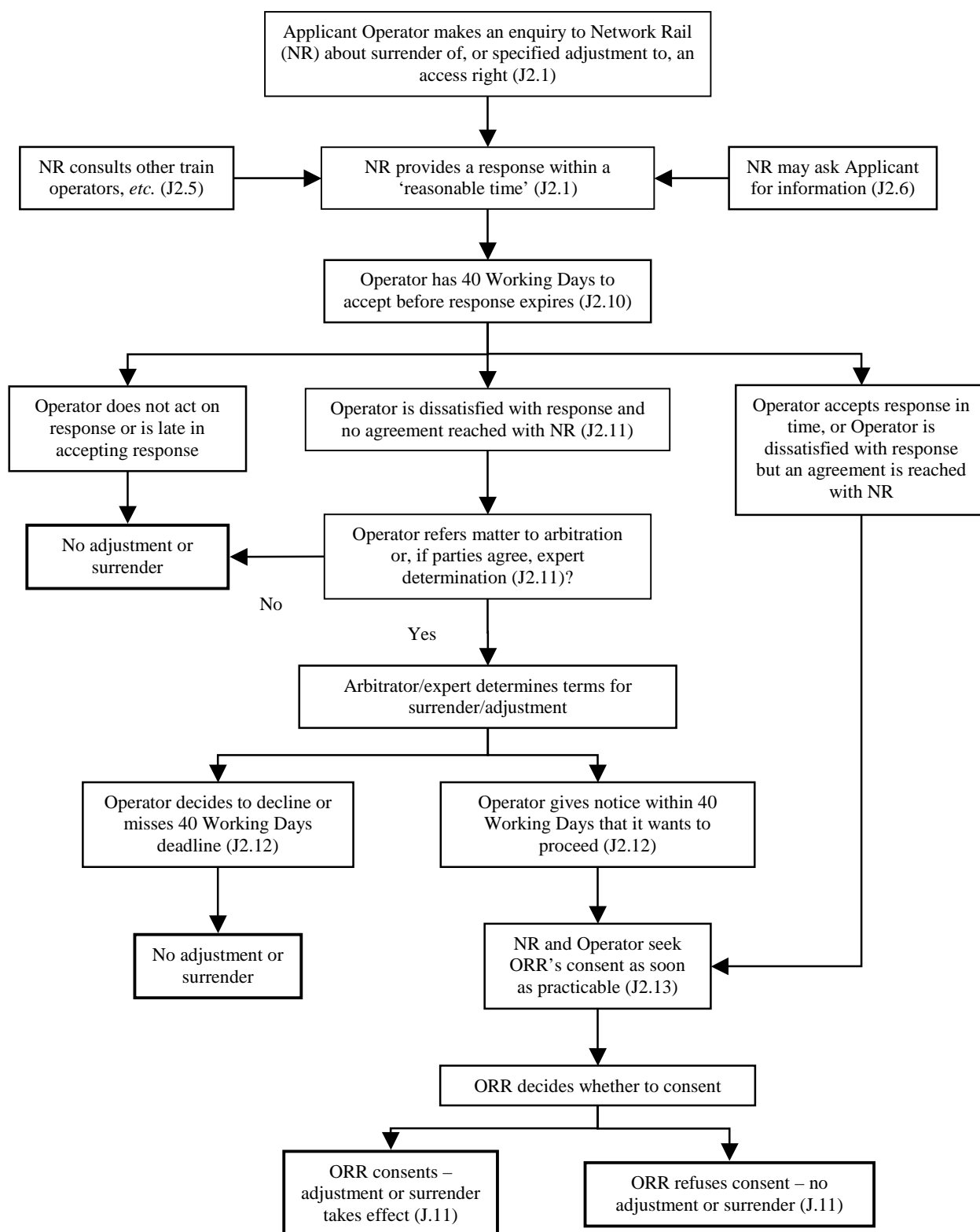
- O. *The transfer mechanism must be triggered by the applicant train operator making a request to Network Rail that a quantum firm right for the provision of transport services to a third party, which the applicant will replace another train operator (the incumbent) in providing, should be transferred to it. In serving notice on Network Rail, the applicant should also copy its request to the incumbent train operator, so as to give it as much advance warning as possible. Network Rail must then serve a third party notice on the incumbent train operator specifying the quantum firm rights sought by the applicant and the corresponding existing right of the incumbent which Network Rail requests it to surrender. The incumbent operator can accept the proposed surrender, or contest it by giving a counter notice within 10 working days, arguing that it has a reasonable on-going commercial need for the rights in question and providing evidence in support of its contention. If Network Rail does not accept the incumbent's argument, there is provision for disputes to be resolved either by arbitration or, if the parties prefer, by expert determination. Whilst the dispute resolution is between the incumbent and Network Rail, Condition J7.8.3 requires the applicant to accept that the award or determination of the arbitrator or the expert will dispose of the matter between the applicant and Network Rail as well.*
- P. *Where it has been agreed or determined that the incumbent operator should give up a right, the right is surrendered by the incumbent and transferred to the applicant from the same date. The period of time the right will be enjoyed by the applicant is the remaining period over which the incumbent would have enjoyed the right, or until the expiry of the applicant's access agreement, whichever is the shorter. The service characteristics of the rights transferred must be substantially the same (although there may be slight differences between the rights surrendered by the incumbent and the rights given to the applicant). Unlike the UIOLI process, the transfer mechanism does not require the Office of Rail Regulation's consent to the modifications to the incumbent's and applicant's access agreements, although it does require the Office of Rail Regulation to be notified of these modifications.*
- Q. *Condition J8 (cordon cap reduction (transfer)) is akin to Condition J6 in that it deals with reductions to cordon caps as part of the transfer mechanism 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 unilaterally (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 main difference between Condition J7 and Condition J8 is that the Office of Rail Regulation's consent is required to*

the adjustment of cordon caps, whereas it is not required to the transfer of the associated rights. 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. As is the case with the reduction of cordon caps under Condition J6, 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.

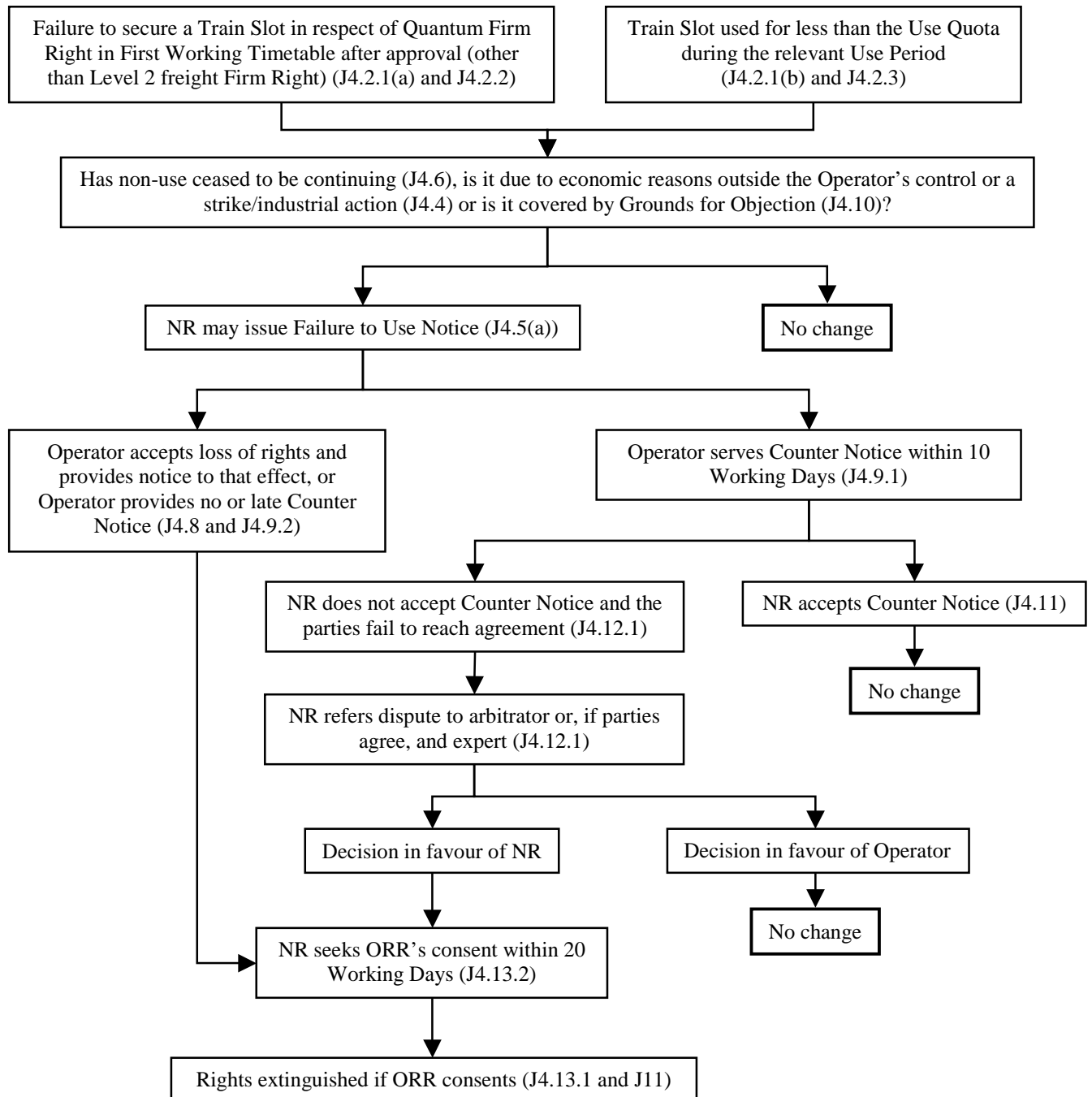
- R. Condition J9 (rights review meetings) has no precedent in existing track access agreements. It is confined to freight train operators (Condition J9.1.1). It sets out a process by which Network Rail and the train operator will hold six-monthly rights review meetings at which they will consider whether 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.
- S. The process starts with Network Rail serving a notice specifying any rights or cordon caps which Network Rail believes should be removed or reduced on the grounds that Network Rail considers the train operator no longer has a reasonable on-going commercial need for them. If the train operator agrees with Network Rail, the rights can be removed or the cordon cap reduced without the meeting going ahead. Similarly, the meeting could agree either to reduce the number of rights or the levels of the cordon caps, or that the train operator has a reasonable on-going commercial need to the existing level of rights and cordon caps. If the parties have not been able to agree, there is provision for disputes to be taken to arbitration, or, if the parties prefer, expert determination. In all cases, any reduction in rights or of the level of cordon caps can only take place with the Office of Rail Regulation's consent. The Office of Rail Regulation can elect to give its consent to the surrender of some of the rights, or, after consultation with the parties, determine itself the appropriate reduction to cordon caps.
- T. Condition J10 (arbitration and expert determination under Part J) includes provisions setting out the remit of the arbitrator or expert when dealing with disputes under Part J.
- U. Condition J11 (Office of Rail Regulation consent or determination) provides that the Office of Rail Regulation can elect: (a) to give its consent to the surrender or transfer of part only of the rights for which its consent is sought; and (b) to determine itself the cordon cap adjustment for which its consent is sought, 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.

- V. *Condition J12 requires Network Rail to publish notices given or received and a statement of every material step taken in accordance with Part J, in order that persons holding or contemplating holding or surrendering access rights can be informed about how the allocation of capacity on the network might change over time.*
- W. *Condition J13 (reasonable on-going commercial need) 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 Strategic Rail Authority and freight train operators and after approval by the Office of Rail Regulation. If the Office of Rail Regulation does not approve rules or criteria proposed by Network Rail, or Network Rail does not submit its proposed rules of criteria within 10 working days of Part J coming into effect, the Office of Rail Regulation can issue a notice requiring it to publish the rules or criteria specified in the notice and if Network Rail fails to comply with such a requirement the Office of Rail Regulation can publish the rules or criteria itself. Any such notice issued by the Office of Rail Regulation must follow consultation with Network Rail, the Strategic Rail Authority and freight train operators.*

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

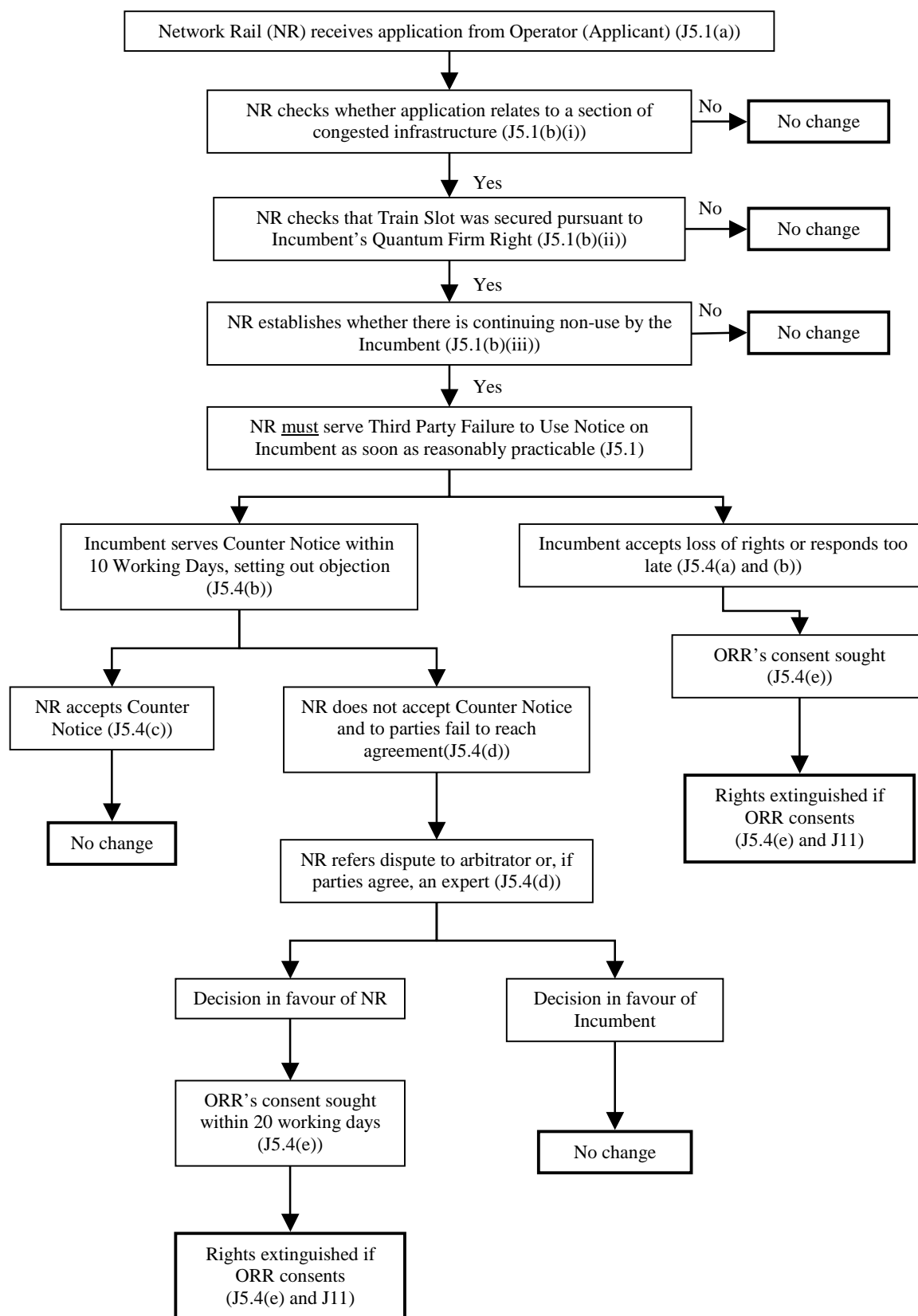


**Appendix 2: Condition J4 UIOLI process for unused rights or where slots are not sought by another operator**

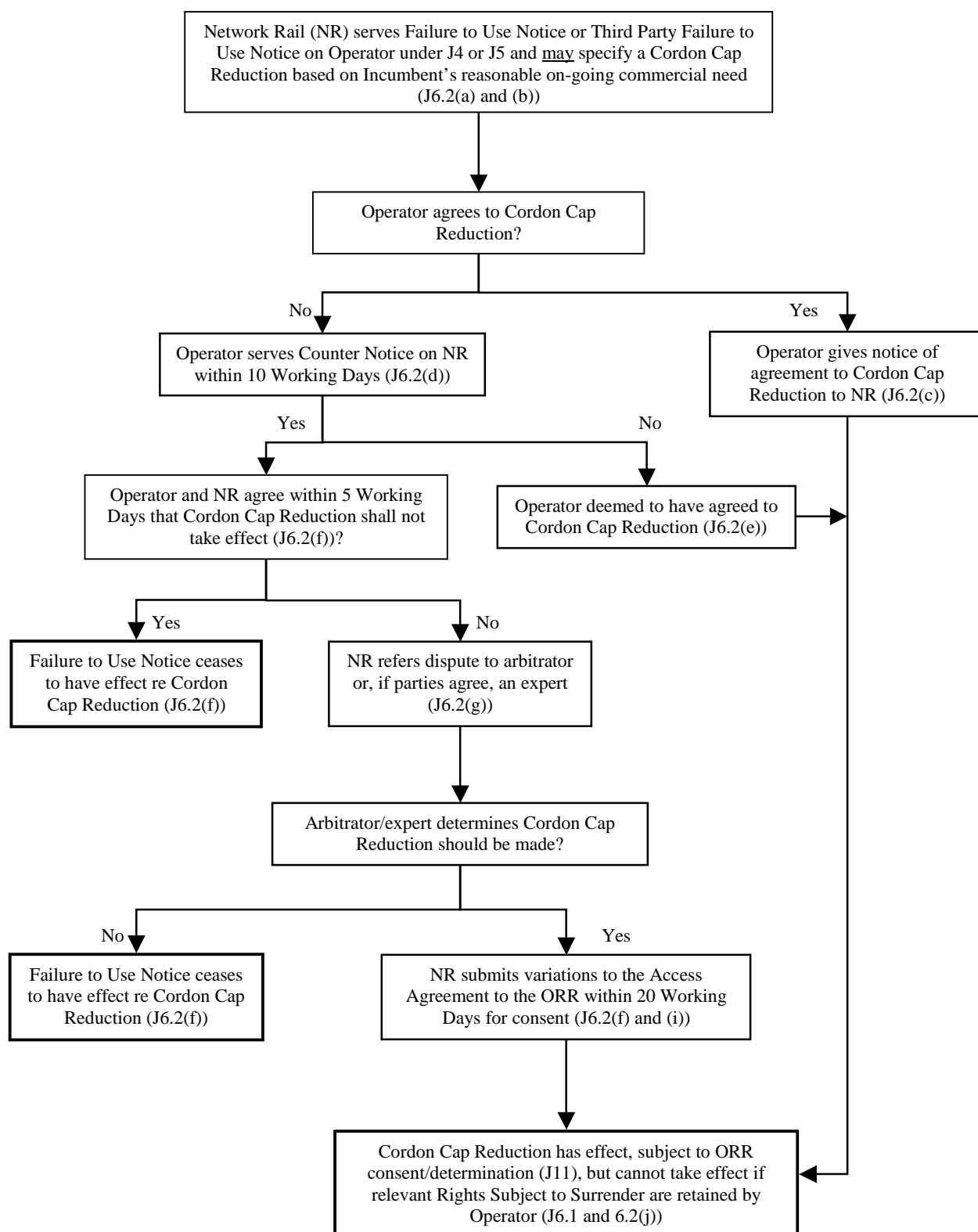




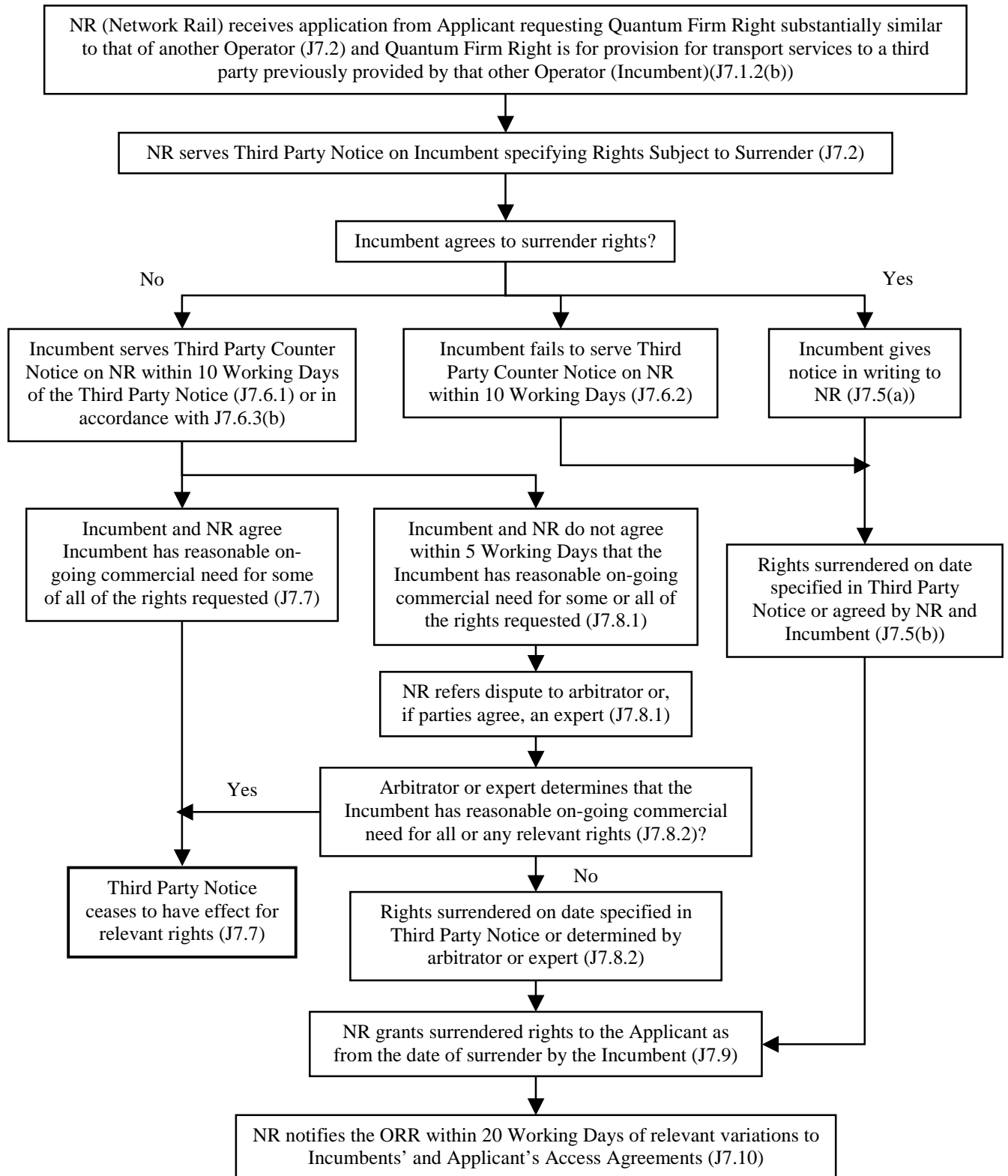
### Appendix 3: Condition J5 UIOLI process where slots are sought by another operator



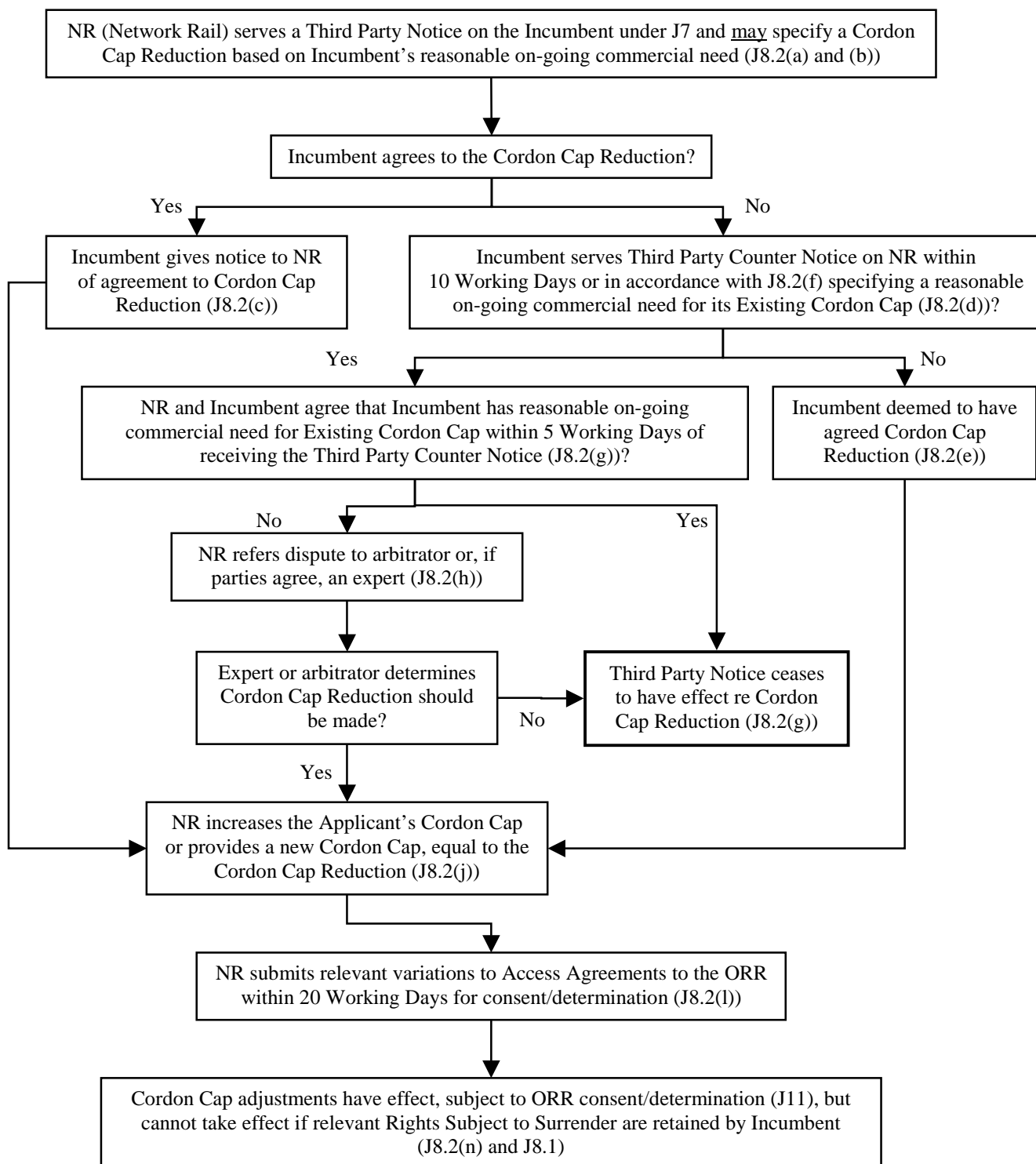
#### Appendix 4: Condition J6 process for reducing cordon caps under UIOLI mechanism



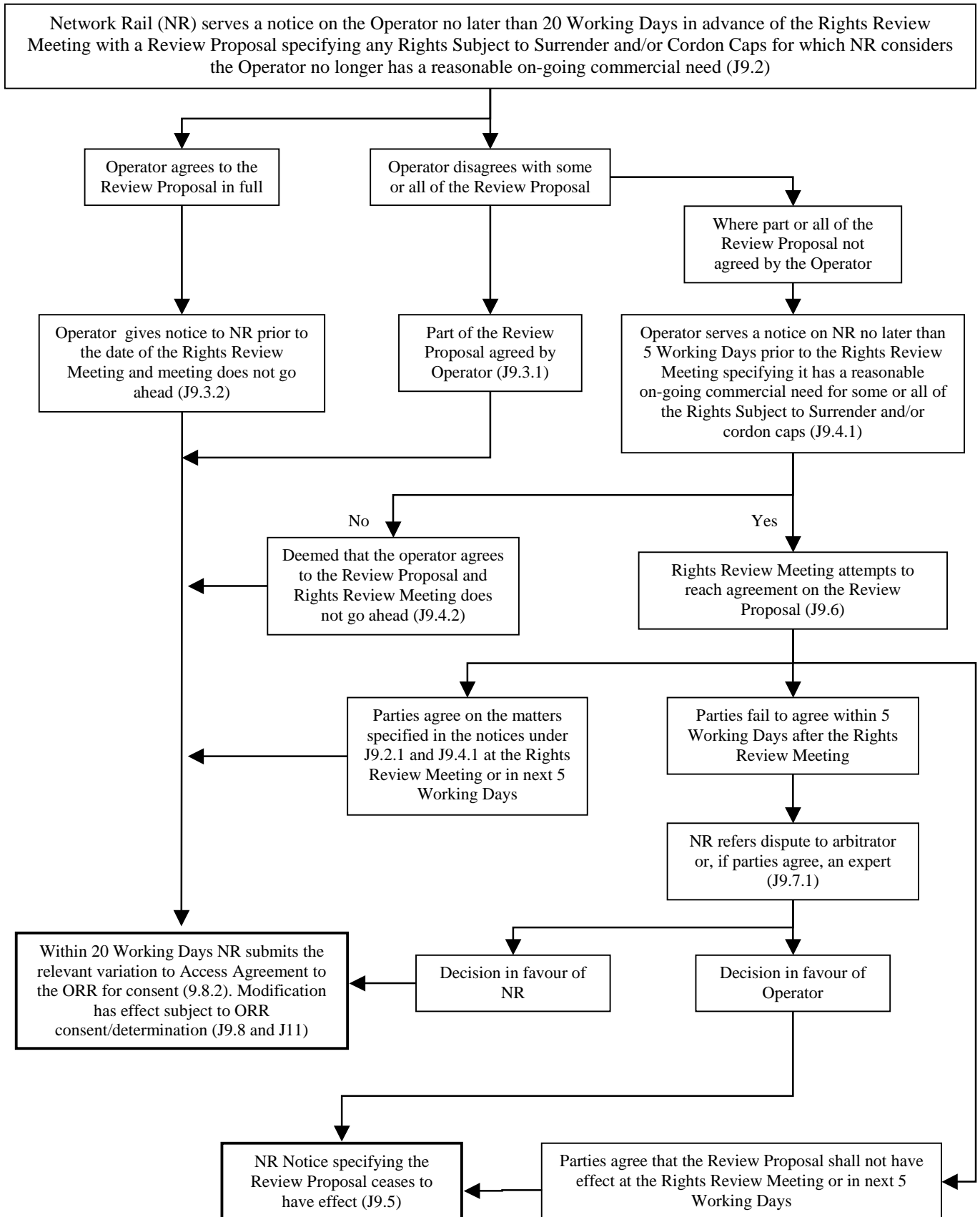
## Appendix 5: Condition J7 freight transfer mechanism



**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:

“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;
“Ancillary Movements”	has the meaning ascribed to it in Part D of this code;
“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 of this code;
“Chairman”	means the Chairman of the Access Dispute Resolution Committee established pursuant to the Access Dispute Resolution Rules;
“Commencement Date”	means the date on which the relevant Quantum Firm 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 J3.18.1;
“congested infrastructure”	has the meaning ascribed to it in Article 2(c) of EU Directive 2001/14/EC;
“Cordon Cap Increase”	has the meaning ascribed to it in Condition J8.2(j);

“Cordon Cap Reduction”	has the meaning ascribed to it in:  (a) Condition J6.2(a); or  (b) Condition J8.2(a),  as applicable;
“Counter Notice”	means a notice given by the Train Operator to Network Rail under Condition J4.9, J5.4(b) or J6.2(d);
“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 SRA, 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 :  (a) Condition J5.1(b)(ii); or  (b) Condition J7.2,  as applicable;
“Level Two Rights”	has the meaning ascribed to it, if any, in the relevant Access Agreement;

“Notice of Objection”	means a notice given by an Affected Person to Network Rail of the kind referred to in Condition J3.5(b);
“ORR’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;
“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 of this code;
“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 Adjustment”	means the surrender of any Access Right of the Train Operator in question and the grant to it of any other Access Right;
“Quantum Firm Right”	means a Firm Right 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;
“reasonable on-going commercial need”	is interpreted as set out in Condition J13.1;
“relate” and “in respect of”	in relation to a Train Slot and a Quantum Firm 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 Firm 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 J2.3(a);
“Relevant Information”	means information which complies with the provisions of Condition J2.3;
“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;
“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;
“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 Firm Right to which such notice refers and:

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

“Service Characteristics”

for the purposes of a right surrendered under Condition J7.9, 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(d);

“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 of this code;
“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
“Working Day”	has the meaning ascribed to it in Part D of this code.

## **1. Application of this Part J**

Subject to any relevant law, nothing in this Part J shall prevent to a material extent the exercise of, or receipt of the benefit of, a protected right.

## **2. Adjustment of Access Rights**

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

Network Rail shall provide the Train Operator with a Relevant Response within a reasonable time of the making of a Relevant Enquiry.

### **2.2 *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.

### 2.3 *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 J2.3(b) above 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 which should be payable by 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.

#### 2.4 *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.

#### 2.5 *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.

#### 2.6 *Obligation to co-operate*

##### 2.6.1 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.

- 2.6.2 Information provided in any response under Condition J2.6.1 shall be treated as Qualifying Information and Condition J3 shall apply accordingly.

## 2.7 *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.

## 2.8 *Payments of costs of Relevant Responses*

The Train Operator shall:

- (a) be entitled to make any request of the kind referred to in Condition J2.7 at the time of making of 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 J2.9; and
- (c) be entitled to receive from Network Rail, on request, a certificate from its auditors verifying that the costs referred to in Condition J2.9 have been incurred in providing the Relevant Response.

## 2.9 *Division and payments of costs*

- 2.9.1 The amount referred to in Condition J2.8(b) shall be an amount equal to 75 per cent of the amount of those 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.

2.9.2 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.

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

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

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

it shall be entitled to do so:

- (i) upon giving to Network Rail a notice to that effect not later than 40 Working Days after the date upon which it receives the Relevant Response in question; and
- (ii) unless the Office of Rail Regulation determines otherwise, so as to have effect not later than the date upon which the Office of Rail Regulation has given its consent to the making of the Relevant Surrender or Relevant Adjustment in question in accordance with Condition J2.13.

2.11 *Dispute resolution*

2.11.1 If, having received a Relevant Response, the Train Operator is dissatisfied with it (whether in relation to the amounts payable or sharing of benefits proposed by Network Rail or in any other respect), it shall be entitled, by notice to Network Rail, to refer the matter to an arbitrator or, if agreed, to an expert for determination in accordance with Part C or Part D, as applicable, of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10).

2.11.2 Subject to Condition J2.12, the arbitrator's or expert's decision (including the modifications contemplated by Condition J10.1(f)) shall have effect upon the date upon which the Office of Rail Regulation gives its consent to the making of the Relevant Surrender or Relevant Adjustment in question, or such other date as the Office of Rail Regulation specifies by notice to the parties for the purpose of this Condition J2.11.

2.12 *Right of Train Operator to have Access Rights adjusted subject to approval of the Office of Rail Regulation*

2.12.1 If the arbitrator or expert determines that the Train Operator should be entitled to make any Relevant Surrender or have any Relevant Adjustment given effect:

- (a) the Train Operator shall give notice to Network Rail as to whether it elects to exercise that entitlement; and
- (b) if the Train Operator gives notice pursuant to Condition J2.12.1(a) of an election to exercise such an entitlement, it shall send a copy of the arbitrator's or expert's decision to the Office of Rail Regulation.

2.12.2 A notice under Condition J2.12.1(b) above shall be given within 40 Working Days of the date of the arbitrator's or expert's decision, and, if not given within that time, the Train Operator shall lose the entitlement in question.

2.13 *Office of Rail Regulation's consent to surrender or adjustment of access rights*

2.13.1 A Relevant Surrender or Relevant Adjustment shall have effect only with the Office of Rail Regulation's consent.

2.13.2 Network Rail shall submit the relevant modifications to the Access Agreement to the Office of Rail Regulation for consent as soon as practicable after:

- (a) the Train Operator's election to make a Specified Relevant Surrender or have a Specified Relevant Adjustment effected under Condition J2.10; or
- (b) the Train Operator's election to make a Relevant Surrender or 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 Surrender or Relevant Adjustment in question; and
- (b) the date from which the Relevant Surrender or Relevant Adjustment shall have effect.

### **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 J2.4, 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 Chairman 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 Chairman.

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 Chairman 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 Chairman 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 Chairman.

3.8 *Chairman'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 J2.4, Network Rail shall be entitled to include Qualifying Information in a Relevant Response except where directed not to do so by the Chairman, 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 Chairman in any directions of the kind referred to in Condition J3.7.4.

### 3.9 *Grounds on which Chairman may order confidentiality*

A Confidentiality Direction shall only have effect if:

- (a) it is stated by the Chairman 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 Chairman has complied with the requirements specified in Conditions J3.11 and J3.12.

### 3.10 *Opportunity to make representations to Chairman*

3.10.1 Within 20 Working Days of the Chairman's receipt of a notice pursuant to Condition J3.7.1 (or such longer period as the Office of Rail Regulation shall allow), each of Network Rail, the Train Operator and the Affected Person shall be entitled to make representations to the Chairman:

- (a) as to whether it considers that the Chairman 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 Chairman 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 Chairman shall be entitled to hear the parties on the matter. The Chairman 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 Chairman shall provide them with his reasons for his determination. Such reasons shall be given in writing.

### 3.13 *Appeal against Chairman's determination*

If Network Rail, the Train Operator or the Affected Person is dissatisfied with the Chairman's determination, it may refer the matter to the Office of Rail Regulation under Part M.

### 3.14 *Immunities of Chairman and Office of Rail Regulation*

3.14.1 Neither the Chairman 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 Chairman, 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 J3.16.1; and
- (b) to the extent that it is the creditor in the indemnity in Condition J3.16.2(a) above, hold the benefit of that indemnity upon trust as bare trustee for the benefit of the Chairman 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 J3.16.

### 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 Chairman 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 Chairman'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 Chairman 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 J3.17.1(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 Chairman 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 Chairman of the kind referred to in Condition J3.18.1(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 the ORR’s Model Passenger Track Access Contract, 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 J3.18, 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 also 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 Firm 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 Firm 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 Firm Right.

4.2.2 Condition J4.2.1(a) shall not apply to Level Two Rights.

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, in accordance with Article 3 of EU Directive 2001/14/EC, 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.

- 4.3.3 For the purposes of determining the Use Quota and Use Period in accordance with this Condition J4.3, the Office of Rail Regulation may carry out all or any part of the consultation before this Part J comes into effect.

#### 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:

- (a) non-economic reasons beyond the Train Operator's control; or
- (b) a strike or other industrial action.

#### 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 Firm 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 4.2.1(b):
  - (i) the Train Operator makes use of a relevant Train Slot such that the Use Quota is met; and
  - (ii) Network Rail has not served a Failure to Use Notice within 20 Working Days of the condition in Condition J4.6(b)(i) being satisfied in whole.

#### 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;
- (b) the Rights Subject to Surrender which Network Rail requires the Train Operator to surrender; and



- (c) the date on which the surrender is intended to take effect.

#### 4.8 *Acceptance of surrender*

Subject to the Office of Rail Regulation consenting to the surrender in accordance with Condition J4.13, if the Train Operator agrees to the surrender specified in the Failure to Use Notice then:

- (a) it shall give notice in writing to that effect to Network Rail; and
- (b) the Rights Subject to Surrender shall be surrendered with effect from the date specified in the Failure to Use Notice or, if later, the date on which the Office of Rail Regulation consents to the surrender in accordance with Condition J4.13.

#### 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) 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
- (b) 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 Firm Right; and/or
  - (ii) would still be required by the Train Operator following the surrender of the relevant Quantum Firm Right; and/or
- (c) 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, the Train Operator will be deemed to have agreed to the surrender specified in the Failure to Use Notice.

#### 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 obligations under the Train Operator's franchise agreement; 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) or (b) 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 *Dispute resolution*

4.12.1 If within five Working Days of receipt by Network Rail of a Counter Notice the Train Operator and Network Rail have:

- (a) failed to reach any agreement on the matters referred to in Condition J4.9.1; and
- (b) not otherwise agreed in writing to refer the matter for expert determination under Part D of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10),

Network Rail shall refer the matter to arbitration in accordance with Part C of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10).

4.12.2 The arbitrator's or expert's decision (including any modifications of the provisions of the Access Agreement contemplated in the decision) shall have effect on the date the Office of Rail Regulation gives its consent to those modifications, or such other date as the Office of Rail Regulation may notify the parties under Condition J4.13.

#### 4.13 *Office of Rail Regulation's consent to surrender of Rights Subject to Surrender*

4.13.1 A surrender of Rights Subject to Surrender specified in a Failure to Use Notice shall have effect only with the Office of Rail Regulation's consent.

4.13.2 Network Rail shall submit the relevant modifications to the Access Agreement to the Office of Rail Regulation for consent within 20 Working Days of the date of:

- (a) the Train Operator's acceptance of the proposed surrender under Condition J4.8;
- (b) the Train Operator's deemed acceptance of the proposed surrender under Condition J4.9.2; or
- (c) the arbitrator's or expert's decision pursuant to a reference under Condition J4.12.

4.13.3 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 modification in question; and
- (b) the date from which the modification shall have effect.

#### 4.14 *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 Firm Right to a Train Slot; and
- (b) the Train Slot:
  - (i) is in respect of a section of congested infrastructure;
  - (ii) was secured in exercise of a Quantum Firm 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 as soon as reasonably practicable 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.

## 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) but not J4.9.1(c);
- (c) J4.11 (cessation of notice) but only to the extent any agreement or determination referred to in that Condition relates to the matters set out in Condition J4.9.1(a) or (b);
- (d) J4.12 (dispute resolution), where in respect of this Condition J5, any arbitration or expert determination will be between Network Rail and the Incumbent, and the Applicant shall accept that the award or determination will dispose of the matter as between the Applicant and Network Rail;
- (e) J4.13 (Office of Rail Regulation's consent to surrender of Rights Subject to Surrender); and
- (f) J4.14 (Bids), as if that Condition referred to a surrender under this Condition J5.

## **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*

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 following additional provisions will apply:

- (a) 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;
- (b) 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 J13;
- (c) if the Train Operator agrees to the Cordon Cap Reduction it shall give notice to that effect in a notice to Network Rail served in accordance with Condition J4.8 or J5.4(a), as applicable;
- (d) 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:
  - (i) specifying that it objects to the Cordon Cap Reduction because it has a reasonable on-going commercial need for its Existing Cordon Cap; and
  - (ii) providing evidence in support of its objection;
- (e) Condition J4.9.2 shall apply as if that Condition referred to a Cordon Cap Reduction rather than a surrender;
- (f) 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;
- (g) if within five Working Days of receipt by Network Rail of a Counter Notice under this Condition J6 the Train Operator and Network Rail have:
  - (i) failed to reach agreement on whether the Cordon Cap Reduction shall have effect; and

- (ii) not otherwise agreed in writing to refer the matter for expert determination under Part D of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10),

Network Rail shall refer the matter to arbitration in accordance with Part C of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10);

- (h) where the Cordon Cap Reduction is specified in a Third Party Failure to Use Notice, any arbitration or expert determination will be between Network Rail and the Incumbent, and the Applicant shall accept that the award or determination will dispose of the matter as between the Applicant and Network Rail;
- (i) a Cordon Cap Reduction specified in a Failure to Use Notice or Third Party Failure to Use Notice, as applicable, shall have effect only with the Office of Rail Regulation's consent. Such consent shall be sought in accordance with the procedures set out in Conditions J4.13 or J5.4(e), as applicable, as if Condition J4.13 referred to a Cordon Cap Reduction rather than a surrender of Rights Subject to Surrender; and
- (j) the Cordon Cap Reduction shall have effect on the date the Office of Rail Regulation gives its consent to the reduction, or such other date as the Office of Rail Regulation may notify the parties under Condition J6.2(i).

## **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:

- (a) is received by Network Rail under Condition J7.2 on or after the date this Condition J7 takes effect; and
- (b) requests a Quantum Firm 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:

- (a) are substantially similar in nature to applications made under this Condition J7; and
- (b) were made before this Condition J7 came into effect.

## 7.2 *Third Party Notice*

If Network Rail receives an application from a Train Operator (“the Applicant”) requesting a Quantum Firm Right that is substantially similar to an existing Quantum Firm Right of another Train Operator (“the Incumbent”) then, as soon as reasonably practicable following receipt of the Applicant’s application, Network Rail shall serve a Third Party Notice on the Incumbent and send a copy of the notice to the Office of Rail Regulation.

## 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 Firm Right take effect in its Access Agreement; and
  - (ii) that the Quantum Firm 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 Firm Right sought by the Applicant;
- (b) the Rights Subject to Surrender, which Network Rail requires the Incumbent to surrender in order to accommodate the Applicant’s request; and
- (c) the date on which the surrender is intended to take effect.

## 7.5 *Acceptance of surrender*

If the Incumbent agrees to the surrender specified in the Third Party Notice, then:

- (a) it shall give notice in writing to that effect to Network Rail; and
- (b) the Rights Subject to Surrender shall be surrendered on the date specified in the Third Party Notice or such other date as the Incumbent and Network Rail may agree.

## **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 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
- (b)     providing evidence in support of its contentions.

**7.6.2**   If no Third Party Counter Notice is served within 10 Working Days of receipt of a Third Party Notice, the Incumbent will be deemed to have agreed to the surrender specified in the Third Party Notice.

**7.6.3**   If the Quantum Firm 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 in writing 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.

## **7.8**     *Dispute resolution*

**7.8.1**   If within five Working Days of receipt by Network Rail of a Third Party Counter Notice the Incumbent and Network Rail have:

- (a)     failed to reach agreement on whether the Incumbent has a reasonable on-going commercial need in respect of any or all of the Rights Subject to Surrender; and
- (b)     not otherwise agreed in writing to refer the matter for expert determination under Part D of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10),

Network Rail shall refer the matter to arbitration in accordance with Part C of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10).



7.8.2 If:

- (a) a reference to arbitration or expert determination is made under this Condition J7.8; and
- (b) the arbitrator or expert determines 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 from the date specified:

- (i) in the Third Party Notice; or
- (ii) in the arbitrator's or expert's determination,

whichever is the later.

7.8.3 In respect of this Condition J7.8, any arbitration or expert determination will be between Network Rail and the Incumbent, and the Applicant shall accept that the award or determination will dispose of the matter as between the Applicant and Network Rail.

7.9 *Grant to Applicant*

Network Rail shall 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 date of surrender by the Incumbent;
- (b) 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;
- (c) with Service Characteristics in substantially the same form as the Rights Subject to Surrender; and
- (d) where applicable, subject to any relevant defeasance provision contained in the Incumbent's Access Agreement.

7.10 *Notification to the Office of Rail Regulation*

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 20 Working Days after the grant to the Applicant is effected in accordance with Condition J7.9.

## 7.11 *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 Firm Right sought by the Applicant there are no Rights Subject to Surrender.

### 8.2 *Existing Cordon Cap adjustments procedure*

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 the Incumbent has an Existing Cordon Cap the following additional provisions will apply:

- (a) 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;
- (b) 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 J13;
- (c) if the Incumbent agrees to the Cordon Cap Reduction it shall give notice to that effect in a notice to Network Rail served in accordance with Condition J7.5;
- (d) if the Incumbent does not agree to the Cordon Cap Reduction, it shall serve a Third Party Counter Notice, in accordance with Condition J7.6:
  - (i) specifying that it objects to the Cordon Cap Reduction because it has a reasonable on-going commercial need for its Existing Cordon Cap; and
  - (ii) providing evidence in support of its contention;

- (e) Condition J7.6.2 shall apply as if that Condition referred to a Cordon Cap Reduction rather than a surrender;
- (f) Condition J7.6.3 shall apply;
- (g) 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;
- (h) if within five Working Days of receipt by Network Rail of a Third Party Counter Notice under this Condition J8 the Incumbent and Network Rail have:
  - (i) failed to reach agreement on whether the Incumbent has a reasonable on-going commercial need in respect of its Existing Cordon Cap; and
  - (ii) not otherwise agreed in writing to refer the matter for expert determination under Part D of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10),

Network Rail shall refer the matter to arbitration in accordance with Part C of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10);

- (i) where the Cordon Cap Reduction is specified in a Third Party Notice, any arbitration or expert determination will be between Network Rail and the Incumbent, and the Applicant shall accept that the award or determination will dispose of the matter as between the Applicant and Network Rail;
- (j) if the Incumbent and Network Rail agree or it is determined that a Cordon Cap Reduction specified in a Third Party Notice shall take effect, Network Rail shall increase the Applicant's Existing Cordon Cap or provide to the Applicant a new cordon cap, equal to the Cordon Cap Reduction (in either case a "Cordon Cap Increase");
- (k) subject to Condition J8.2(n), a Cordon Cap Increase shall be granted to the Applicant:
  - (i) as from the date of the Cordon Cap Reduction; and
  - (ii) for a period of time:
    - (A) equal to that which the Incumbent would have enjoyed had its Existing Cordon Cap remained unchanged; or
    - (B) until the expiry of the Applicant's Access Agreement,
 whichever is the shorter;

- (l) a Cordon Cap Reduction and a Cordon Cap Increase shall have effect only with the Office of Rail Regulation's consent. 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 20 Working Days after the date of:
  - (i) the Applicant's acceptance of the Cordon Cap Reduction under Condition J8.2(c);
  - (ii) the Applicant's deemed acceptance of the Cordon Cap Reduction under Condition J8.2(e); or
  - (ii) the arbitrator's or expert's decision pursuant to a reference under Condition J8.2(h);
- (m) Condition J4.13.3 shall apply as if the reference to the Train Operator was to both the Applicant and the Incumbent; and
- (n) the Cordon Cap Reduction and Cordon Cap Increase shall have effect from the date the Office of Rail Regulation gives its consent to the reduction or increase, or such other date as the Office of Rail Regulation may notify the parties on giving such consent.

## **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 The first Rights Review Meeting shall be scheduled by Network Rail, subject to Condition J9.2.1, to be held as soon as practicable after the coming into force of this Condition J9 and then at six-monthly intervals.

### **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.

9.2.3 For the purposes of this Condition J9, any circumstances relating to the Rights Subject to Surrender and/or Existing Cordon Caps specified in the notice served under Condition J9.2.1 which occurred before Part J came into effect shall be taken into account in determining whether the Train Operator has a reasonable on-going commercial need for such Rights Subject to Surrender and/or Existing Cordon Caps.

### 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; and
- (b) the Review Proposal, to the extent that it is agreed by the Train Operator, shall have effect in accordance with Condition J9.8.

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 five Working Days prior to the Rights Review Meeting, it shall serve a notice on Network Rail:

- (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; and
- (c) the Review Proposal shall have effect in accordance with Condition J9.8.

## 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 part 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*

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.

## 9.7 *Dispute resolution*

### 9.7.1 If within five Working Days of the end of the Rights Review Meeting the Train Operator and Network Rail have:

- (a) failed to reach agreement on the matters specified in their respective notices served under Conditions J9.2.1 and J9.4.1; and
- (b) not otherwise agreed in writing to refer the matter for expert determination under Part D of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10),

Network Rail shall refer the matter to arbitration in accordance with Part C of the Access Dispute Resolution Rules in force at the time of the reference (as modified by Condition J10).

### 9.7.2 The arbitrator's or expert's decision (including any modifications to the provisions of the Access Agreement contemplated in the decision) shall have effect on the date the Office of Rail Regulation gives its consent to those modifications, or such other date as the Office of Rail Regulation may notify the parties under Condition J9.8.

## 9.8 *Office of Rail Regulation's consent*

### 9.8.1 A Review Proposal shall have effect only with the Office of Rail Regulation's consent.

### 9.8.2 Network Rail shall submit the relevant modification to the Access Agreement to the Office of Rail Regulation for consent within 20 Working Days after the date of:

- (a) the Train Operator's acceptance of the Review Proposal under Condition J9.3;
- (b) the Train Operator's deemed acceptance of the Review Proposal under Condition J9.4.2;

- (c) the Train Operator and Network Rail's agreement on the matters specified in the notices served under Conditions J9.2.1 and J9.4.1; or
- (d) the arbitrator's or expert's decision pursuant to a reference under Condition J9.7.

9.8.3 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 modification in question; and
- (b) the date from which the modification shall have effect.

#### 9.9 *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. Arbitration and expert determination under Part J**

10.1 *In determining the matters referred to him under this Part J, the arbitrator's or expert's remit shall be that he shall:*

- (a) reach a decision which is fair and reasonable;
- (b) reach a decision as soon as reasonably practicable;
- (c) have due regard to:
  - (i) the matters about which duties are imposed on the Office of Rail Regulation by section 4 of the Act; and
  - (ii) 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;
- (d) not make an award or determination which is inconsistent with any provision of this code;
- (e) have the power:
  - (i) to give directions as to the procedure to be followed in the arbitration or expert determination, 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 arbitration or expert determination shall be disclosed to the other; and

- (ii) to make such orders as he shall think fit in relation to the proportions of the costs of the arbitration or expert determination (assessed in such manner as he shall determine) which shall be borne by either or both of the parties;
- (f) issue his decision as to what modifications of the provisions of the Access Agreement shall be required to give effect to that decision; and
- (g) give his reasons.

#### 10.2 *Provision of information etc., compliance with directions and binding nature of decision*

Network Rail and the Train Operator shall:

- (a) use all reasonable endeavours to procure that the arbitrator or expert is furnished with sufficient information and evidence to determine the matter in question as soon as is reasonably practicable after the date of the reference;
- (b) comply with any lawful directions of the arbitrator or expert; and
- (c) be bound by the decision of the arbitrator or expert.

#### 10.3 *Matters to be determined by the arbitrator or expert*

10.3.1 If a reference to arbitration or expert determination is made under Condition J2.11, the parties shall request the arbitrator or expert to provide a reasoned award or determination covering the following matters:

- (a) whether the Train Operator should be entitled to make any Relevant Surrender or have any Relevant Adjustment given effect;

and, if so:

- (b) what the Relevant Surrender or Relevant Adjustment should be;
- (c) what should be the amounts payable by the Train Operator under the Access Agreement as a consequence of the making of the Relevant Surrender or Relevant Adjustment in question, including the sharing between Network Rail and the Train Operator of the Relevant Financial Consequences;
- (d) when the Relevant Surrender or Relevant Adjustment in question should have effect; and
- (e) such other matters as he considers relevant to the proper determination of the reference.

10.3.2 If a reference to arbitration or expert determination is made under Condition J4.12 or J5.4(d) the parties shall request the arbitrator or expert to provide a reasoned award or determination covering the following matters:



- (a) whether there has been a Failure To Use; and/or
- (b) whether the Train Operator's or Incumbent's, as applicable, objections (if any) should be upheld in respect of any or all of the Rights Subject to Surrender; and
- (c) such other matters as he considers relevant to the proper determination of the reference.

10.3.3 If a reference to arbitration or expert determination is made under Condition J6.2(g) the parties shall request the arbitrator or expert to provide a reasoned award or determination covering the following matters:

- (a) whether the Train Operator or Incumbent, as applicable, has a reasonable on-going commercial need for its Existing Cordon Cap, having regard to any rules or criteria determined and published from time to time under Condition J13; and
- (b) such other matters as he considers relevant to the proper determination of the reference.

10.3.4 If a reference to arbitration or expert determination is made under Condition J7.8 the parties shall request the arbitrator or expert to provide a reasoned award or determination covering the following matters:

- (a) whether the Incumbent has a reasonable on-going commercial need in respect of any or all of the Rights Subject to Surrender after the date specified in the Third Party Notice, having regard to any rules or criteria determined and published from time to time under Condition J13; and
- (b) such other matters as he considers relevant to the proper determination of the reference.

10.3.5 If a reference to arbitration or expert determination is made under Condition J8.2(h), the parties shall request the arbitrator or expert to provide a reasoned award or determination covering the following matters:

- (a) whether the Incumbent has a reasonable on-going commercial need for its Existing Cordon Cap having regard to any rules or criteria determined and published from time to time under Condition J13; and
- (b) such other matters as he considers relevant to the proper determination of the reference.

10.3.6 If a reference to arbitration or expert determination is made under Condition J9.7.1, the parties shall request the arbitrator or expert to provide a reasoned award or determination covering the following matters:

- (a) whether the Train Operator has a reasonable on-going commercial need to the Rights Subject to Surrender and/or any Existing Cordon Caps specified in the Review Proposal, having regard to any rules or criteria determined and published from time to time under Condition J13; and
- (b) such other matters as he considers relevant to the proper determination of the reference.

#### 10.4 *Miscellaneous*

- 10.4.1 Paragraph C6 of the Access Dispute Resolution Rules shall not apply to any arbitration or expert determination commenced under Condition J2.11.
- 10.4.2 In relation to any arbitration or expert determination commenced under Conditions J5.4(d), J6.2(g), J7.8 or J8.2(h), a copy of the award or determination shall be sent to the Applicant by Network Rail on receipt by Network Rail of the award or determination.
- 10.4.3 In relation to any arbitration or expert determination under Conditions J2.11, J4.12.1, J5.4(d), J6.2(g), J7.8.1, J8.2(h) and J9.7.1, any reference to an arbitrator or expert shall be made as soon as reasonably practicable after Network Rail and the Train Operator or the Incumbent, as applicable, have failed to reach agreement on the matters to be referred to arbitration or expert determination.

### **11. Office of the Rail Regulation consent or determination**

#### 11.1 *Consent to part of the modifications or determination of modifications*

- 11.1.1 Where Network Rail submits modifications to an Access Agreement to the Office of Rail Regulation for consent under Conditions J2.13, J4.13, J5.4(e) or J9.8, the Office of Rail Regulation may elect to give its consent to part only of the modifications submitted to it.
- 11.1.2 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 Conditions J6.2(i), J8.2(l) or J9.8.2, 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.
- 11.1.3 No notice of the Office of Rail Regulation under Condition J11.1.2 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 J11.1.3(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.

11.1.4 If the Office of Rail Regulation determines the Cordon Cap Reduction or Cordon Cap Increase under Condition J11.1.2, then Conditions J6.2(j), J8.2(m) and (n) and J9.8 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.

## 11.2 *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 of the Office of Rail Regulation.

## 12. **Obligation of Network Rail to publish documentation**

Subject to Condition A5.1, Network Rail shall promptly publish an accurate and up to date copy or statement of:

- (a) every notice given or received in accordance with this Part J, other than a notice given or received in under Condition J3 ; and
- (b) every material step taken in accordance with this Part J

in relation to a change in the access rights held by any person, 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.

## 13. **Reasonable on-going commercial need**

13.1 In this Part J, the phrase 'reasonable on-going commercial need' shall be interpreted in accordance with rules or criteria (if any) determined and published from time to time in accordance with this Condition J13 which, subject to Condition J13.4:

- (a) follow consultation by Network Rail with the Strategic Rail Authority and Train Operators providing services for the carriage of goods by railway; and
- (b) have been approved by the Office of Rail Regulation.

- 13.2 Within 10 Working Days of Part J coming into effect, or such longer period as the Office of Rail Regulation may approve, Network Rail shall submit to the Office of Rail Regulation for approval the rules or criteria described in Condition J13.1.
- 13.3 For the purposes of determining the rules or criteria described in Condition J13.1, Network Rail may carry out all or any part of the consultation before this Part J comes into effect.

13.4 If:

- (a) the Office of Rail Regulation does not give its approval to the rules or criteria described in Condition J13.1; or
- (b) Network Rail does not submit the rules or criteria described in Condition J13.1 to the Office of Rail Regulation for approval in accordance with Condition J13.2,

the Office of Rail Regulation may issue a notice requiring Network Rail to publish the 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 rules and criteria itself.

13.5 No notice of the Office of Rail Regulation under Condition J13.4 shall have effect unless the Office of Rail Regulation has:

- (a) consulted Network Rail, the Strategic Rail 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 J13.5(a); and
- (c) notified Network Rail, the Strategic Rail Authority and Train Operators providing services for the carriage of goods by railway as to its conclusions in relation to the issues specified in the notice and its reasons for those conclusions.

13.6 The rules or criteria published in accordance with this Condition J13 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.

## Part K – Information

### Explanatory Note

- A. *Part K provides for the two-way flow of key information between Network Rail and the train operators 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 a Train Operator, and a Train Operator 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. *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. *It is intended that Part K will have full effect on and from 31 March 2006. Before this date, Part K will have effect subject to a notice 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.*
- F. *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 financial year commencing on 1 April, each such period being 28 days in length, save that the length of the first and last period in such financial 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 K4.1;

“Network Rail Annual Report”

means the report referred to in Condition K4.2;

“Network Rail Monitoring Information”

means the information specified in Condition K4.3;

“Network Rail Monitoring Report”

means the report referred to in Condition K4.4;

“Relevant Network”

means that part of the Network comprising any Strategic Planning Route which the relevant Train Operator is permitted to use;

“Relevant Year”	means each 12 month period beginning 1 April;
“Requested Information”	<p>means:</p> <p>in relation to information to be provided by Network Rail, such information as a Train Operator may reasonably request from time to time in order to plan its business with a reasonable degree of assurance and shall include information on the register of relevant assets which Network Rail is required to establish and maintain under Condition 24 of its network licence; and</p> <p>in relation to information to be provided by a Train Operator, such information as Network Rail may reasonably request from time to time in order to plan its business with a reasonable degree of assurance,</p> <p>in each case to the extent specified in a notice given by the Office of Rail Regulation under Condition K5.1; and</p>
“Strategic Planning Route”	means a route for route planning purposes designated in the business plan which Network Rail is required to produce under Condition 7 of its network licence as a “strategic planning route”.

## **CONDITION K1 - PROVISION OF INFORMATION**

### **1.1 Provision of Information by Network Rail**

Network Rail shall, subject to Condition K1.5, make available to each Train Operator:

- (a) Network Rail Annual Information;
- (b) Network Rail Monitoring Information; and

(c) Requested Information,

in accordance with this Part K.

## **1.2 Provision of Information by each Train Operator**

Each Train Operator shall make available to Network Rail Requested Information in accordance with this Part K.

## **1.3 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 18 of its network licence and in accordance with this code.

## **1.4 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
- (b) the relevant Train Operator to assess the effect of the matters disclosed in the Information provided to it on its Services.

## **1.5 Provision of information at election of Train Operator**

Network Rail may give notice to any Train Operator requiring it to elect, by notice to Network Rail, whether or not that Train Operator wishes to receive Network Rail Annual Information or Network Rail Monitoring Information. The Train Operator shall elect accordingly and such election shall have effect until the date specified by the Train Operator.

# **CONDITION K2 - STANDARD OF INFORMATION**

Subject to Condition K5, 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 - TIMING OF PROVISION OF INFORMATION**

## **3.1 Provision of Information by Network Rail**

Network Rail shall provide to each Train Operator:

- (a) Network Rail Annual Information within 28 days after the date by which, in accordance with its network licence, Network Rail is required to publish its



business plan, 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 Annual Information shall be provided on such other date;

- (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.

### **3.2 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 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 Train Operator of any necessary changes to that Information.

### **3.3 Provision of Information by Train Operator**

Each Train Operator shall provide to Network Rail Requested Information in a timely manner after such information is requested.

## **CONDITION K4 - NETWORK RAIL ANNUAL INFORMATION AND NETWORK RAIL QUARTERLY INFORMATION**

### **4.1 Network Rail Annual Information**

Network Rail Annual Information means, in relation to any Train Operator:

- (a) an explanation of how Network Rail will carry out its relevant activities, including details in respect of each relevant asset category as to:
  - (i) policies and practices for the carrying out of relevant activities;

- (ii) policies and practices in relation to the resourcing of the carrying out of relevant activities;
  - (iii) policies and practices for acquiring and improving information about relevant activities, including the costs of carrying them out;
  - (iv) an assessment of the extent to which improvements may reasonably be made to such policies and practices;
- (b) projections of future network quality and capability requirements;
- (c) 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;
- (d) 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
- (e) the expected effect of relevant activities on the outputs required of Network Rail and established in the last access charges review.

In this Condition K4.1:

- |           |   |
|-----------|---|
| “duty”    | means the duty incumbent on Network Rail to take such steps as are necessary or expedient so as 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;  |
| “purpose” | <p>is to secure:</p> <ul style="list-style-type: none"> <li>(a) the operation and maintenance of the network;</li> <li>(b) the renewal and replacement of the network; and</li> <li>(c) the improvement, enhancement and development of the network,</li> </ul> <p>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</p> |

services relating to railways and funders in respect of the quality and capability of 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.

## **4.2 Provision of annual report**

Network Rail Annual Information shall be provided in the form of an annual report.

## **4.3 Network Rail Monitoring Information**

Network Rail Monitoring Information means, in relation to any Train Operator:

- (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 Train Operator 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.

#### **4.4 Provision of report**

Subject to Condition K4.5(b) Network Rail Monitoring Information shall be provided in the form of a report for each Monitoring Period.

#### **4.5 Interpretation of Network Rail Annual Information**

In relation to Network Rail Annual Information:

- (a) terms used in Condition K4.1 shall have the same meaning as in Condition 7 of the network licence of Network Rail;
- (b) the information provided shall be in the same form and detail as is required under Condition 7 of the network licence of Network Rail.

### **CONDITION K5 - APPLICATION OF PART K**

#### **5.1 Extent and timing of information obligations**

This Part K shall have effect:

- (a) to the extent, including as to:
  - (i) the types or classes of information to be provided;
  - (ii) the times within which information must be provided;
  - (iii) the categories of persons to whom information of different types or classes is to be provided; and
  - (iv) 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); and

- (b) from such dates after 31 March 2005,

as are specified in a notice or notices given by the Office of Rail Regulation.

#### **5.2 Asset register guidelines**

No notice under Condition K5.1 may have effect to the extent that it requires Network Rail to provide asset register 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 24 of its network licence. In this Condition K5.2, “asset register information” is information which Network Rail is required to hold on the register of relevant assets under that condition of its network licence.

### **5.3 Full effect from 31 March 2006**

This Part K shall have full effect in relation to all the matters specified in Condition K5.1(a) on and from 31 March 2006 unless the Office of Rail Regulation has given a notice stating:

- (a) the extent to which Part K shall continue not to have effect;
- (b) when it will have full effect; and
- (c) its reasons.

### **5.4 Consultation**

No notice may be given by the Office of Rail Regulation under Condition K5.1 or K5.3 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 K6 - OTHER OBLIGATIONS TO CONTINUE**

This Part K is:

- (a) without prejudice to any other obligation of Network Rail or a Train Operator 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 – Local Output Commitments

## 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 to an Appeal Body;
- “Appeal Body” means the Industry Committee or the Office of Rail Regulation, as the case may be;
- “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 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 supersession 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 to relevant ADRC tribunal**

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 to the relevant ADRC tribunal for determination under the Access Dispute Resolution Rules (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 to the relevant ADRC tribunal:

- (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 relevant ADRC tribunal 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 Access 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 relevant ADRC tribunal is furnished with sufficient information and evidence so as properly to consider any matter referred to it under Condition L7.1. All information and evidence provided under this Condition L7.4 shall be copied to the Office of Rail Regulation.

### **7.5 Power of relevant ADRC tribunal**

In relation to a reference made under Condition L7.1, the parties shall request the relevant ADRC tribunal to have regard to the need to issue the LOC Statement as soon as reasonably practicable and the relevant ADRC tribunal 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 ADRC tribunal under this Condition L7.5 shall not be inconsistent with the Access Dispute Resolution Rules;

- (b) to require any other affected Train Operator to make submissions or provide evidence, whether orally or in writing or both;
- (c) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter; 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 ADRC tribunal 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, subject to any reference of the matter to the Office of Rail Regulation under Condition L7.9, and any determination made following a reference under Condition L7.9, 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 (and, in the case of an appeal concluded in the relevant ADRC tribunal, 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.

## **7.9 Right of appeal to the Office of Rail Regulation**

If any Access Party is dissatisfied with the final determination of the relevant ADRC tribunal in relation to any matter referred to it under Condition L7.1, that Access Party may, within 14 days of the issue of the relevant ADRC tribunal's determination, refer the matter to the Office of Rail Regulation for determination under Part M.

## **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 any revision issued under Condition L7.10, if:

- (a) it has consulted with Network Rail, the relevant Train Operator and the SRA 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 receiving notification under Condition L7.10 or L9.1(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 L7.10.



### **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;
- (c) “Working Day” means each of Monday to Friday (inclusive) excluding common law and statutory public holidays; and
- (d) 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 L7.3(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. *Under Parts D, F, G, H and L, provision is made for parties who are dissatisfied with the outcome of the procedures for managing Timetabling, Vehicle Change, Network Change, Operational Disruption or Local Output Commitments to appeal in the first instance to the relevant ADRC tribunal and from decisions of that tribunal to the Office of Rail Regulation. In Part J there is also provision for appeals to the Office of Rail Regulation in relation to certain matters. Part M sets out general provisions governing this second tier of appeals.*
- B. *If the Office of Rail Regulation refuses to hear the appeal, and the Appellant wishes to pursue the appeal, he must 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 Industry Party seeking to challenge a determination made under this code by appeal to the Office of Rail Regulation;                |
| “Respondent” | means, in relation to any determination which is challenged under this Part M, any other Access Party which is subject to 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 Condition of this code; or
- (b) the Access Dispute Resolution Rules.

## **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 7 working days of receipt of the determination to be challenged;
- (b) in the case of an appeal under Condition L7, within 14 days of issue of the determination to be challenged; and
- (c) in any other case, within 28 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 any party entitled under Rule A5.12.7 of the Access Dispute Resolution Rules to receive a copy of the determination.

## **CONDITION M4 - RIGHT OF THE OFFICE OF RAIL REGULATION TO REFUSE TO HEAR APPEAL**

### **4.1 Grounds of decision**

Within 14 working days of service of a notice of appeal, 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 of the relevant ADRC tribunal 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**

Within 28 working days of service of a notice of appeal (or such longer period as the Office of Rail Regulation may allow) the Respondent may serve on the Appellant 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.

## **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 the 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 any thing 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 the other;
- (b) to appoint any person who it considers has suitable knowledge and experience to assist the Office of Rail Regulation by acting as *amicus curiae*;
- (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 either or both of the parties.

## **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 Access Parties shall:

- (a) subject to and pending the final determination of any reference to the Office of Rail Regulation, comply with:
  - (i) any determination of the relevant ADRC tribunal in relation to any dispute referred to it; 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***

***The  
Access Dispute  
Resolution Rules***

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# Access Dispute Resolution Rules

## **Explanatory note**

*(This note does not form part of the Rules)*

## **General**

1. *The Access Dispute Resolution Rules are a set of rules for the resolution of disputes arising usually from access contracts. The rules are designed to provide a speedy, efficient and economical method of resolving disputes in the railway industry in matters of access without recourse to the courts.*
2. *The rules provide a menu of options for the resolution of disputes. The options are the Access Dispute Resolution Committee itself, any of its specialist sub-committees, mediation, expert determination and arbitration.*
3. *It is not the rules which prescribe which method of dispute resolution should be used by parties to a dispute. Rather, it is the commercial contract between the parties (usually a track, station or depot access agreement) which determines which, if any, of the options in the rules will be used in a particular case. The parties may choose not to use the rules at all for some classes of dispute, although in substantially all access agreements the rules have been adopted. In certain types of case, the Network Code, Station Access Conditions and Depot Access Conditions prescribe that the rules must be used. These are cases where the dispute may have a bearing on the interests of third parties or where reference may be made to the Office of Rail Regulation for a final determination.*
4. *Whilst annexed to the Network Code, they are in fact used for the resolution of disputes arising out of station and depot access contracts as well. The Access Dispute Resolution Rules are separate from the parallel (but in some respects materially different) Railway Industry Disputes Resolution Rules. The latter rules are used for non-access disputes, including disputes arising out of rolling stock leases and other unregulated contracts (in the Access Dispute Resolution Rules, the parallel rules are referred to as the "Non-Access Dispute Resolution Rules"). The two sets of rules should not be confused.*
5. *In cases where a dispute is inextricably connected with another matter which falls to be dealt with by the Non-Access Dispute Resolution Rules, then the dispute may be handled under those Rules.*
6. *The rules may be changed by the Class Representative Committee or the Office of Rail Regulation under Part C of the Network Code. All changes require the approval of the Office of Rail Regulation.*

## **Access Dispute Resolution Committee**

7. *Part A of the rules concerns the establishment of the Access Dispute Resolution Committee and its sub-committees.*

### *Composition of Committee*

8. *The Access Dispute Resolution Committee consists of a Chairman, a Committee Secretary and eight elected members. Of the eight elected members, one is appointed by the Committee as Deputy Chairman. To ease the demands on the Chairman, provision is also made for the appointment by the Committee of one or more independent Vice-Chairmen who share the duties and responsibilities of the Chairman.*
9. *The elected members are appointed by the same constituencies as elect the members of the Class Representative Committee under Part C of the Network Code. Two members are appointed by Network Rail, one by each of the three bands of the Franchised Passenger Class, one by each of the two bands of the Non-Passenger Class and the eighth by the Non-Franchised Passenger Class. Appointment is made by election.*
10. *The elected members may appoint and remove alternates who act in their places.*
11. *Elected members retire by rotation.*
12. *The Access Dispute Resolution Committee is funded by a levy payable by parties which have agreed to resolve their disputes using the rules. The levy is directly proportionate to the licence fees payable by those parties.*

### *Chairman*

13. *The Chairman of the Committee holds a special position. He is not a member of the Committee, but he chairs it. He is appointed by unanimous resolution of the Committee. He may be removed by the Committee. To be eligible for appointment, he must have suitable experience of the railway industry and may not, whilst in office, be employed by or otherwise be connected with a party to an access agreement in a way which may compromise his impartiality.*
14. *The Chairman has important powers to make procedural and substantive rulings in cases before the Committee. He also plays an important part in determining questions of the confidentiality of the decisions of the Committee and its sub-committees, of arbitrators and experts dealing with disputes, and in questions concerning the disclosure of information by Network Rail to train operators under Part 9 of Schedule 7 of track access agreements (which concern the structure of track access charges payable to Network Rail).*

### *Deputy Chairman*

15. *The Deputy Chairman is one of the elected members of the Committee. He is not empowered to make substantive rulings in cases where he is employed by or otherwise connected with one of the parties to the dispute in a way which may compromise his impartiality.*

### *Disputes secretary*

- 16. The Committee appoints a Disputes Secretary with the approval of the Office of Rail Regulation. The Disputes Secretary maintains a register of persons who are suitably qualified to act as arbitrators to determine disputes. He can also supply names of persons qualified to act as mediators and experts.*
- 17. The register must be provided to any industry party which requests it.*

### *Meetings of the Committee*

- 18. The quorum of the Committee is the Chairman and five elected members. The Deputy Chairman or any of the independent Vice-Chairmen may act in the place of the Chairman. Alternates may act in the place of elected members.*

### *Sub-committees*

- 19. The rules empower the Committee to establish specialist sub-committees.*
- 20. Two specialist sub-committees are established by the rules themselves. They are the Timetabling Sub-Committee (which deals with timetabling and train regulation disputes under Conditions D5 and H11.9(a) of the Network Code) and the Network and Vehicle Change Sub-Committee (which deals with disputes under Conditions F5 and G6 of the Network Code).*
- 21. The Chairman of the Access Dispute Resolution Committee is the Chairman of the Timetabling and Network and Vehicle Change Sub-Committees. His place may be taken by one of the independent Vice-Chairmen.*
- 22. Sub-committees may make their own rules of procedure. However, in the case of disputes which may be referred ultimately to the Office of Rail Regulation for determination, rules of procedure may not be inconsistent with certain entrenched rules.*
- 23. Questions of the jurisdiction of sub-committees are determined by the Committee by majority vote.*

### *Procedure of the Committee and its sub-committees*

- 24. The Committee is entitled to make its own rules of procedure. It may also make rules of procedure for a sub-committee.*
- 25. Certain detailed rules of procedure of the Committee are already established in the rules themselves.*
- 26. Parties to a dispute which is heard by the Committee are entitled to determine their own representation. One or more of the representatives of a party may be legally qualified. Other advisers are also allowed.*

27. *In disputes which are not appealable to the Office of Rail Regulation, the Chairman of the Committee has a discretion to disallow legal representation before the Committee. Before making such a ruling, the Chairman is obliged to consult the parties, the elected members and the independent Vice-Chairmen.*
28. *The Chairman is entitled to appoint a clerk of the Committee, assessors (in technical, legal or other matters) or to obtain other legal advice. The clerk to the Committee may, but need not, be a lawyer.*
29. *The Committee determines disputes referred to it unanimously. In doing so, its members fulfil an arbitral, not a partisan, role. If unanimity is not achieved, the Chairman's powers in relation to the next steps depend on the nature of the dispute. If the dispute is one which is appealable to the Office of Rail Regulation, the Chairman must either adjourn the hearing to a later meeting of the Committee or make a ruling himself. If the dispute is not one which is appealable to the Office of Rail Regulation, the Chairman has a discretion: to make a ruling, adjourn the hearing or declare the matter unresolved.*
30. *The Committee has the power to make awards of costs against a party to a dispute. In cases which are not appealable to the Office of Rail Regulation, there is a presumption that no such order will be made, but that presumption is rebuttable where the Committee is satisfied that the matter should not have come before the Committee in the first place or the conduct of the party against which the order is made has been such as to justify an order for costs being made against it.*
31. *After the Committee has finished with a dispute (whether by agreed determination, a Chairman's ruling or a declaration that the matter is unresolved), the right of a party which is dissatisfied with the outcome depends on the terms of the commercial contract under which the dispute was referred to the Committee in the first place. In cases which are appealable to the Office of Rail Regulation, the Network Code specifies what is to happen next. In other cases, the contract should give the answer. In most track and station access agreements, it is provided that the matter will go next to arbitration. In some cases, the contract provides that the Committee itself (or the relevant sub-committee) will determine the next step.*

## **Mediation**

32. *Mediation is a private dispute resolution process involving a neutral mediator who meets the parties and tries to enable them to resolve their dispute by agreement.*
33. *Simple rules of procedure are specified in Part B of the rules.*
34. *Part B also contains rules as to the confidentiality of the mediation and of documents used in the mediation.*

## **Arbitration**

35. *Arbitration is a formal process which resembles proceedings in a court in many ways. However it is not subject to the same delays and rules as court proceedings, and it is not public.*
36. *The parties appoint an arbitrator by agreement. If they fail to agree, the Disputes Secretary appoints the arbitrator. An arbitration fee not exceeding £500 is payable.*
37. *The arbitrator has a complete discretion as to the rules of procedure to be followed in the arbitration, but the presumption is that the comprehensive set of rules of procedure in paragraph C3 will apply unless disapplied by the arbitrator in a particular case.*
38. *The rules of procedure in paragraph C3 are designed to focus as sharply as possible the issues of fact and law (if any) which separate the parties. The procedure provides for this to be done on paper before the matter reaches an oral hearing. It is achieved by the use of the procedure of "adjustment of pleadings" under which each averment (an assertion of fact or of law) of a party is answered in writing by the other party. When averments have been answered, the first party may in turn answer what the other party has said. The process is iterative and time-limited.*
39. *Once the issues have been so focused, a single document incorporating the averments and answers of each party is prepared. This enables the arbitrator and the parties to see clearly exactly what has to be proved and what the issues are. Extraneous material and matters which can be agreed or disposed of in advance are thus filtered out before any oral hearing of the matter. (It may be that the adjustment process causes the matter to be settled without a hearing). The outcome should minimise the amount of time used preparing for, and consumed by, an oral hearing. The process is designed to keep the number of witnesses and the facts to which they are required to speak to the irreducible minimum. The same applies to any points of law.*
40. *The arbitrator has powers to make substantially the same kinds of order as a court. These include orders for the payment of money, orders to take or not to take specified action, the determination of the meaning of an agreement and the award of costs.*
41. *The decision of the arbitrator (called the "award") is provided to the parties, the Chairman of the Access Dispute Resolution Committee and the Disputes Secretary. There is a presumption that the award will be published to the industry to enable "case law" to be built up. However, if either party believes that publication should not take place, it must give notice of that fact to the Chairman of the Committee within 7 days of receiving the award. The Chairman then follows a procedure of consultation of the parties concerned and decides whether publication should take place by balancing the interests of the party in question in the confidentiality of the award on the one hand and the interests of the industry in its publication on the other hand.*

### **Expert determination**

42. *Expert determination is provided for in Part D. It is an alternative to arbitration. It resembles arbitration in many ways but the decision of the expert is final and not challengeable in the same ways as an award of an arbitrator. The procedure is very much the same.*

### **Determinations by the Office of Rail Regulation**

43. *Part E makes certain provision for matters to be determined by the Office of Rail Regulation.*
44. *There are two ways in which the Office of Rail Regulation may come to determine a dispute. The first is where a contract (usually an access agreement) which the Office of Rail Regulation has approved provides for the Office of Rail Regulation to perform this role. The second is where the Office of Rail Regulation has given its consent in a particular case. Instances of the latter kind are expected to be rare.*
45. *The Network Code provides for certain appeals to be made to the Office of Rail Regulation for final determination. These are in certain cases of timetable, network change, vehicle change and train regulation disputes. These appeal mechanisms have been designed so as to minimise the numbers of appeals to the Office of Rail Regulation.*

## DEFINITIONS AND INTERPRETATION

### *Definitions*

In these rules, unless the context otherwise requires:

“Access Conditions” in relation to an access contract, means whichever of the Network Code, the National Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions is incorporated by reference in that access contract;

“affiliate” in relation to a company, means:

- (a) a company which is either a holding company or a subsidiary of such a company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary;

and for these purposes "holding company" and "subsidiary" shall have the meanings given to them in section 736 of the Companies Act 1985;

“alternate” means an alternate of a member appointed pursuant to paragraph A2.6;

“arbitrator” in Scotland, means arbiter;

“beneficiary” has the meaning ascribed to it in section 17(7) of the Act;

“Chairman” means the chairman of the Committee and, where he is acting as chairman, the Deputy Chairman;

“claimant” means a person who refers a dispute to the Committee or an arbitrator;

“the Committee” means the Access Dispute Resolution Committee established pursuant to paragraph A2;

“Committee Secretary” means the person appointed as such pursuant to paragraph A3.7;

“costs”	includes expenses;
“Deputy Chairman”	means the deputy chairman of the Committee appointed pursuant to paragraph A3.1(b);
“Disputes Secretary”	means the person appointed as such pursuant to paragraph A3.11;
“financial associate”	in relation to any party, means a person from whom that party has obtained or is, in good faith, seeking to obtain any financial assistance, whether by way of loan, equity participation or otherwise;
“independent Vice-Chairman”	means a person appointed pursuant to paragraph A3.12;
“Industry Party”	means a facility owner or a beneficiary which in either case is a party to an Access Agreement;
“licence fees”	in relation to an Industry Party, means the amount payable by that Industry Party to the Office of Rail Regulation under each of the licences granted to it under section 8 of the Act which it holds;
“member”	means a member of the Committee;
“modifications”	has the meaning ascribed to it in section 151 of the Act and cognate expressions shall be construed accordingly;
“Non-Access Dispute Resolution Rules”	means the rules bearing the name "The Railway Industry Disputes Resolution Rules" (formerly the "Industry Disputes Resolution Committee, Mediation, Arbitration and Expert Determination Rules");
“party to a dispute”	in relation to a dispute, means a person who: <ul style="list-style-type: none"> <li>(a) has made a claim in the dispute;</li> <li>(b) has had a claim made against him; or</li> <li>(c) in the case of a reference by an Access Party under the Access Conditions, is likely to be materially affected by the outcome of the reference;</li> </ul>
“pleadings”	means the written averments, pleas, admissions and denials of each party to an arbitration;



“register”	means the register established and maintained pursuant to paragraph A3.11.2; and
“unlicensed Industry Party”	means an Industry Party which does not hold a licence under section 8 of the Act.

### *Interpretation*

Unless the context otherwise requires:

- (a) terms and expressions defined in the Network Code shall have the same meanings in these Rules;
- (b) the rules of interpretation in the Network Code shall have effect in these Rules; and
- (c) references to paragraphs and parts are to paragraphs and parts of these Rules.

## **A THE COMMITTEE**

### **A1.1 Purpose**

The purpose of the Committee is to discuss and, if possible, settle by agreement disputes which are referred to it by Industry Parties and which arise out of or in connection with:

- (a) an Access Agreement;
- (b) the Access Conditions incorporated by reference in the Access Agreement in question;
- (c) an access option,

except where:

- (i) such a dispute is required to be resolved pursuant to the Non-Access Dispute Resolution Rules;
- (ii) such dispute is so connected with a dispute (whether involving the same parties or not) which is required to be resolved pursuant to the Non-Access Dispute Resolution Rules that it is expedient for the two disputes to be resolved in the same proceedings; or
- (iii) the parties have agreed that the dispute will be resolved pursuant to the Non-Access Dispute Resolution Rules;

in each of which cases the dispute shall be referred to the Committee established under the Non-Access Dispute Resolution Rules.

### **A1.2 Jurisdiction in Disputes**

If there is a disagreement as to whether a dispute falls within paragraph A1.1(i) or (ii), each party to the disagreement shall submit its arguments in writing to the Committee Secretary and to the other party, so as to be received either before the notice of reference is served or within seven days of its service. The Committee Secretary shall rule on the disagreement within seven days of receiving the submissions. If either party refuses to accept the Committee Secretary's ruling, the issue shall be determined by the Chairman of the Committee established pursuant to paragraph A2 of the Non-Access Dispute Resolution Rules.

## **A2      *Establishment and composition of the Committee***

### **A2.1      *General***

The Committee is hereby established and shall consist of the Chairman, the Committee Secretary and eight members of whom one shall be appointed Deputy Chairman pursuant to paragraph A3.1. The members of the Committee shall be appointed by the following Bands and Classes:

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

None of the Chairman, the independent Vice-Chairmen or the Committee Secretary shall be a member of the Committee.

### **A2.2      *Appointment***

#### **A2.2.1      *Elections***

Members of the Committee shall be appointed by election. The elections shall be carried out in the same way as elections of members of the Class Representative Committee are carried out under Part C of the Network Code.

#### **A2.2.2      *Affiliates***

Affiliates of one another shall be treated as the same person for the purpose of any election.

#### **A2.2.3      *Notification of elections***

The Committee Secretary shall, as soon as reasonably practicable following the election of a new member, notify the Chairman, the independent Vice-Chairmen, all members and Class Members of that election.

### **A2.3      *Duration of appointment***

Subject to paragraphs A2.4 and A2.5, unless he shall have been re-elected, a member shall be treated as having ceased to hold office on the 1 April which is nearest to the date which is two years after the date of his appointment.

#### A2.4 *Loss of office*

A member:

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

#### A2.5 *Retirement by rotation*

Notwithstanding paragraph A2.3, members shall retire in rotation on 1 April in each year in the following order:

- (a) on 1 April 1995:
  - (i) the member appointed by the Band of the Franchised Passenger Class which is highest by value of relevant annual Track Charges payable by the Bands of that Class at the relevant time;
  - (ii) the member appointed by the Band of the Non-Passenger Class which is the higher of the two by value of relevant annual Track Charges payable by them at the relevant time;
  - (iii) the member appointed by the Band of the Non-Franchised Passenger Class; and
  - (iv) whichever of Network Rail's two members as Network Rail shall elect;
- (b) on 1 April 1996, the members of the Committee who shall not have retired pursuant to sub-paragraph (a) above.

#### A2.6 *Alternates*

##### A2.6.1 *Rights to appoint or remove alternates*

Each member (other than an alternate member) may:

- (a) appoint any person who is willing to act to be his alternate; and
- (b) remove that alternate from office.

##### A2.6.2 *Notice of appointment or removal*

The appointment or removal of an alternate shall be by notice given to the Chairman and the Committee Secretary within 7 days of the appointment or removal and signed by the member making or revoking the appointment.

#### **A2.6.3** *Rights of alternates*

An alternate shall be entitled:

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

#### **A2.6.4** *Loss of office of alternates*

An alternate shall cease to be an alternate if the member which appointed him ceases to be a member.

### **A3** *The Chairman, Deputy Chairman and Committee Secretary*

#### **A3.1** *Appointment of Chairman and Deputy Chairman*

The Committee shall appoint:

- (a) its Chairman, who shall:
  - (i) not be a member of the Committee;
  - (ii) have suitable experience of the railway industry; and
  - (iii) subject to paragraph A3.5, not, during his term of office, be employed by or otherwise connected with any Industry Party or receive any benefit from any Industry Party in return for services provided to it, in either case in a way which may compromise his impartiality; and
- (b) one of its members to act as Deputy Chairman.

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

#### **A3.2** *Declaration of connections*

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

**A3.3**     *Fees, expenses and allowances of Chairman*

**A3.3.1**     Subject to paragraphs A3.4 and A3.5, the Chairman shall hold office on such terms as the Committee shall determine. Where the terms on which the Chairman holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Committee.

**A3.3.2**     The terms on which the Chairman holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Committee.

**A3.4**     *Duration of appointment of Chairman*

**A3.4.1**     *Appointment and removal*

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

- (a)    in the case of removal on the ground of the incapacity or misbehaviour of the Chairman, be passed on the positive resolution of at least five members of the Committee; and
- (b)    in any other case, be passed only by unanimous resolution.

**A3.4.2**     *Appointment of successor Chairman*

If, within 45 days of the termination (for whatever reason) of the period of office of a Chairman, the Committee shall have failed to make the appointment of a new Chairman pursuant to paragraph A3.1, the Committee shall:

- (a)    by unanimous resolution, determine a list of three candidates for the office of Chairman;
- (b)    send the list to the Office of Rail Regulation, together with such information in relation to the candidates and the preferences of the members of the Committee 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.

A3.5 [Not used]

A3.6 *Deputy Chairman*

A3.6.1 *Appointment and removal*

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

A3.6.2 *Voting by Deputy Chairman*

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

A3.7 *Committee Secretary*

The Chairman shall appoint a Committee Secretary, and an alternate, who may be employees of one or more Industry Parties. They may attend Committee meetings and may be removed from office by the Chairman.

A3.8 *Terms of appointment of Deputy Chairman, Committee Secretary etc.*

A3.8.1 The Deputy Chairman and the Committee Secretary and his alternate shall hold office on such terms as the Committee shall determine. Where the terms on which any of them holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Committee.

A3.8.2 The terms on which the Deputy Chairman, Committee Secretary and his alternate holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Committee.

**A3.9**     *Funding of Committee etc.*

**A3.9.1**   *Payments by Industry Parties*

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

In the event that any Industry Party fails to pay to the Committee Secretary the required amount pursuant to this paragraph A3.9.1 within 30 days of being requested to do so by the Committee Secretary, that Industry 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 2% 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.

**A3.9.2**   *Committee to estimate costs*

The estimated costs and expenses of the Committee referred to in paragraph A3.9.1 shall be the amount which the Committee reasonably expects will be its costs of operation in the year beginning with the next following 1 April, net of any receipts (including amounts received pursuant to paragraphs A5.11.7 and C5.1) which it expects to be paid to it by any person, including any unlicensed Industry Party.

**A3.9.3**   *Adjustments of estimates*

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

**A3.9.4**   *Accountants' certificate*

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



#### A3.10 *Chairman etc. not employees*

None of the Chairman, the Deputy Chairman, the independent Vice-Chairmen, the Committee Secretary, his alternate or the Disputes Secretary shall by virtue of his office be an employee of the Committee or any person.

#### A3.11 *The Disputes Secretary*

##### A3.11.1 *Appointment*

The Committee shall, with the approval of the Office of Rail Regulation, appoint a Disputes Secretary, who may be employed by an Industry Party and may be the same person as the Committee Secretary. The Disputes Secretary may be removed from office by a decision of the Committee, provided that at least two weeks' written notice of the intention to table such a motion has been given to all members of the Committee, the Chairman and the Disputes Secretary.

##### A3.11.2 *Register*

The Disputes Secretary shall establish and maintain a register of persons who are suitably qualified, willing and able to act as mediators, arbitrators or experts and of organisations which are qualified to suggest such persons. The Disputes Secretary shall provide a copy of the register on request to any Industry Party or the Strategic Rail Authority.

##### A3.11.3 *Other functions and qualifications*

The Disputes Secretary shall have such other functions as the Committee shall determine. The Committee may authorise the Disputes Secretary to engage staff or consultants to assist him in his functions.

##### A3.11.4 *Terms of appointment etc.*

The provisions of paragraph A3.8 shall apply *mutatis mutandis* to the Disputes Secretary, his staff and consultants as they apply to the Committee Secretary.

#### A3.12 *Independent Vice-Chairmen*

##### A3.12.1 *Power to appoint*

If the Committee shall be satisfied that, in addition to the Deputy Chairman appointed pursuant to paragraph A3.1(b), it is necessary or expedient that there shall be one or more Vice-Chairmen of the Committee who shall not be members of the Committee, it shall be entitled at any time and from time to time to make such an appointment.

#### A3.12.2 *Method of appointment*

An independent Vice-Chairman shall be appointed in the same way as, and according to the same conditions as apply to the appointment of, the Chairman, except that paragraph A3.4.2 shall not so apply.

#### A3.12.3 *Terms of appointment of independent Vice-Chairmen*

Each independent Vice-Chairman shall hold office and be liable to be removed from office in the same way as the Chairman. Paragraph A3.5 shall not apply to any independent Vice-Chairman.

#### A3.12.4 *Rights and obligations of independent Vice-Chairmen*

Except to the extent:

- (a) otherwise determined by the Committee; or
- (b) that the Chairman shall have acted or given notice to the independent Vice-Chairman in question that he has determined that he shall act in the matter in question,

each independent Vice-Chairman shall have the same rights and obligations as are exercisable and dischargeable by the Chairman under these rules. References in these rules to the Chairman shall be construed accordingly.

#### A3.13 *Capacity of Committee to enter into Contracts with Officers*

In making any appointment or otherwise exercising its powers under this paragraph A3, the Committee is authorised to act on behalf of the Industry Parties.

#### A3.14 *Indemnities by new, and to retiring, Industry Parties*

A3.14.1 An Industry Party, on becoming such, shall indemnify those who are already industry Parties ("the existing Industry Parties") against its share of any liability which arises:

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

Its share shall be the appropriate proportion of the liability calculated in accordance with paragraph A3.9.1, applied to the Industry Parties at the time the liability arises.

- A3.14.2 An Industry Party which ceases to be such shall be indemnified by the Industry Parties which remain as such against any liability which arises:
- after it ceases to be an Industry Party and
  - under a contract of appointment entered into by the Committee on behalf of it (with other Industry Parties) while it was an Industry Party,
- such that the Industry Parties as at the date the liability arises shall bear it in the proportion set out in paragraph A3.9.1, applied to them.

#### **A4 Sub-committees**

##### **A4.1 Particular sub-committees**

The following sub-committees of the Committee are hereby established:

- (a) a Timetabling Sub-Committee, which shall determine references made to it pursuant to Conditions D5 and H11.9(a) of the Network Code; and
- (b) a Network and Vehicle Change Sub-Committee, which shall determine references made to it pursuant to Conditions F5 and G6 of the Network Code.

##### **A4.2 Constitution of sub-committees**

###### **A4.2.1 Membership**

The membership of each sub-committee shall be determined in the same way as members of the Committee are appointed, and Part A of these rules shall apply *mutatis mutandis* to such determinations. The same person may be a member of the Committee and any sub-committee.

###### **A4.2.2 Chairmanship of sub-committees**

The chairman of the Timetabling Sub-Committee and the Network and Vehicle Change Sub-Committee shall be the Chairman of the Committee or one of the independent Vice-Chairmen. The chairman of any other sub-committee shall be either the Chairman of the Committee or any other person elected by the sub-committee in question and approved by the Chairman of the Committee.

###### **A4.2.3 Powers of sub-committee chairman to make rulings**

Where the chairman of a sub-committee is a person other than the Chairman of the Committee or one of the independent Vice-Chairmen and is an officer or employee of, or is otherwise connected with, an Industry Party (in either case in a way which may compromise his impartiality), he shall not be entitled to make a

ruling under paragraph A4.5 or A5.11 if the Industry Party in question is a party to the dispute in question.

**A4.3**     *Meetings of the Timetabling Sub-Committee*

The Timetabling Sub-Committee shall meet within 35 days after the end of the Bidding Cycle.

**A4.4**     *Other sub-committees*

The Committee may decide to establish other sub-committees.

**A4.5**     *Constitution of other sub-committees*

The Committee shall have the power, by unanimous vote, to determine the constitution of any sub-committee established pursuant to paragraph A4.4. If it shall fail to reach such a decision, the Chairman shall make a ruling determining the matter.

**A4.6**     *Procedural rules*

Paragraph A5.3 applies in relation to the rules of procedure of sub-committees.

**A4.7**     *Questions of jurisdiction*

In any case in which either:

- (a) more than one of the sub-committees of the Committee has jurisdiction in a reference; or
- (b) the parties to a dispute are not in agreement as to which of the sub-committees of the Committee should determine their reference,

the question of jurisdiction shall be determined by the Committee by resolution pursuant to paragraph A7.

**A5**       ***Proceedings of the Committee***

**A5.1**     *Meetings*

Meetings of the Committee shall take place at the dates, times and places notified to Industry Parties by the Chairman, or the Committee Secretary on his behalf. Any Industry Party may, by notice to the Committee Secretary, require a meeting of the Committee to be called. That meeting shall take place within 14 days (or such longer period as the Industry Party in question shall agree with the

Committee Secretary) of the receipt by the Committee Secretary of the notice. The quorum for each meeting of the Committee shall be the Chairman and five members or their alternates. With the consent of the Chairman or in accordance with such directions as the Chairman shall have given, the Deputy Chairman or any of the independent Vice-Chairmen may attend in the place of the Chairman and shall be counted as Chairman for the purposes of the quorum. If the Deputy Chairman so attends in place of the Chairman, he shall be counted both as Chairman and as a member.

#### A5.2 *Chairmanship of meetings*

Each meeting of the Committee shall be chaired by the Chairman or the Deputy Chairman. When he is chairing the Committee, the Deputy Chairman shall have all the powers of the Chairman, except that the Deputy Chairman shall not be entitled to make a ruling pursuant to paragraph A5.11 in relation to any dispute to which the Industry Party of which he is an employee (or is otherwise connected with in a way which may compromise his impartiality) is a party.

#### A5.3 *Rules of procedure of Committee and sub-committees*

##### A5.3.1 *Committee to make rules*

Subject as provided in this paragraph A5.3, the Committee shall be entitled to make and from time to time revise the rules of procedure to be followed by the Committee and every sub-committee. If no rules of procedure shall have been made for any sub-committee, the rules of procedure of the Committee shall apply to the proceedings of the sub-committee as if it were the Committee.

##### A5.3.2 *Power to delegate power to make rules*

The Committee may delegate the power to make and revise rules of procedure for any sub-committee to the sub-committee in question, subject to such (if any) conditions as the Committee shall specify in the delegation. Any such delegation may be revoked at any time by notice in writing given by the Committee to the chairman of the sub-committee in question. Notice of any such delegation or revocation shall be promptly given to each member of the sub-committee in question. This paragraph A5.3 shall apply *mutatis mutandis* to rules made pursuant to a delegation, except that paragraph A5.3.3 shall apply as if references in that paragraph to the Chairman of the Committee were references to both the Chairman of the Committee and the chairman of the sub-committee in question.

##### A5.3.3 *Consultation with Chairman and independent Vice-Chairmen*

No rules of procedure may be made or revised pursuant to this paragraph A5.3 unless the Committee shall have:

- (a) consulted the Chairman of the Committee and each of the independent Vice-Chairmen as to the proposed rules or revisions; and
- (b) taken into account any representations or objections they shall have made within such time as the Committee shall have specified for the purpose.

In so consulting, the Committee shall provide a copy of the proposed rules or revisions to the Chairman and each of the independent Vice-Chairmen.

#### A5.3.4 *Access Conditions to prevail*

Where the Access Conditions in question provide for the procedure to be followed in the determination of any matter referred to the Committee or any sub-committee, those provisions shall prevail and the Committee shall have no power to make inconsistent rules of procedure.

#### A5.3.5 *Relationship with Access Dispute Resolution Rules*

Subject to paragraph A5.3.4, rules of procedure made pursuant to this paragraph A5.3 may not be inconsistent with any provision of Part A of these rules, except that:

- (a) a sub-committee may decide to meet with such frequency as it shall determine necessary for the proper discharge of its functions; and
- (b) rules of procedure may specify time limits which are different from those specified in this Part A provided they do not deny any party to a dispute the right:
  - (i) properly to make his case;
  - (ii) to receive proper notice of the case he has to answer; and
  - (iii) to a fair hearing.

#### A5.4 *Commencement of proceedings*

A person wishing to refer a dispute to the Committee shall serve a written notice of reference on the Committee Secretary and on every other party to the dispute. The notice shall:

- (a) state the subject-matter of the dispute;
- (b) identify the other parties concerned;
- (c) be accompanied by any papers which the claimant reasonably considers are necessary to or desirable for the Committee's consideration of the dispute; and

- (d) be sent so as to be received by each person to whom it is sent at least 7 days before the meeting of the Committee which is to consider the matter.

#### A5.5 *Responses*

Each other party to a dispute which has been notified to the Committee Secretary pursuant to paragraph A5.4 shall provide to the Committee Secretary and the other parties to the dispute such further information or documents which that party reasonably considers necessary or desirable to the Committee's consideration of the dispute. Such information or documents shall be sent so as to be received by each person to whom it is sent at least 7 days before the meeting of the Committee which is to consider the matter.

#### A5.6 *Circulation of papers*

The Committee Secretary shall circulate to members, so as to be received at least 4 days before a meeting of the Committee, a list of the issues to be tabled at that meeting, together with appropriate summaries and background papers relating to those issues. Late circulation of papers to members by the Committee Secretary shall not prevent or invalidate discussion of the disputes concerned.

#### A5.7 *Notification to parties to dispute*

The Committee Secretary shall notify an Industry Party, which is a party to a dispute to be considered at a meeting of the Committee, of the time, date and place of the meeting. Such notification shall be sent so as to be received at least 7 days before the meeting. If a party does not receive such notification at least 7 days before the meeting and the information submitted by each other party to the dispute by the time specified above (other than through its own fault), it shall be entitled to require the Committee to postpone its consideration of the dispute until a date which is not earlier than 7 days after its receipt of the notification in question. The Committee shall be entitled to proceed to consider any dispute referred to it unless:

- (a) any party to the dispute shall, before the beginning of the meeting, have exercised any right to have consideration of the dispute postponed; or
- (b) the Chairman, on the application of any party to the dispute, determines that the Committee's consideration of the dispute should be postponed on the grounds that the party which has made the application has received insufficient notice in any respect.

If the Committee's consideration of the dispute is not so postponed, no objection shall be made in relation to the failure of any party timeously to receive any notification, information or documents.

#### A5.8 *Time extensions*

The Chairman on cause shown may extend any period of time fixed by or pursuant to these rules whether or not that period of time has expired. He shall notify the members of the Committee, the Committee Secretary and the parties to the dispute of any such extension of time.



## **A5.9**     *Representation before the Committee*

### **A5.9.1**   *Representatives*

Subject to paragraph A5.9.5, each party to a dispute shall be entitled to be represented by such persons as it considers appropriate at that part of the meeting of the Committee which considers a dispute to which it is a party. If a member of the Committee is an officer or employee of a party to the dispute, that party may be represented by that member, whether or not it is also represented by any other person. A party intending to be represented shall notify the Committee Secretary and the other parties to the dispute of the name and address of each of its representatives. A person shall not be prevented from representing a party because he is or may be a witness in the proceedings. Nothing shall prevent a party being represented by different persons at different times.

### **A5.9.2**   *Right to be heard*

The representative of a party to the dispute shall be entitled to make written and oral representations to the Committee on behalf of the party in question.

### **A5.9.3**   *Legal representation and advice*

Subject to paragraph A5.9.5, the representative of a party to a dispute may be legally qualified, or may be accompanied by a legal adviser who shall be entitled to advise the representative at the meeting of the Committee.

### **A5.9.4**   *Other assistance and observers*

The representative of a party to a dispute shall be entitled to be accompanied at the meeting of the Committee by a representative of that party's insurers and by persons with technical or professional expertise (other than legal advisers) in relation to the subject matter of the dispute. Such persons shall be entitled to advise the representative.

### **A5.9.5**   *Discretion of Chairman in relation to legal representation etc. in certain matters*

In relation to disputes referred to the Committee other than pursuant to Conditions D5, F5, G6 and H1 I.9(a) of the Network Code, the Chairman of the Committee shall be entitled to direct that none of the parties to the dispute shall be entitled to be accompanied or represented by a person who is legally qualified. No such direction may be given unless the Chairman has first:

- (a) given not less than 5 days' notice to the parties to the dispute, the members of the Committee and the independent Vice-Chairmen of:
  - (i) his intention to give such a direction;

- (ii) his reasons; and
  - (iii) the period (which shall not be less than 48 hours) within which they may make representations or objections to him in relation to the matter; and
- (b) taken into account any representations or objections which any of them shall have timeously made.

Any such direction shall be in writing and shall be given to the parties to the dispute, and a copy sent to each member of the Committee and each independent Vice-Chairman, as soon as reasonably practicable after the Chairman shall have decided the matter.

#### A5.10 *Procedure at Committee meetings*

##### A5.10.1 *Length of proceedings*

The Chairman shall be entitled to determine for how long a party's representative may address the Committee, provided a fair and equal opportunity is given to the parties for the presentation of their cases.

##### A5.10.2 *Appointment of assessor*

Any party to a dispute shall be entitled to require the Committee to appoint a legal, technical or other assessor to assist it in its consideration of the dispute. The Chairman shall have the power to appoint an assessor on his own motion. Any such assessor shall:

- (a) attend all meetings of the Committee at which the dispute is considered unless the parties and the Chairman agree otherwise; and
- (b) if the Chairman determines that it is in the interests of the efficient and fair determination of the dispute, be entitled to ask questions of the parties to the dispute, their representatives and any other person required to give evidence.

The Committee shall have regard to but shall not be bound to adopt the views expressed by the assessor.

##### A5.10.3 *Appointment of clerk*

The Chairman shall be entitled to appoint any person to act as clerk to the Committee for the hearing of any dispute referred to the Committee.

The provisions of paragraph A3.8 shall apply *mutatis mutandis* to the clerk as they apply to the Committee Secretary.

#### A5.10.4 *Legal advice*

The Chairman shall be entitled to obtain legal advice in relation to any aspect of a dispute on his own motion.

#### A5.11 *Determination of disputes*

##### A5.11.1 *Determination by agreement*

After the conclusion of the hearing of the representatives of the parties to a dispute, the Committee shall make its determination of the dispute. The dispute shall be determined by the Committee only if all members of the Committee agree on the determination of the dispute. The Chairman may at any time call for a vote of the members to ascertain whether unanimity has been achieved. A determination shall be treated as having been unanimously agreed if no member present votes against it.

##### A5.11.2 *Failure to agree determination of dispute*

If the determination of a dispute shall not have been agreed pursuant to paragraph A5.11.1 at any meeting of the Committee:

- (a) in the case of a reference to the Committee under Conditions D5, F5, G6 or H11.9(a) of the Network Code, the Chairman shall either:
  - (i) postpone consideration of the dispute to a subsequent meeting of the Committee; or
  - (ii) make a ruling as to the determination of the dispute; and
- (b) in the case of any other reference to the Committee, the Chairman may:
  - (i) postpone consideration of the dispute to a subsequent meeting of the Committee;
  - (ii) make a ruling as to the determination of the dispute; or
  - (iii) declare that the dispute shall not have been resolved.

A ruling by the Chairman pursuant to paragraphs A5.11.2(a)(ii) or A5.11.2(b)(ii) shall be deemed to be a decision of the Committee or sub-committee in question for the purposes of the Network Code.

##### A5.11.3 *Power to make orders*

In the determination of a dispute, the Committee or the Chairman may make any of the orders provided for in paragraph C4.2.

#### *A5.11.4 Power to require further information*

Where the Chairman exercises his powers to postpone consideration of a dispute to a subsequent meeting of the Committee, he may require the parties to the dispute to provide the Committee with such further information in such form and by such times as he shall specify.

#### *A5.11.5 Written determination*

The Committee's or Chairman's determination of a dispute shall be in writing.

#### *A5.11.6 Reasons*

In the case of a reference to the Committee under Conditions D5, F5, G6 or H11.9(a) of the Network Code, the determination of the Committee or the Chairman shall be accompanied by a written statement of the reasons for the determination. In the case of any other reference, the Committee or the Chairman (as the case may be) shall not be obliged to provide a written statement of its or his reasons for the determination unless any of the parties to the dispute shall so require.

#### *A5.11.7 Costs and expenses*

The Committee shall have power, on the motion of any party to a dispute, to order any party to a dispute to meet the costs or expenses of the Committee and of any other party to the dispute, assessed in such manner as the Committee shall determine. In the case of references made to the Committee other than under Conditions D5, F5, G6 or H11.9(a) of the Network Code, there shall be a presumption that no such order shall be made. Such presumption shall be rebutted only where the Committee is satisfied that either:

- (a) the case of any party to the dispute shall have been so lacking in merit that the reference should not have been made; or
- (b) the conduct of any such party before or during the conduct of the reference was such as to justify an award of costs being made against it.

#### *A5.11.8 Minutes*

Without prejudice to paragraphs A5.11.5 and A5.11.6 and subject to paragraph A5.11.9:

- (a) the Committee Secretary shall prepare full and accurate minutes of every meeting of the Committee;
- (b) the minutes shall be considered and approved (with or without modification) at the next meeting of the Committee, or, in the circumstances in which the next meeting of the Committee is not anticipated to take place within three months, the minutes may be circulated

and approved by the assent in writing of all Committee members who were present at the meeting concerned; and

- (c) copies of the approved minutes shall be provided to every Industry Party and the Strategic Rail Authority not later than 7 days after their approval.

#### **A5.11.9 Confidentiality of Committee decision**

Subject to compliance with any provision of the Access Conditions in question, the Chairman shall have a discretion to direct that the decision of the Committee or any part of it shall be kept confidential. Paragraph C6.3 shall apply *mutatis mutandis* to decisions of the Committee as they apply to arbitration awards.

### **A6 Implementation of determination**

Except as otherwise provided in the agreement under or in respect of which the dispute arose (including the Access Conditions), the parties to the dispute shall comply with the terms of the determination within such period as shall be specified in the determination.

### **A7 Decisions of the Committee**

Except as otherwise provided in these rules, all decisions of the Committee (including decisions pursuant to paragraph A5.3 and any resolution for the removal of the Deputy Chairman pursuant to paragraph A3.6) shall be made by the votes of 5 or more members of the Committee present (whether in person or by proxy) at a meeting of the Committee. Each member shall have one vote.

### **A8 Reference to further methods of dispute resolution**

If the agreement under which a dispute arises provides that the dispute shall be referred for determination to such body or person as the Committee shall specify, the Committee shall do so by a decision reached pursuant to paragraph A7. If the Committee fails so to reach a decision, the Chairman shall decide the matter, and his decision shall be final and binding on the parties to the dispute.

### **A9 Liability of Officers**

None of the Chairman, the Deputy Chairman, the Independent Vice-Chairman, the Committee Secretary, the clerk to the Committee, or the Disputes Secretary shall be liable to any party for any act or omission (including negligence) in connection with any Committee proceedings or any dispute determined by the Committee or the Chairman under these rules unless the act or omission is established to have been in bad faith.

## **B        MEDIATION**

Mediation under these rules is a private dispute resolution process in which a neutral mediator tries to help the parties to reach a negotiated settlement.

### **BI        *Disputes to be submitted to mediation***

BI.1        Any dispute between Industry Parties or the Strategic Rail Authority, or between any of those persons and other parties, which the parties to the dispute have agreed shall be submitted to mediation under these rules, shall proceed according to the rules of this Part B. Such agreement may be made when the dispute arises or previously and may be made orally or in writing.

BI.2        Where a dispute which would otherwise be submitted to mediation in accordance with the provisions of this Part B:

- (i)        is required to be submitted to mediation pursuant to the Non-Access Dispute Resolution Rules;
- (ii)        is so connected with a dispute (whether involving the same parties or not) which is to be (or has been) submitted to mediation pursuant to the Non-Access Dispute Resolution Rules that it is expedient for the two disputes to be submitted to mediation in the same proceedings; or
- (iii)        the parties have agreed that it will be submitted to mediation pursuant to the Non-Access Dispute Resolution Rules;

the dispute shall be submitted to mediation under the Non-Access Dispute Resolution Rules.

BI.3        If there is a disagreement as to whether a dispute falls within paragraph BI.2(i) or (ii), each party to the disagreement shall submit its arguments in writing to the Committee Secretary and to the other party, so as to be received within five days of its receipt of the notification of a wish to submit to mediation referred to under paragraph B2. The Committee Secretary shall rule on the disagreement within seven days of receiving the submissions. If either party refuses to accept the Committee Secretary's ruling, the issue shall be determined by the Chairman of the Committee established pursuant to paragraph A2 of the Non-Access Dispute Resolution Rules.

## **B2      *Beginning a mediation***

A party wishing to refer a dispute to mediation shall so inform the Disputes Secretary and every other party to the dispute of which it is aware. The Disputes Secretary shall promptly approach all parties to the dispute and discuss with them the identity of a suitable mediator. Unless within 5 days of his initial approach the parties agree on the identity of a mediator, the Disputes Secretary shall appoint one from the register.

## **B3      *Procedure***

- B3.1      Immediately on his appointment, the mediator shall contact the parties and arrange to meet them. He may require them to provide him with a brief summary of the dispute and their contentions in relation to it. The mediator shall, at his discretion, be entitled to send a copy of such summary to the other party to the dispute.
- B3.2      Two representatives of each party shall attend each meeting with the mediator, at least one of whom shall be a senior manager with decision-making authority in relation to the dispute. No other persons may attend without the mediator's agreement.
- B3.3      The parties and the mediator may meet more than once but, unless all involved agree, the meetings shall not continue later than 35 days after the date of the appointment of the mediator.
- B3.4      The parties shall explain their respective positions to the mediator. He may see each on his own if he sees fit. The mediator shall not be entitled to disclose matters told to him in confidence without the permission of the party in question. He shall encourage the parties to resolve the dispute by agreement and may also discuss informally with any party his own views as to the merits of the dispute.
- B3.5      Within seven days of the final meeting, if the parties have not resolved the dispute by agreement the mediator may advise the parties of his views as to the likely outcome of the dispute if it were to be referred to arbitration and/or what he considers would be a fair settlement of the dispute. No party shall be bound to adopt the views expressed, or accept the advice provided, by the mediator.

## **B4      *Confidentiality***

- B4.1      The mediation is and shall be kept confidential.

- B4.2 The parties, their representatives and advisers, the mediator and the Disputes Secretary shall keep confidential all documents, submissions, statements and other information disclosed in the mediation, including any agreement for the settlement of the dispute, except when and insofar as disclosure is necessary:
- (a) to implement or enforce the agreement for settlement of the dispute; or
  - (b) to comply with an obligation to disclose owed to any financial associate of the party making the disclosure.
- B4.3 Its use in the mediation shall not affect the extent to which any document, submission, statement or other information disclosed in the mediation is admissible or subject to discovery or production (or, in Scotland, recoverable by commission and diligence under section 1 of the Administration of Justice (Scotland) Act 1972 or otherwise) in any subsequent arbitration, legal or other proceedings involving the parties.
- B4.4 New documents generated in the course and for the purposes of the mediation shall be treated as being on the same basis as without prejudice negotiations in an action in the courts.

**B5 Costs**

Unless the parties otherwise agree, each party shall bear its own costs of the mediation. The parties shall share equally the mediator's fees and expenses, the costs of his appointment and all other administrative costs of the procedure.

**B6 *Termination of the mediation***

The mediation shall terminate upon service by one party to the mediation on the other and on the mediator of a notice of withdrawal from the mediation.

**B7 *Communications, exclusion of liability, jurisdiction and governing law***

Paragraphs C7, C8 and C9 shall apply to mediations as if references to the arbitrator and arbitration were references to the mediator and mediation respectively.

**B8 *Mediator barred from further proceedings***

The mediator shall not be entitled to act in any capacity in relation to the subject matter of the mediation in which he acted as mediator in any subsequent arbitration, legal or other similar proceedings.



## **C ARBITRATION**

### **C1.1** *Disputes to be decided by arbitration*

Any dispute arising between Industry Parties or the Strategic Rail Authority, or between any of those persons and other parties, which the parties to the dispute have agreed should be referred in part or in whole to arbitration under these Rules shall be arbitrated in accordance with the provisions of this part C. In each of the following cases the arbitration may only proceed if a notice of arbitration is served on the Disputes Secretary by the party wishing to begin the arbitration:

- (a) in the case of a dispute referred to the Committee or a sub-committee of it and declared by the Chairman pursuant to paragraph A5.11.2(b)(iii) not to have been resolved, within 14 days of the Chairman's declaration;
- (b) in the case of a dispute referred to the Committee or a sub-committee of it and determined by a ruling by the Chairman pursuant to paragraph A5.11.2(b)(ii), within 14 days of the Chairman's ruling;
- (c) in the case of a dispute between Industry Parties which has been the subject of mediation pursuant to part B above, within 14 days of the end of the period provided for in paragraph B3.3; and
- (d) in the case of a dispute referred, other than under Conditions D5, F5, G6 or H11.9(a) of the Network Code, to the Committee or a sub-committee of it and determined by agreement pursuant to paragraph A5.11.1, within 14 days of the decision of the Committee or sub-committee.

### **C1.2** *Relationship with Non-Access Dispute Resolution Rules*

Where a dispute which would otherwise be arbitrated in accordance with the provisions of this Part C:

- (a) has been referred to the Committee (or a sub-committee of it) established under the Non-Access Dispute Resolution Rules pursuant to paragraph A1.1(i), (ii) or (iii); or
- (b) is otherwise so connected with a dispute (whether involving the same parties or not) which is to be (or has been) referred to arbitration under the Non-Access Dispute Resolution Rules that it is expedient for the two to be resolved in the same proceedings;

the dispute shall be arbitrated under the Non-Access Dispute Resolution Rules.

### **C1.3** *Disputes*

If there is a disagreement as to whether a dispute falls within paragraph C1.2(a) or (b), each party to the disagreement shall submit its arguments in writing to the Committee Secretary and to the other party, so as to be received either before

the notice of reference is served or within seven days of its service. The Committee Secretary shall rule on the disagreement within seven days of receiving the submissions. If either party refuses to accept the Committee Secretary's ruling, the issue shall be determined by the Chairman of the Committee established pursuant to paragraph A2 of the Non-Access Dispute Resolution Rules.

## **C2      *Beginning an arbitration and appointing the arbitrator***

### **C2.1      *Notice of arbitration***

A person wishing to refer a dispute to arbitration shall serve a written notice of arbitration on the Disputes Secretary and shall serve a copy of the notice of arbitration on every other party to the dispute. The notice shall summarise the basis of the claim and list the other parties concerned. It may suggest one or more appropriate arbitrators, whether from the register or otherwise.

### **C2.2      *Appointment of arbitrator***

The Disputes Secretary shall promptly approach all parties to the dispute and discuss with them the identity of an arbitrator to decide it. Subject to any agreement of the parties to the contrary, if the parties fail to agree on an arbitrator within 7 days of the Disputes Secretary's initial approach, he shall appoint an arbitrator from the register. Upon the appointment of an arbitrator, the Disputes Secretary shall send to all the parties to the dispute a notice of the appointment of the arbitrator.

### **C2.3      *Change of arbitrator***

C2.3.1 If any arbitrator acting or appointed to act under these rules resigns, withdraws, dies or refuses to act, the Disputes Secretary shall, upon application by the arbitrator or any party to the arbitration, on proof satisfactory to the Disputes Secretary, declare the office of arbitrator vacant.

C2.3.2 If the arbitrator or any party to the arbitration considers that the arbitrator is unable by reason of mental or physical infirmity to perform the duties of his office or is disqualified for any reason from performing the duties of his office, or has delayed unreasonably in the conduct of the arbitration or in the making of any award, the Disputes Secretary may, at the request of the arbitrator or any party to the arbitration, having heard the arbitrator and the parties if they or any of them wish to be heard, declare the office of arbitrator vacant.

C2.3.3 Where the office of arbitrator shall have been declared to be vacant pursuant to this paragraph C2.3, paragraph C2.2 shall apply to the appointment of a replacement arbitrator.

### **C3      *Procedure***

#### **C3.1    *General***

The arbitrator shall conduct the arbitration in such manner as he considers most suitable for the fair resolution of the dispute. The parties may agree that an arbitration shall be conducted on the basis of written representations only. In such a case, nothing in this paragraph C3 shall prevent the arbitrator from requiring one or more oral hearings if he considers it appropriate for the just and expeditious determination of the proceedings. The arbitrator shall have the power at any time to make or amend the procedure to be followed by the parties in the arbitration. Unless the arbitrator rules otherwise, the following timetable and procedure shall apply:

- (i) Within 14 days of the notice of appointment of the arbitrator, the claimant shall serve on the arbitrator and the other party a written statement of its claim. The statement of claim shall specify all relevant facts and matters and contentions of law (if any, and naming the principal authorities) on which the claimant relies (or admits or denies) and the relief and remedies sought.
- (ii) Within 14 days of service by the claimant of the statement of its claim, the other party shall serve on the arbitrator and the claimant a written statement of its defence. The statement of defence shall specify the defence and all relevant facts and matters and contentions of law (if any, naming the principal authorities) on which the respondent relies (or admits or denies). The statement of defence may set out any counterclaim which the respondent wishes to make.
- (iii) The statements served pursuant to sub-paragraphs (i) and (ii) above shall be accompanied by copies of any documents referred to in them or upon which the party serving the statement wishes to rely. That party shall, if so requested, make the originals of such documents available for inspection by the arbitrator or the other party.
- (iv) After service by the respondent of its statement of defence (in Scotland, answers), the arbitrator may allow the parties a period (the "adjustment period") within which to adjust the written pleadings so that each material averment of the parties shall be answered (whether by admission, denial, explanation or otherwise).
- (v) On the expiry of the adjustment period, the pleadings shall be finalised and within 7 days thereafter the claimant shall reproduce the pleadings, as adjusted, into a single document (in Scotland, the closed record) and send 2 copies to each of the arbitrator and the other parties to the arbitration.
- (vi) Within 14 days after the pleadings have been so finalised, each party shall serve upon the arbitrator and the other party signed statements of any factual witnesses upon whose evidence it wishes to rely, together with any copies of documents referred to in them not already in the possession of

the other party. That party shall, if requested to do so, make the originals of such documents available for inspection by the arbitrator or the other party.

- (vii) If he considers it appropriate for the just and expeditious determination of the proceedings, the arbitrator shall be entitled to appoint one or more advisers (in Scotland, assessors) or experts on any matter (including matters of law) to report to him on any specific issue. The costs of any such person shall be subject to the provisions of paragraph C5.2. Where the arbitrator receives a report from any such person, he shall disclose the report to the parties and afford them such opportunity to comment on it as he considers appropriate.
- (viii) Within 7 days after the pleadings have been finalised, the Disputes Secretary shall agree with the arbitrator and the parties a hearing date and the estimated length of the hearing. The hearing date shall be no later than 28 days after the finalisation of the pleadings.
- (ix) In relation to the production of documents:
  - (a) the arbitrator may, on the application of a party, require the production of such specific identified documents as are within the possession, custody or control of the other party or any third party which the arbitrator considers relevant; the parties to the proceedings shall be given the opportunity to inspect and to comment upon any document so produced;
  - (b) if any document is not supplied to the arbitrator and the other party within such time as the arbitrator shall prescribe, the arbitrator may:
    - (aa) proceed with the arbitration on the basis of the documents already before him;
    - (bb) apply to the Court for an order to produce the documents; or
    - (cc) strike out (in Scotland, dismiss) the part of the claim or defence to which the document relates,and in making his award the arbitrator shall be entitled to make such allowance as he may think fit for the failure to supply the document;
  - (c) no party shall be obliged to produce any document which would be privileged from production in any proceedings in an action in the courts;
  - (d) an application by a party to the arbitrator pursuant to sub-paragraph (a) above shall be made not later than 21 days before the date fixed for the hearing; a party in receipt of a request from the arbitrator to produce a document shall comply with such a request within 7 days.
- (x) At least 5 days before the hearing each party shall serve on the other and on the arbitrator its written submissions.

- (xi) At the hearing:
  - (a) there shall be no oral opening submissions, but the arbitrator may ask the parties questions arising out of their written submissions or pleadings;
  - (b) subject sub-paragraph (c) below, the testimony of a witness may be presented in written form, either as a signed statement or as an affidavit duly sworn, provided paragraph C3.1(vi) has been complied with. Any party may apply to the arbitrator for an order that any witness whose written statement or affidavit is to be relied upon by a party should attend for oral examination at a hearing and the arbitrator shall make such order unless, having heard the parties, he is satisfied that such oral examination is not likely to assist him in making his award. If a witness is ordered to attend and fails to do so, the arbitrator may:
    - (aa) place such weight on the written statement or affidavit as he thinks fit;
    - (bb) exclude it altogether; or
    - (cc) apply to the Court for an order for the citation or attendance of witnesses;
  - (c) there shall be no examination-in-chief of factual or expert witnesses who give oral evidence. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the arbitrator;
  - (d) the parties may make oral closing submissions, not exceeding 20 minutes each;
  - (e) the parties may be legally represented; and
  - (f) the arbitrator shall be entitled to receive such evidence as he shall consider relevant, whether or not such evidence would have been admissible in a court of law.
- (xii) The arbitrator shall deliver to the parties a reasoned award within 14 days of the end of the hearing.

### C3.2 *Proposed amendments*

Immediately after his appointment, the arbitrator shall require each party to inform him of any amendments to the procedure or the time limits set out in paragraph C3.1 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall promptly send any proposed amendments to the arbitrator and the other party. Before responding, the arbitrator may require the parties to meet him.

### **C3.3**     *Supplemental*

- C3.3.1    The arbitrator shall have power to strike out (in Scotland, dismiss) part or all of any claim or defence made in the proceedings on any one or more of the following grounds:
- (a)    wilful breach of these rules;
  - (b)    deliberate non-compliance by a party with any order of the arbitrator; or
  - (c)    inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the arbitrator, given rise to a substantial risk that a fair determination of the dispute will not be possible, or which is such as to cause or to have caused serious prejudice to the other party.
- C3.3.2    The arbitrator shall have power to strike out (in Scotland, dismiss) part or all of any claim or defence made in the proceedings if he is satisfied that the claim or defence or any part of it is scandalous, frivolous or vexatious.
- C3.3.3    If either party fails to serve a pleading within the period allowed under these rules or by order of the arbitrator, and fails to remedy his default within 14 days after despatch to him by the arbitrator or any other party to the dispute of notice of that default, the arbitrator shall be entitled to rule that he shall be treated as having abandoned his claim or defence (as the case may be) and, having made such a ruling, the arbitrator shall be entitled to proceed with the reference on an *ex parte* basis.
- C3.3.4    Any party who becomes aware that any provision or requirement of these rules has not been complied with and who fails to state an objection to that failure within a reasonable time shall be deemed to have waived the right to object.

## **C4**     *Awards*

### **C4.1**     *Final and binding*

Without prejudice to the provisions of the Arbitration Act 1996 or, for arbitrations taking place in Scotland, the Administration of Justice (Scotland) Act 1972 and the provisions of any agreement between the parties to the dispute and the relevant Access Conditions, awards shall be final and binding on the parties.

#### **C4.2**     *Power to make orders*

In addition to his other powers under these rules, the arbitrator may make such orders in his award as he considers necessary to resolve the dispute, including orders that:

- (a) one party shall pay an amount of money (including damages) to another party, whether that amount is specified in the arbitrator's order or calculated in accordance with such procedure as he shall specify;
- (b) one party should take or not take specified action;
- (c) the meaning of an agreement or a party's obligations under that agreement are as stated in the award; or
- (d) any principal sum he may order one party to pay to another shall carry interest at such rate and over such period as he shall determine.

#### **C4.3**     *Issue of arbitration award*

C4.3.1 The arbitrator shall send a copy of his award to the parties, the Chairman and the Disputes Secretary.

C4.3.2 Paragraph C6.3 applies in relation to the confidentiality of the award.

### **C5**       **Costs**

#### **C5.1**     *Arbitration fee*

Any party serving a notice of arbitration shall at the same time pay to the Disputes Secretary a fee, of an amount to be published from time to time by the Disputes Secretary but not exceeding £500 (excluding VAT). The arbitration shall not start until the fee has been paid. The Disputes Secretary shall promptly remit all amounts received pursuant to this paragraph C5.1 to the Committee Secretary.

#### **C5.2**     *Discretion to order payment of costs*

Whether or not the arbitration reaches the stage of a final award, the arbitrator may order any party to pay some or a specified proportion of any party's costs incurred in the arbitration, the arbitrator's fees, any costs of his appointment and any fee paid to the Disputes Secretary pursuant to paragraph C5.1, assessed in such manner as the arbitrator shall determine.

## **C6      *Confidentiality***

### **C6.1      *Documents***

All documents produced or disclosed in the course of an arbitration shall be treated as confidential by the arbitrator, the Chairman, the Disputes Secretary and all parties.

### **C6.2      *Use of documents***

Unless otherwise agreed by all parties, such documents shall only be used:

- (i) for the purposes of the arbitration, including any appeal against the arbitration award (or, in Scotland, any application under Section 3 of the Administration of Justice (Scotland) Act 1972, or for judicial review, in respect of the award);
- (ii) for enforcing the arbitration award; or
- (iii) in support of a plea of estoppel (or, for arbitrations taking place in Scotland, of *res judicata*) in any subsequent proceedings.

### **C6.3      *Confidentiality of arbitration awards***

#### **C6.3.1      *Copies to Industry Parties and Strategic Rail Authority***

Subject as provided in this paragraph C6, a copy of every award of an arbitrator pursuant to this Part C shall be sent by the Disputes Secretary to each Industry Party and the Strategic Rail Authority. No such copy shall be sent until the expiry of 21 days after the receipt by the Disputes Secretary of the copy of the award in question, unless the Chairman shall order otherwise.

#### **C6.3.2      *Discretion to order confidentiality***

The Chairman shall be entitled to direct that an award or any part of it shall be kept confidential, to the extent stated and subject to such conditions (if any) as shall be specified in the direction, on the grounds that:

- (a) publication would or might seriously and prejudicially affect the interests of any of the parties to the dispute or any other person; and
- (b) such prejudice outweighs or is likely to outweigh the interests of the industry in the publication of the award.

Any such direction shall be in writing and shall be given to the parties to the dispute and the Disputes Secretary.



#### **C6.3.3** *Exceptions to confidentiality directions*

A direction given pursuant to paragraph C6.3.2 shall not apply to disclosure which is:

- (a) agreed in writing by all the parties to the dispute (including in any Access Agreement between them);
- (b) made to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
- (c) made to the Office of Rail Regulation or the Strategic Rail Authority;
- (d) required for the purposes set out in paragraph C6.2; or
- (e) required pursuant to the order of a court of competent jurisdiction.

#### **C6.3.4** *Representations of parties as to confidentiality*

Within 7 days of its receipt of the award (or such longer period as the Chairman shall allow), each party to the dispute shall give notice to the Chairman and the other parties to the dispute:

- (a) as to whether it considers that the Chairman should exercise his discretion to exclude from publication any part of the award which relates to its affairs; and
- (b) if confidentiality is sought, its justification for considering that the grounds referred to in that paragraph exist.

#### **C6.3.5** *Hearing on confidentiality representations*

The Chairman shall be entitled to hear the parties on the question of confidentiality under this paragraph C6.3.

#### **C6.3.6** *Written reasons for decision*

If any representations shall have been made to him pursuant to paragraph C6.3.4, unless the parties to the dispute otherwise agree the Chairman shall provide the parties to the dispute with his reasons for making his determination. Such reasons shall be given in writing.

### **C7** *Communications*

Communications for the purposes of the arbitration shall be by telephone and confirmed in writing wherever possible. Unless the contrary is proved, faxes sent before 5.00 pm shall be deemed received on the day of sending and letters sent by first class post shall be deemed received two working days after posting.

**C8      *Exclusion of liability***

None of the Chairman, the Disputes Secretary or any arbitrator shall be liable to any party for any act or omission (including negligence) in connection with any arbitration under these rules unless the act or omission is established to have been in bad faith.

**C9      *Jurisdiction and governing law***

Arbitrations shall take place in England and be subject to English law, except where the Access Agreement in respect of which the dispute has arisen confers permission to use railway assets situated entirely in Scotland or the Access Agreement in question is governed by Scots law, in which case the arbitration shall take place in Scotland and be subject to Scots law. In either case the arbitrator may order otherwise. For the purposes of this paragraph C9, where a single Access Agreement confers permission to use track in both Scotland and England, the railway assets in question shall be treated as being situated partly in Scotland and partly in England.

**C10     *Interlocutory relief granted by the Court***

In an appropriate case, a party to a dispute which has been or may be submitted to arbitration may apply to the Court for interlocutory relief (whether negative or positive), notwithstanding that the relief sought may overlap with the relief which is, or may be, claimed in the arbitration.

## **D      EXPERT DETERMINATION**

### **D1      *General***

Any dispute which the parties have agreed should be referred to expert determination under these Rules shall be determined by an expert agreed between the parties or appointed by the Disputes Secretary.

### **D2      *Application of Part C***

Part C shall apply to any such disputes, and to paragraph D1, as if references to the arbitrator and the arbitration were references to the expert and the expert determination respectively, save that in paragraph C3.1, unless otherwise ordered by the expert:

- (a) sub-paragraphs (iv), (v), (vi), (vii), (viii), (x) and (xii) shall not apply;
- (b) any notice served under sub-paragraph (ix)(d) shall be served within 35 days of the appointment of the expert;
- (c) the expert shall deliver his determination, and (unless the parties have agreed that he should not give them) the reasons for it within 56 days of his appointment; and
- (d) the expert's determination shall be final and binding save where it is so clearly erroneous on its face that it would be unconscionable for it to stand.

## **E DETERMINATION BY THE OFFICE OF RAIL REGULATION**

### **E1 *Commencement of proceedings***

The determination of any dispute:

- (a) in relation to which it is specified, in any agreement in respect of which the Office of Rail Regulation shall have issued directions under section 17 or 18 of the Railways Act 1993, or in any agreement which it shall have designated for the purposes of these Rules, that the Office of Rail Regulation shall have jurisdiction; or
- (b) which all parties to the dispute have agreed should be referred to determination by the Office of Rail Regulation and the Office of Rail Regulation has agreed to determine,

shall be begun by the person wishing to refer the dispute to the Office of Rail Regulation serving on the Office of Rail Regulation and on every other party to the dispute a written statement of its case.

### **E2 *Procedure***

The Office of Rail Regulation shall be entitled to determine any dispute referred to it pursuant to the preceding clause in such manner as it considers most suitable for the just resolution of the issues before it. It shall have the power at any time to make or amend the practice and procedure to be followed by the parties referring the dispute to it and shall have the power (if it considers it appropriate) to require the parties to adopt the procedure set down in paragraph C3 for use in arbitrations, subject to whatever amendments it considers appropriate. The Office of Rail Regulation's determination shall be final and binding on the parties.

### **E3 *Determinations by the Office of Rail Regulation***

In the case of a reference made to it pursuant to Conditions D5, F5, G6 or H11.9(a) of the Network Code, the Office of Rail Regulation shall be entitled to determine that any senior member of the staff of the Office of Rail Regulation who is authorised generally or specially in that behalf by the Office of Rail Regulation may either:

- (a) consider and determine the matter in question; or
- (b) report to the Office of Rail Regulation as to the determination of the matter after such procedure as the Office of Rail Regulation shall specify.

A determination made pursuant to this paragraph E3 shall be a determination of the Office of Rail Regulation.

## **F      AMENDMENT**

These Rules may be amended in accordance with the provisions of Part C of the Network Code.

## **G      OFFICE OF RAIL REGULATION'S APPROVAL**

No amendment of these Rules shall have effect unless approved by the Office of Rail Regulation.