

THE GBR CODE

DRAFT FOR CONSULTATION

9/9/26

Part A - General Provisions

EXPLANATORY NOTE

Part A sets out certain definitions, general provisions and rule of interpretation which apply generally to this code.

GBR is responsible for administering the GBR Code, including producing amended versions of the GBR Code following adoption and implementation of any changes to the GBR Code in accordance with Part C.

This Explanatory Note does not form part of the GBR Code.

CONDITION A1 - GENERAL

A1.1 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 the GBR Code shall be interpreted or construed as compromising that objective.

In the GBR 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. References to the "GBR Code" 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 the GBR Code.

(c) Definitions in the Act

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

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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 the GBR Code and the rules of interpretation contained in that Act shall apply to the interpretation of the GBR Code.

(f) Include

The words preceding “include”, “includes”, “included” and “including” are to be construed without limitation by the words which follow those words.

(g) Other documents etc.

Any agreement, instrument, licence, standard, timetable, code or other document referred to in the GBR Code or entered into, approved, authorised, accepted or issued by a person pursuant to the GBR 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 the GBR Code and an Access Agreement (not including the GBR Code) the following order of precedence shall apply:

- (1) the GBR Code; and
- (2) the Access Agreement.

(i) Time limits

Where in the GBR Code any obligation of an Access Beneficiary or GBR is required to be performed within a specified time limit that obligation shall continue after that time limit if the Access Beneficiary or GBR fails to comply with that obligation within the time limit.

(j) Headings

The headings and references to headings are only for convenience and shall not affect its interpretation.

(k) Ruling language

All notices served under the GBR Code shall be in the English language.

(l) Plural & singular

Where appropriate, the singular shall include the plural and vice-versa.

(m) Parties and persons

A reference to a person or party includes that party's employees, agents and representatives.

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A1.2 Definitions

In the GBR Code, unless the context otherwise requires:

A

“Access Agreement”	means any agreement between GBR and another person under which entitlements to use the Network, or options relating to such entitlements, are granted, reserved, secured or regulated;
“Access and Use Policy”	means one or more documents setting out GBR's policy about, and procedures for, access to and the use of its Network for the operation of trains;
“Access Beneficiary”	means a Train Operator who is party to an Access Agreement, or Access Option Holder;
"Access Option"	means a contract conferring an option on the relevant entity (whether the counterparty to the contract or some other person) that when exercised requires GBR to secure permission for the relevant entity to use the Network;
“Access Option Holder”	means the holder of an Access Option;
“the Act”	means the Railways Act 2026;
"the 2003 Act"	means the Railways and Transport Safety Act 2003;
"Adjacent IM"	means an Infrastructure Manager whose rail network connects with GBR's Network and which maintains and publishes a network code or network statement that has similar effect to a network code;
“Adopt”	means to Decide to enact and given effect to a Proposal for Change to the GBR Code, or a document established and managed according to this code, following the relevant procedures as set out in the Code.
“Advanced Notice of Timetable Change” ("ANTC)	has the meaning given to that term in Condition D2.6.1;
“Advanced Register of Possessions”	shall have the meaning shown in the Engineering Access Statement in relation to the Midweek Possession Strategy (Section 5) and the Register of Disruptive Possessions (Section 7).
“Affected Person”	has the meaning given to that term in Condition J3.1.1(b);
“Ancillary Movements”	means a train movement which is not an express part of any Services but which is necessary or reasonably required for giving full effect to the train movements which are an express part of a Service 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 an Access Agreement;
“Appeal”	means, in relation to a ROC Section, the exercise by a person of an entitlement under Part H to make a reference in that respect in accordance with Part M;

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“Applicant”	has the meaning given to that term in: (a) Condition J5.1.1(a); or (b) Condition J7.2.1, as applicable;
"Appointed Operator"	means a Train Operator into whose name an Access Option Holder has assigned some or all of its Capacity Commitments in accordance with that Option Holders Access Agreement;
“Associated Person”	means any person whose commercial, financial, operational, regulatory or contractual interests may reasonably be expected to be affected by the disclosure, use or publication of Qualifying Information;
“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;

B

“Better Use”	means a positive significant impact on the use of Network in furtherance of GBR's functions, duties, and obligations in the Act or Licence.
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C

“Cancelled Train”	means a Train which does not operate all or part of its planned journey, including a Train which fails to call at one or more planned stopping points;
“Capacity Commitment”	(a) a commitment made by GBR to an Access Beneficiary under an Access Agreement in respect of the quantum, timing or any other characteristics of a train movement and any Ancillary Movements associated with any such commitment but excluding any Uncommitted Freight Service; or (b) a commitment in respect of the quantum, timing or any other characteristic of a train movement identified in the Capacity Commitments Register as relating to GBR passenger services and any Ancillary Movements associated with any such commitment;
“Capacity Commitment Change”	means any amendment, adjustment, limitation, reduction, surrender, transfer, reassignment or other modification to a Quantum Capacity Commitment or to the entitlements and obligations arising from a Quantum Capacity Commitment;
“Capacity Commitments Register”	means a register maintained and published by GBR containing Capacity Commitments in respect of the

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quantum, timing or any other characteristic of a train movement that may be operated by either:

- (a) a Train Operator (in which case the commitments are given contractual effect by Schedule 5 of the Train Operator's Access Agreement); or
- (b) GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services).

“Capacity Commitments Review Meeting” means a meeting held between GBR and an Access Beneficiary for the purpose of reviewing the Quantum Capacity Commitments held by that Access Beneficiary and its use of them;

“Capacity Review Notice” has the meaning given to that term in Condition J9.1.2;

“Capacity Duty” means GBR's duty under section 63 of the Act;

"Change Consultation Period" means the period for written representations in accordance with C2.3.1(e) which shall be reasonable in all the circumstances but in any event be no fewer than 30 Working Days from the date of notification of the relevant Proposal for Amendment (or such additional period of consultation contemplated in C2.4.2);

“Commencement Date” means the date on which the relevant Quantum Capacity Commitment takes effect in accordance with the Access Beneficiary's Access Agreement - including as appropriate any reference to the Capacity Commitments Register;

“Commitments Subject to Surrender” means, in relation to:

- (a) a Failure to Use Notice; or
- (b) a Third Party Notice,
as applicable, the Quantum Capacity Commitment to which such notice refers and:
 - (i) any Train Slot, including any Y-Path, or part of it in the Working Timetable which relates to that Quantum Capacity Commitment;
 - (ii) any Ancillary Movements or Stabling that GBR (or the Applicant in relation to Condition J7.3) considers:
 - (A) are directly associated with the relevant Quantum Capacity Commitment; and
 - (B) will no longer be required by the relevant Access Beneficiary following the surrender or reduction of the Quantum Capacity Commitment, as applicable; and
 - (iii) any Timetable Proposal relating to any such Quantum Capacity Commitment;

“Commitments under Review” has the meaning given to that term in Condition J9.1.2;

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“Competent Authority”	means any court, regulator, government department, public authority, statutory body, safety authority or other person exercising powers under any applicable law;
“Complex Projects Procedure”	means the procedure set out in Conditions G5 to G7 for the development, consultation, assessment and implementation of a proposed Network Change of a scale, complexity or duration that GBR reasonably determines requires the application of that procedure;
"Considerations"	has the meaning given to that term in Condition D4.5.2;
“Confidentiality Undertaking”	has the meaning given to that term in Condition J3.9;
“Contingent Capacity Commitment”	means a Capacity Commitment which is not a Firm Capacity Commitment, and which is subject to the fulfilment of all competing Firm Capacity Commitments and any additional contingency specified in the Capacity Commitments Register or the applicable Track Access Contract;
“costs”	includes expenses;

D

“D-X”	shall have the meaning shown in Condition D2.1.4;
“Decision Criteria”	shall have the meaning shown in Condition D4.5;
“Determination”	means a binding decision issued by a Dispute Resolution Body following a Determinative Process pursuant to Part M; and “Determined” (and cognate expressions) shall be construed accordingly;
"Determinative Process"	means a binding dispute resolution process conducted in accordance with this Part M and the applicable Rules of Procedure.
“Delay Attribution Principles and Rules” or “DAPR” (B)	means, subject to Condition A1.1(g), the document which provides the requirements for the attribution of delays and cancellations across the Network, entitled “Delay Attribution Principles and Rules” as issued by GBR;
“Development Timetable”	means an indicative timetable developed by or on behalf of GBR: (a) as part of planning activity undertaken in support of a change to the Infrastructure Capacity Plan; - and/ or (b) in connection with proposed services notified by Timetable Participants (including through an Advanced Notice of Timetable Change), where GBR considers it appropriate having regard to the quality of information provided,

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and which does not in itself create or confirm any entitlement to Train Slots.

"Direction"	means a direction or instruction mandatory in nature given by a relevant entity;
"Dispute"	means a dispute, difference or question arising between parties under this GBR Code or an Access Agreement which is capable of being referred to a Dispute Resolution Body under Part M.
"Dispute Resolution Body"	means any person, panel, committee, tribunal or other body designated by GBR pursuant to Part M for the purpose of administering, considering, facilitating, determining or otherwise resolving Disputes arising under this GBR Code or an Access Agreement.
"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;
"Draft Working Timetable"	means shall have the meaning set out in Condition D2.1.7;
"Duties"	means the statutory duties, licence obligations and other legal obligations imposed upon GBR under the Act, its Licence and any other applicable legislation.

E

"Effective Date"	means, in relation to a Short Term Network Change, the date on which that change first takes effect;
"Engineering Access Statement"	means a publication that contains; (i) Standard Possession Opportunities (ii) Advanced Register of Possessions issued at separate timescales and setting out, for any part of the Network, each of the following matters: (a) the location, number, timing and duration of any Restrictions of Use; and (b) any alternative train routes or stopping patterns which may apply during any Restriction of Use referred to in paragraph (a) above;
"Environmental Condition"	means any Environmental Damage; or Any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage which (in either case) in GBR's reasonable opinion could result in GBR 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

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	from the discharge, emission, escape or migration of any substance, energy, noise or vibration;
“Established”	means, in relation to a ROC Section, or a variation to a ROC Section, as the case may be, that the ROC Section or the variation has come into effect whether: (a) following publication of the ROC Section or the variation (or if publication is not required notification of the ROC Section or the variation to affected Capacity Commitment holders) 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 Facilitative Process or Determination under Condition H4; or (ii) variation under Condition H5, and “Establish” and “Establishment” shall be construed accordingly;
“Expedited Procedure”	means the procedure set out in Condition F3.4;
“Expiry Date”	means, in relation to a Short Term Network Change, the date by which the Network shall be restored pursuant to Condition G8 unless a further Network Change has been implemented;
“Extended Disruption”	means a Disruptive Event which is likely to be of sufficient duration as to make it practicable to adopt a revised timetable;

F

“F-X”	shall have the meaning shown in Condition D2.1.5;
"Facilitative Process"	means a non-binding dispute resolution process intended to assist the parties in resolving a Dispute, including through mediation, non-binding arbitration, expert advice or any other facilitative technique made available under Part M.
“Failure to Use”	has the meaning given to that term in Condition J4.1.1;
“Failure to Use Notice”	means a notice given by GBR to an Access Beneficiary under Condition J4.4;
"Financial Half Year"	for the purposes of Part D the Financial Year is split into two halves producing two Financial Half Year dates. The first half shall run from the Saturday before the first Sunday of April of the relevant year for 26 calendar weeks. The second half shall start on the Saturday before the 27th Sunday of the

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	Financial Year of the relevant year and run through to the end of the Financial Year;
"Financial Year"	shall mean the period beginning on the Saturday before the first Sunday in April of the relevant year and ending the Friday before the first Sunday of April in the following year;
"Firm Capacity Commitment"	means a Capacity Commitment that is not expressed to be subject to any contingency outside the control of the Capacity Commitment holder (save that the Capacity Commitment may be subject to the Rules);
"Flexing Right"	means a right, exercisable by GBR in allocating a Train Slot in the New Working Timetable or relevant Working Timetable, to vary a Train Slot: (a) sought in a Timetable Proposal; or (b) arising from a Rolled Over Timetable Proposal; or (c) sought in any written Train Slot Variation or GBR proposal for Train Slot Variation, in any way within and consistent with a relevant Firm Capacity Commitment; and where the Train Slot which is being varied is consistent with capacity identified in the Infrastructure Capacity Plan that is not allocated to a Capacity Commitment, in any way within and consistent with the description contained within the Infrastructure Capacity Plan; and for any other Train Slot, in any way without limitation.
"Freight Operator"	means an operator of trains for the carriage of goods by rail;

G

"GBR"	means Great British Railways Ltd, Company No. [xxxxxx]
"GBR Depot Code"	means, in respect of the Depot, the GBR Depot Code published on [**/**/****];
"GBR Station Code"	means, in relation to a Station, the GBR Station Code published on [**/**/****] and the annexes relevant to the Station, as referred to in paragraph 6 of the relevant Station Supplement;
"Grounds for Objection"	means the grounds set out in Condition J4.9 or Condition J7.5.1, as applicable;
"Governmental Body"	means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the Office of Rail and Road);

H

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Not used.

I

"Incumbent"	has the meaning given to that term in: (a) Condition J5.1.1(b)(ii); or (b) Condition J10.1.2(b);
"Incumbent Provider"	has the meaning given to that term in Condition J7.2.1;
"Infrastructure Capacity Plan"	means documentation issued by GBR pursuant to section 60 of the Act;
"Infrastructure Manager"	means any body or undertaking that is responsible in particular for the establishment, management and maintenance of railway infrastructure, including traffic management and control-command and signalling;
"International Freight Train Slot"	a Train Slot included in the Draft Working Timetable, New Working Timetable or Working Timetable used, or intended to be used, for the carriage of goods through the Channel Tunnel, including any connecting Train Slot used primarily for the conveyance of those goods;
"International Operator"	each Timetable Participant which has entitlement to train movements through the Channel Tunnel;
"International Path"	any Train Slot on the Network which is used for carrying goods or passengers through the Channel Tunnel and, in relation to a Train Slot used for carrying goods through the Channel Tunnel, it also means any connecting Train Slot used for the primary purpose of conveying the goods which have passed or are to pass through the Channel Tunnel;

J

"Joint Performance Strategy" or "JPS"	has the meaning ascribed to it in Condition L3.;
"Joint Performance Improvement Plan" or "JPIP"	has the meaning ascribed to it in Condition L4;
"JPIP Party"	means any of the Train Operators and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) between whom a JPIP has from time to time been agreed in accordance with Part L;
"Joint Performance Review" or "JPR"	means a meeting held pursuant to Condition L3.2 or L3.5.1;

K

Not used.

L

"Licence"	means a licence granted to GBR under section 7B Railways Act 1993;
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M

"Mandatory Variation"	means a variation to the Railway Operational Code pursuant to Condition H 5.1;
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N

"Network"	means the railway infrastructure, railway facilities and services owned, operated, managed or controlled by GBR and made available for the operation of trains pursuant to Access Agreements;
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"Network Change"	means: (a) any change to the Network; or (b) any change to the manner in which the Network is operated, which is likely materially to affect the operation of trains on the Network or the entitlements of an Access Beneficiary;
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"Network Services"	means trains required in connection with the provision or operation of GBR infrastructure;
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"New Working Timetable"	has the meaning ascribed to it in Condition D2.8;
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"Notice of Adoption"	means in respect of Part B the meaning ascribed to it in Condition B2.6.1; and in respect of Part C has the meaning ascribed to it in Condition C3.2;
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"Notice of Consultation"	means a notice given in accordance with Conditions B2.5.6, B2.5.9, C2.3.2, C2.3.3(a), or C2.4.2;
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"Notice of Objection"	means a notice given by an Affected Person to GBR of the kind referred to in Condition J3.5.1(b);
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"Notice of Rejection"	means in respect of Part B the meaning ascribed to it in Condition B2.6.4; and in respect of Part C has the meaning ascribed to it in Condition C3.2;
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O

"the Objective" (H)	means, in relation to Part D, the objective described in Condition D4.5.1;
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"Office of Rail and Road"	means the Office of Rail and Road established pursuant to the Railways and Transport Safety Act 2003, as amended by the Office of Rail Regulation (Change of Name) Regulations 2015, and includes any successor to all or any of its functions and references to "ORR" shall be construed as references to the Office of Rail and Road;
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"One Stop Shop Service"	means the service offered by GBR under which an International Operator can apply to GBR to obtain an extension to an International Path over the network of one or more adjoining Infrastructure Managers belonging to Rail Net Europe;
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"Part B Amendment Proposal"	means any proposal to amend the Delay Attribution Principles and Rules or the Performance Data Accuracy Code;
"Part J Counter Notice"	means a notice given by the Access Beneficiary to GBR under Condition J4.8, J5.1.2, J5.3.1(b)
"Passenger Operator"	means an operator of trains for the carriage of passengers by rail;
"Passenger Transport Executive"	has the meaning ascribed to it in section 9 of the Transport Act 1968;
"Performance Data Accuracy Code" or "PDAC"	means, subject to Condition A1.1(g), the code relating to the standards of performance data accuracy entitled "Performance Data Accuracy Code" as issued by GBR;
"Performance Monitoring System"	means the system for monitoring train performance described in Condition B1;
"Performance Objectives"	are those objectives set out in Condition L2.1;
"Period for Objections"	means the period specified in Condition J3.5);
"Permitted Exemptions"	has the meaning given to that term in Condition H3.3;
"Potential Access Beneficiary"	means an entity that is in meaningful negotiation with GBR with a view to becoming an Access Beneficiary providing that such a person has first undertaken to GBR to be bound by the relevant provisions of the GBR Code;
"Preparatory Works"	means any survey, investigation, design, planning, testing, enabling work, procurement activity, temporary works, utility diversion, access arrangement or other preliminary activity reasonably required in connection with the development, assessment or implementation of a proposed Network Change;
"Primary Purpose"	means conveying 50% or more of the gross tonnage transported using the Commitments Subject to Surrender, over the 12 month period immediately preceding the date of service of the Third Party Notice, for a Primary Purpose Customer;
"Primary Purpose Customer"	means a customer or customers other than the third party referred to in Condition J7.1.1(a);
"Priority Date"	shall have the meaning set out in Condition D2.6.6;
"Proposal for Amendment"	has the meaning ascribed to in Condition B2 or C2, as the case may be;
"Public Passenger Specifier" or "PPS"	means a public authority engaged in the letting of Public Service Obligations to passenger Train Operators for the delivery of passenger train services in England, Wales or Scotland subsidised by that authority;
"Public Passenger Specifier Services"	means railway passenger services, the provision of which is secured, specified or funded (in whole or in part) by or on

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	behalf of a competent public authority in the exercise of its statutory functions;
"Public Timetable"	means, in relation to Part B, the timetable referred to within the Performance Monitoring System as the passenger timetable which reflects the scheduled train times advertised to the public and used to monitor train Lateness and Cancelled Stops;

Q

"Qualifying Information"	means information which GBR has acquired in relation to the affairs of: (a) any Affected Person; or (b) an Incumbent under an Access Agreement between GBR and that person, or information from within its own organisation that relates to GBR itself;
"Quality Adjustment"	means the alteration of any aspect of the Capacity Commitments of the Access Beneficiary (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 the GBR Code;
"Quantum Capacity Commitment"	means any entitlement under an Access Agreement or assigned to GBR in the Capacity Commitments Register in respect of a number (or quantum) of Train Slots in any specified period (including entitlement to Train Slots in respect of additional trains or relief services), and includes part of such an entitlement;
"Quantum Adjustment"	means the surrender of any Capacity Commitment of the Access Beneficiary in question;

R

"Railway Operational Code" or "ROC"	has the meaning ascribed to it in Condition H1.1;
"relate" and "in respect of"	in relation to a Train Slot and a Quantum Capacity Commitment where these terms are used together, means that the Train Slot in question has been secured by the Access Beneficiary in accordance with Part D in the exercise of that Quantum Capacity Commitment;
"Relevant Adjustment"	means a Quality Adjustment or a Quantum Adjustment, and "adjust" shall be construed accordingly;
"Relevant Consultation"	means a consultation carried out by GBR with a Third Party during negotiation under Condition J10.4.3 or before an offer of compensation is made under Condition J10.6.3;
"Relevant Costs"	means, in relation to Part G, costs, direct losses and expenses (including loss of revenue) reasonably incurred or

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	reasonably expected to be incurred as a consequence of the matter in question;
"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 Dispute Resolution Body condition or the Direction of a Competent Authority of the kind referred to in Condition E2.1.1; and
"Relevant Response"	means in respect of Part J, GBR's answer to a Request for Information under Part J;
"Relevant Response Date"	means, in relation to a proposal for a Vehicle Change under Part F, the later of such dates as are reasonably specified by GBR under Condition F2.3.1(b)(i) or Condition F2.4.3 as the date on or before which GBR is to give notice of its response to that proposal under Condition F3.1, having regard to: (a) the size and complexity of the change; and (b) the likely impact of the change on the operation of the Network and Access Beneficiaries, and which shall not be: (A) less than 60 days; or (B) unless GBR and the Sponsor agree otherwise in writing, more than 90 days, from the date on which GBR notice under Condition F2.3.1(c) is given;
"Relevant Steps"	means, in relation to a Train Operator, the steps of the kind referred to in Condition E2.1.3(e)(i);
"Relevant Surrender"	means the surrender to GBR of Capacity Commitments possessed by the Access Beneficiary;
"Relevant Undertaking"	means a deed of undertaking from the Third Party to pay the Incumbent: (a) the agreed reasonable costs of providing an estimate of compensation, in advance of those costs being incurred, pursuant to Condition J10.10; and (b) compensation under Condition J10.7, where the Third Party has requested that GBR withdraw the notice of a proposed Capacity Commitment Change under Condition J10.15 but the Incumbent has nonetheless suffered costs, direct losses and expenses (including loss of revenue).
"Relevant Year"	means each 12 month period beginning 1 April;
"Remedial Plan"	means a plan agreed pursuant to Condition L5.1;
"Requested Information"	means the information specified in Condition K1.3;
"Restriction of Use"	means a restriction of use of all or any part of the Network;

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“Restriction of Use Variation”	has the meaning given to that term in Condition D3.1.2;
“Restrictive Provisions”	means any provisions in the Incumbent’s Access Agreement that restrict the operation of the transferring Capacity Commitment, and specific timings relating to the transferring Capacity Commitment;
“ROC Objective”	means the objective of the Railway Operational Code specified in Condition H1.2;
“ROC Section”	means a section of the Railway Operational Code covering one or more of the matters specified in Condition H3 or any part of them;
"Rolled Over Timetable Proposal"	any Train Slot included in the Draft Working Timetable which is not the subject of a Timetable Proposal in accordance with Part D;
"Rules"	The Timetable Planning Rules and the Engineering Access Statement;
"Rules of Procedure"	means the rules, procedures and guidance published by a Dispute Resolution Body in relation to the administration and conduct of disputes under Part M.

S

"Scope"	means, in respect of Part G, the elements, characteristics, outputs, effects and boundaries of a proposed Network Change identified by GBR and agreed or determined pursuant to Condition G5.
“Secure Information”	means information the publication or wider disclosure of which would, in the reasonable opinion of GBR or a Competent Authority: (a) prejudice the security of the Network or any railway facility; (b) increase risks to the safety or security of passengers, staff, contractors or the public; (c) facilitate unlawful interference with railway operations or infrastructure; or (d) be contrary to any legal, regulatory or governmental requirement relating to security.
“Service Characteristics”	for the purposes of a right surrendered under Condition J7.9, has the meaning given to that term in the Incumbent’s Access Agreement;
“Services”	means the operation of trains for the conveyance of passengers, goods or other traffic on the Network by GBR, or pursuant to an Access Agreement, and includes: (a) any passenger service; (b) any freight service; (c) any charter, tourist, heritage or special train service; and (d) any Ancillary Movement expressly identified as forming part of such service;

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“Short Term Network Change”	means a Network Change which: (a) is intended to have effect for a temporary period; (b) reduces, removes or alters the capability, capacity or operation of any part of the Network; and (c) is proposed with an Effective Date and an Expiry Date after which the Network is intended to be restored or otherwise replaced by a further Network Change.
"Short Term Plan"	shall have the meaning shown in Condition D3.7.1;
“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 or a Network Change under Part G, the Access Beneficiary which has made the proposal;
“Stabling”	has the meaning given to that term in the relevant Access Agreement;
“Standard Possession Opportunity”	forms part of the Engineering Access Statement and shall have the meaning shown in the Engineering Access Statement in Section 4 of Part D;
"Suggestion for Change"	means a suggestion to change the GBR Code that is made in accordance with Condition C2;
“Subsidiary Documentation”	means all plans, procedures and documents which are required to be produced under one or more ROC Sections and designated as Subsidiary Documentation under them;

T

“Third Party”	means an Access Beneficiary or a Potential Access Beneficiary who has submitted an Capacity Commitment Change proposal to GBR;
“Third Party Transfer Counter Notice”	means a notice given by the Incumbent to GBR under Condition J7.5;
“Third Party Transfer Notice”	means a notice given under Condition J7.5;
“Timetable Change Date”	shall have the meaning shown in Condition D2.1.2;
“Timetable Participant”	(a) an Access Beneficiary; or (b) a Potential Access Beneficiary;
“Timetable Period”	the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
“Timetable Planning Rules”	a document regulating, for any part of the Network, the standard timings and other matters necessary to enable trains to be included in the New Working Timetable or scheduled into the Working Timetable applicable to that

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part of the Network, being rules which specify (amongst other matters):

- (a) 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) timing geography,
- (e) minimum and maximum time periods for stopping at stations and other specified points;
- (f) restrictions as to the speed of railway vehicles on any section of track; and
- (g) a procedure for generating new or amended values for inclusion in the Timetable Planning Rules; and

a procedure for accommodating changes to the Timetable Planning Rules between D-64 and D- 44;

“Timetable Preparation Period”	has the meaning given to that term in Condition D2.8.1;
“Timetable Proposal”	has the meaning given to that term in Condition D2.7.3;
“Timetable Risk Register”	has the meaning given to that term in Condition D6;
“Timetable Variation”	has the meaning given to that term in Condition D3.1.3;
“Timetable Variation by Consent”	has the meaning given to that term in Condition D3.6.1;
“Timetable Week”	has the meaning given to that term in Condition D3.2.1;
“Timetabling Panel”	has the meaning given to that term in the ADRR;
“Timing Load”	in relation to a Service, the timing reference code which details: a) the maximum speed; and b) the particular combination of traction type; and c) trailing weight (where applicable), together with whether any vehicles may be conveyed to which local speed restrictions will apply;
“Train Delays”	means, the measured lateness for a Train calculated at Recording Point in the Working Timetable as defined by the PDAC and DAPR.
“Train Operator”	means an operator of trains who has permission to use Network pursuant to an Access Agreement;

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“Train Slot”	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;
“Train Slot Variation”	has the meaning given to that term in Condition D3.1.1;
"Transfer Applicant"	has the meaning given to that term in Condition J7.2.1;
“TW-12”	has the meaning given to that term in Condition D3.2.1;

U

“Uncommitted Freight Services”	means services for, or in connection with, the carriage of goods and for which the Train Operator does not hold a Capacity Commitment and where the Train Operator has either: (a) made a Timetable Proposal which has resulted in a Train Slot being included in the New Working Timetable; or (b) requested a Train Operator Variation which GBR has: (i) accepted or been deemed to have accepted; or (ii) modified, and that modification has been accepted or been deemed to have been accepted by the Train Operator. For the purposes of the above paragraph, Uncommitted Freight Services: (a) shall not include Services for the purpose of testing under vehicle acceptance procedures; but (b) shall include Services for the purpose of testing rolling stock (including testing for the purpose of mileage accumulation) which has secured an engineering acceptance certificate and a certificate of interim operation.
“Use Period”	has the meaning given to that term in Condition J4.2.3;
“Use Quota”	has the meaning given to that term in Condition J4.2.2;

V

" Value Added Tax" "VAT"	means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto and any similar sales, consumption or turnover tax replacing or introduced in addition to the foregoing;
“Variation”	means in respect of Part F, 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

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out, and “varied” and any other cognate words shall be construed accordingly;

“Vehicle Change”

means, in relation to an Access Beneficiary:

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

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

W

"Working Day"

means each of Monday to Friday (inclusive) excluding common law and statutory public holidays;

"Working Timetable"

means the detailed operational timetable for the current timetable period that shall show every train movement on the Network, including:

- a) every Service;
- b) every Ancillary Movement;
- c) every International Freight Train Slot;
- d) the times of:
 - (i) departure from origin and arrival at destination;
 - (ii) arrival at and departure from every intermediate stopping point;
 - (iii) such passing points, in accordance with the Timetable Planning Rules, or DAPR, or PDAC, as GBR (acting reasonably) considers appropriate;

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- (iv) all relevant timing allowances; and
- (v) platform workings.

X

Not used.

Y

“Y-Path”	means a Train Slot incorporated in the Working Timetable which
(a)	departs from one or more Origins to the same destination: and/or
(b)	arrives at one of more destinations from the same Origin, that is identified as such by the incorporation of the letter “Y” in the operating characteristics part of the Train Slot’s heading.

Z

Not used.

A1.4 Notices

A1.4.1 Any notice, consent or approval to be given under the GBR Code by any person may be given by:

- (a) personal delivery, express postal delivery or prepaid first class post to the intended recipient's registered address or principal business address within the UK; or
- (b) e-mail to the e-mail address of the intended recipient most recently provided by the intended recipient to the sender; or
- (c) by any other electronic means established between the parties for the purpose of exchange of such notices, consents, approvals or notifications.

A1.4.2 Where any notice, consent or approval is given by e-mail in accordance with Condition A1.4.1 (c), the recipient shall be entitled, within 5 Working Days of receipt of the e-mail, to request that a hard copy of the notice, consent or approval be provided. Where such a request is made, the sender shall provide the recipient with the hard copy within 5 Working Days of the request being received.

A1.4.3 Any notice, consent or approval given in accordance with Condition A1.4.1 shall be deemed to have been received in accordance with Condition A4.2.

A1.5 Good faith

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

A1.6 Public Passenger Specifier services

References to Public Passenger Specifier Services include:

- (a) railway passenger services designated by the appropriate authority for provision under franchise or service agreements pursuant to section 23 of the Act;
- (b) railway passenger services provided under franchise agreements, concession agreements, or other contractual arrangements entered into by or on behalf of a relevant public authority for the purpose of securing the provision of such services;
- (c) railway passenger services provided by, or on behalf of, the relevant authority in discharge of its duty to secure the provision of passenger services pursuant to section 30 of the Act; and
- (d) railway passenger services provided by or on behalf of the relevant authority in discharge of its duty to secure the provision of passenger services pursuant to section 30 of the Act.

CONDITION A2 - STANDARDS OF DOCUMENTATION

- A2.1 Where in the GBR 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 the GBR Code which requires its preparation, production or publication, and this Condition A2 is without prejudice to any further or other requirements specified in the GBR Code in relation to the specified information (including in Part K).

CONDITION A3 - PUBLICATIONS

A3.1 General Obligation

- A3.1.1 Where in the GBR Code GBR is required to publish any specified information, that obligation is an obligation to ensure that:

- (a) the publication of the specified information is, subject to Condition A3.1.3, brought to the notice of every Access Beneficiary, every Passenger Transport Executive, Transport for London, the Scottish Ministers and the Welsh Government and the Secretary of State.
- (b) the specified information is, subject to Conditions A3.1.2 and A3.1.3 published on its website.

- A3.1.2 The obligation of GBR under Condition A3.1.1 shall have full effect on and from the date on which Condition A3 comes into effect unless GBR 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.

A3.1.3

- (a) Any person to whom GBR owes an obligation under Condition A3.1.1(a) may give notice to GBR 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 GBR'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 may revoke or modify its notice at any time by further notice to GBR.

A3.2 Sensitive information

Where in the GBR Code GBR is required to publish any specified information which includes relevant items which are sensitive information on its website, that obligation

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shall be satisfied in respect of any relevant item if it publishes a non-sensitive version of that relevant item.

A3.3 Secure Information

Where in the GBR Code GBR is required to publish on its website any specified information which includes relevant items which are secure information, that obligation shall be satisfied if it:

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

A3.4 Hard copy information

Where in the GBR Code GBR is required to publish on its website any specified information which includes relevant items which are hard copy information, but are not Sensitive Information, that obligation shall be satisfied if it:

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

A3.5 Hard copy sensitive information

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

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

A3.6 Determination

A3.6.1 A determination as to whether any relevant item is sensitive information may be made:

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

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A3.6.2 A determination as to whether any relevant item is secure information or hard copy information may be made by GBR.

A3.7 Non-sensitive versions

A3.7.1 Any person who is obliged to submit specified information to GBR may submit a non-sensitive version of particular relevant items, provided that they also submit such relevant items in their entirety and GBR shall publish the non-sensitive version of those relevant items.

A3.7.2 If no non-sensitive version of a particular relevant item is submitted to GBR, GBR shall be entitled to assume that the relevant item does not contain any sensitive information and shall publish that relevant item in its entirety.

A3.8 Appeals

A3.8.1 If any Access Beneficiary is dissatisfied with a determination made by:

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

it may refer the matter for determination in accordance with Part M.

CONDITION A4 - NOTICES

A4.1 Not used.

A4.2 Deemed Receipt

A notice given under the GBR Code shall be deemed to have been received:

- (a) if sent by hand or express postal delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, 3 Working Days after posting unless otherwise proven;
- (c) if sent by e-mail;
 - (i) upon sending if sent before 17:00 hours on a Working Day; or
 - (ii) in any other case, at 09:00 hours on the first Working Day following the day of transmission.
- (d) if sent by any other electronic means established between the parties for the purpose of exchange of such notices, consents, approvals or notifications;
 - (i) upon sending if sent before 17:00 hours on a Working Day; or
 - (ii) in any other case, at 09:00 hours on the first Working Day following the day of transmission.

CONDITION A5 - LIMITATION ON LIABILITY

A5.1 General

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If an Access Beneficiary fails to perform an obligation under the GBR Code, the provisions of its Access Agreement limiting the liability of such Access Beneficiary 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 the GBR Code; or
- (b) an express provision states otherwise in the relevant Access Agreement.

A5.2 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

A6.1 Application to third parties

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

A6.2 Application to GBR Code

Where in the GBR Code a right is given to any person who is not an Access Beneficiary, 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 (including ORR where relevant statutory provisions apply) and not by way of damages or other compensatory award.

CONDITION A7 - CONSULTATION

A7.1 Consultation by a meeting

Where in the GBR 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

CONDITION B1 - PROCEDURES FOR MONITORING PERFORMANCE

B1.1 Performance Monitoring System

GBR 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 and the Public Timetable;
- (c) all Cancelled Trains and trains failing to pass any specified point; and
- (d) the cause of Train Delays and cancellations.

B1.2 The Performance Data Accuracy Code

B1.2.1 Incorporation

The Performance Data Accuracy Code is incorporated into and shall form part of this GBR Code.

B1.2.2 Obligations and Rights

Each Access Beneficiary and GBR 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.

B1.2.3 Modification of the Performance Data Accuracy Code

Modification to the Performance Data Accuracy Code shall be made in accordance with B2.5.

1.3 The Delay Attribution Principles and Rules

B1.3.1 The Delay Attribution Principles and Rules are incorporated into and shall form part of this GBR Code.

B1.3.2 Modification of the Delay Attribution Principles and Rules

Modification to the Delay Attribution Principles and Rules shall be made in accordance with B2.5.

CONDITION B2 - DIAGNOSIS OF DELAYS OR CANCELLATIONS

B2.1 Determination of causes of delays or cancellations

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GBR shall, in relation to any Train Delay or cancellation, (subject to any thresholds agreed by GBR and a Train Operator), including any Train Delay or cancellation affecting GBR's railway passenger services and any related train services trains, 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, in accordance with the provisions of the Delay Attribution Principles and Rules.

B2.2 Information relating to causes of delays or cancellations

GBR 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 information:

- (a) from any computerised or other recording system which GBR is permitted to use for the purposes of a particular Access Agreement;
- (b) supplied by GBR operational staff and other persons duly authorised to participate in the operation of the Network;
- (c) supplied by any operator of trains, whether such information is within its knowledge or based on information supplied by another operator of trains or railway assets;
- (d) sourced by GBR, whether such information is within GBR'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, GBR or other operators of railway assets; and
- (e) or guidance set out in the Delay Attribution Principles and Rules.

B2.3 Disputes about statements of allocated responsibility

B2.3.1 Notification of delays or cancellations

GBR 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 GBR to that operator.

Any such notification shall be sent using the Performance Monitoring System (and/or any such others means of notification that has been agreed for this purpose between that Train Operator and GBR) and at the same time provide its reasons for doing so.

GBR shall, as soon as reasonably practicable following the occurrence of any Train Delay or cancellation affecting GBR's railway passenger services and any related train services, include in the Performance Management System details of such occurrence and how GBR has attributed responsibility for that delay or cancellation and at the same time provide its reasons for such attribution.

B2.3.2 Consideration by a Train Operator

A Train Operator shall consider each delay or cancellation attributed to it by GBR and, if that Train Operator wishes to refer the attribution for further discussion or investigation it shall do so within two Working Days of receipt of that notice utilising the Performance Monitoring System (or any other means of notification that has been agreed for this purpose between that Train Operator and GBR), and at the same time provide its reasons for doing so.

The name and contact details of the designated senior manager appointed by the Train Operator for the purposes of Condition B2.4.2 must also be made available within the same timeframe to GBR.

B2.3.3 Agreement of delay attribution

Any attribution shall, unless referred for further investigation by that Train Operator within two Working Days of receipt of that notice in accordance with the requirements of Condition B2.3.2, be deemed to be agreed by that Train Operator.

B2.4 Matters referred for further investigation

B2.4.1 Procedure for conducting further investigation

Within the next two Working Days after receipt of a notification from a Train Operator in accordance with Condition B2.3.2, GBR and that Train Operator shall attempt to resolve the matter referred for further investigation. Such further investigation shall take into account all relevant circumstances of the case and any relevant information set out in the Delay Attribution Principles and Rules.

B2.4.2 Referral for review and Dispute Resolution

If agreement has not been reached within:

- (a) the two Working Days referred to in Condition B2.4.1; or
- (b) such longer period as GBR and the Train Operator have agreed in order to continue and conclude their investigations, or
- (c) such longer period as GBR and the Train Operator may have further agreed in addition to the period under B2.4.2(b) in order for GBR and the Train Operator to continue and conclude their investigations,

the matter shall become subject to a period of review, of no more than 20 Working Days, by the designated senior manager appointed by the Train Operator and the designated senior manager appointed by GBR for the purposes of this Condition B2.4.2.

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If at the end of the above period of 20 Working Days for senior manager review, GBR and the Train Operator remain unable to agree on the attribution, either or both may refer the matter to the designated Dispute Resolution Body in accordance with Part M within two Working Days.

B2.4.3 Deemed agreement of delay attribution

Any unagreed attribution shall, unless referred to the Dispute Resolution Body within two Working Days of conclusion of the senior manager review pursuant to B2.4.2, be deemed to be agreed by the Train Operator.

B2.4.4 Regulatory Appeal

Nothing in this Part B shall limit or restrict the exercise of any statutory or contractual right of appeal to the ORR at any time insofar as the relevant party has such a right.

Notwithstanding the above, if following referral to the Dispute Resolution Body in accordance with Part M, the parties fail to agree any matter then the Train Operator may refer the matter for appeal to the ORR in accordance with any statutory right of appeal under section 67 (1.(b)) insofar as the relevant party has such a right.

Unless the ORR has published any deadline for submission of such appeals, then the original determination will be deemed to be agreed by the train operator if not appealed to the ORR within ten Working Days of conclusion of the Dispute Resolution Body's activities.

B2.4.6 Precedence

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

B2.5 Amendments to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code

B2.5.1 GBR may propose amendments, from time to time, to the Delay Attribution Principles and Rules, or the Performance Data Accuracy Code, where it considers it necessary to do so in furtherance of GBR's functions, duties or obligations under the Act or GBR's Licence, in order to comply with a Direction or in order to maintain consistency with the Access and Use Policy, and follow the process set out in B2.5.

B2.5.2 Any Train Operator may propose amendments to the Delay Attribution Principles and Rules, or the Performance Data Accuracy Code, by notifying any such proposal to GBR.

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B2.5.3 Any Part B Amendment Proposal shall:

- (a) be in writing and, where made by a Train Operator, sent to GBR;
- (b) contain reasonable particulars of the amendment proposed;
- (c) be supported by an explanation in reasonable detail of the reasons for the proposed amendment; and
- (d) include, to the extent that it is able to do so, for the benefit of any Train Operator to whom a notice of a Part B Amendment Proposal is given under this Condition, an assessment of any wider impact (including commercial impact) that the proposal is likely to have on another Access Party, and, where relevant, a proposed solution to mitigate such impact.

B2.5.4 GBR may seek further information or clarification from the Train Operator making the Part B Amendment Proposal to clarify and assist assessment of the proposal, and provide the Train Operator with a reasonable period of time in which to provide such further information or clarification.

B2.5.5 Following receipt of a Part B Amendment Proposal from a Train Operator and any information or clarification in accordance with B2.5.4, GBR shall state that:

- (a) it will sponsor the Part B Amendment Proposal and that GBR will instigate the process for progressing a Part B Amendment Proposal in accordance with B2.5.;
- (b) GBR will consult Train Operators on the Part B Amendment Proposal, but reserving its position as to whether it will adopt the Part B Amendment Proposal pending the outcome of such consultation; or
- (c) it rejects the Part B Amendment Proposal and will not progress the Part B Amendment Proposal and give its reasons in writing for such rejection.

B2.5.6 Where GBR has stated that it will sponsor a Part B Amendment Proposal or consult on such a proposal in accordance with B2.5.5 (a) or (b) or where it wishes to progress a Part B Amendment Proposal under B2.5.1, GBR shall notify Train Operators of the Part B Amendment Proposal, through issuing a Notice of Consultation which shall:

- (a) be in writing;
- (b) be supported by an explanation in reasonable detail of the reasons for the proposed amendment and whether it is a change proposed under C2 (including explaining whether it is a supported Suggestion for Change or a Suggestion for Change in respect of which GBR is reserving its position pending conclusion of the consultation) or C2.3.1;
- (c) contain the particulars of the suggested amendment including the revised wording of the amendment and the date or series of dates on which it is proposed that it come into effect;

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- (d) include, to the extent possible, an assessment of any wider impact (including commercial impact) that the suggested amendment is reasonably likely to have on Train Operators and, where relevant, proposals to mitigate such impact; and
- (e) invite the submission to GBR of written representations in respect of the proposal within the Change Consultation Period.

B2.5.7 In providing any written representations in accordance with B2.5.6(e), a Train Operator must :

- (a) specify whether or not it accepts the proposed change and provide an explanation for its position;
- (b) indicate any wider impact (including commercial impact) that the proposed change is likely to have on its business; and
- (c) confirm whether it is content with any solution proposed by the sponsor; or
- (d) provide details of any alternative solution it considers appropriate to address the wider impact (including commercial impact); and
- (e) indicate whether such an alternative has been discussed and agreed with GBR and/or a potentially affected Train Operator.

B2.5.8. A modification to any Part B Amendment Proposal may be proposed:

- (a) by any of the persons notified in accordance with B2.5.6 during the Change Consultation Period; or
- (b) by GBR.

B2.5.9 If the proposed modification to any Part B Amendment Proposal is, in GBR's opinion, a material modification and GBR decides to continue with the Part B Amendment Proposal as modified, GBR shall treat the proposal as a new Part B Amendment Proposal and GBR shall carry out further consultation by issuing a new Notice of Consultation in respect of such a Part B Amendment Proposal incorporating the proposed modification and specify a Change Consultation Period which in this instance may be shorter than 30 working days but no fewer than 10 working days.

B2.5.10 If the proposed modification to any Part B Amendment Proposal is, in GBR's opinion, a non-material modification, GBR shall be entitled to:

- (a) consider the Part B Amendment Proposal, as modified; or
- (b) disregard the modification.

B2.5.11 GBR shall assess the Part B Amendment Proposal (including, where relevant, as modified in accordance with B2.5.9 or 2.5.10) in light of the representations made, and other information collated, during the Change Consultation Period,

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including any impact on affected entities and, where relevant, any mitigation of that impact.

B2.5.12 In making its assessment, GBR shall be entitled to satisfy itself that adoption of the Part B Amendment Proposal would:

- (a) be in furtherance of GBR's functions, duties or obligations under the Act or GBR's Licence;
- (b) be necessary in order to maintain consistency with the Access and Use Policy or in order to comply with a Direction;
- (c) not unfairly prejudice the rights of any entity directly affected by the Part B Amendment Proposal.

B2.6 Notice of Adoption or Rejection

2.6.1 Any decision by GBR to adopt a Part B Amendment Proposal shall be confirmed by a Notice of Adoption published by GBR that states the revised wording of the relevant part of the Delay Attribution Principles and Rules, or the Performance Data Accuracy Code, as the case may be, to effect the Part B Amendment Proposal, the date on which the decision was taken and the date, or series of dates, on which the amendment in the Part B Amendment Proposal is to take effect, being a date or dates no earlier than the date on which GBR reached its decision.

2.6.2 Where GBR issues a Notice of Adoption in accordance with B2.6.1, GBR shall accompany publication of the Notice of Adoption with a written statement :

- (a) explaining in reasonable detail the reasons for GBR's decision to issue the Notice of Adoption;
- (b) containing a summary of the results of the consultation carried out in relation to the relevant Part B Amendment Proposal (including copies of any representations made pursuant to B2.5);
- (c) detailing what, if any, modifications were made to the original Part B Amendment Proposal in the light of representations made pursuant to B2.5 and why these modifications have been made;
- (d) stating the reasons behind the rejection of any representations or modifications in respect of the Part B Amendment Proposal;
- (e) providing, if relevant, details of where a number of Part B Amendment Proposals put forward to GBR have been merged.

2.6.3 As soon as reasonably practicable following publication of the Notice of Adoption, GBR shall issue an amended version of the Delay Attribution Principles and Rules, or the Performance Data Accuracy Code, as the case may be, containing the revised wording contained in the Notice of Adoption.

2.6.4 If GBR decides to reject the Part B Amendment Proposal it shall publish a Notice of Rejection which shall be in writing and give GBR's reasons for rejecting the Proposal for Amendment.

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- 2.6.5 Without prejudice to Condition B2.5, GBR is entitled to make modifications to the Delay Attribution Principles and Rules and the Performance Data Accuracy Code provided that such modifications are notified to Train Operators 10 Working Days in advance of the proposed date they will take effect and are non-material.

CONDITION B3 - SYSTEM INVESTIGATION

B3.1 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 B1.1, notify GBR of the manner in which the Performance Monitoring System is alleged not to satisfy such requirements. GBR may also undertake such an investigation on its own initiative.

B3.2 Investigation of system

As soon as practicable following receipt of a notice from a Train Operator under Condition B3.1, GBR shall investigate the matters complained of and shall, within the period of 20 Working Days following the date of receipt of that notice, prepare and deliver to that Train Operator a report of its investigations which shall include:

- (a) details of all relevant tests and checks carried out by GBR;
- (b) the results of GBR's investigations;
- (c) GBR's conclusion as to whether the Performance Monitoring System failed to satisfy the requirements set out in Condition B1.1 in the manner alleged by that Train Operator or in any other respect;
- (d) GBR's reasons for its conclusions and copies of all relevant data and documentation in respect thereof; and
- (e) any steps which GBR is taking or proposes to take in respect of any failure to satisfy the said requirements.

B3.3 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 B1.1, the relevant 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 those results.

CONDITION B4 - RECORDS, AUDIT AND TESTING

B4.1 Obligation to keep information

GBR and Train Operators shall, for a period of not less than six years, keep either summaries, copies, or data records of all material information relating to the monitoring of train performance.

B4.2 Right to audit and inspect

GBR or Train Operators may, without prejudice to Condition B3.2 and on giving at least five Working Days' prior notice to each other :

- (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 GBR or other relevant Train Operator carry out reasonable 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 entity instigating the audit and inspection, including GBR or the relevant Train Operator as the case may be, such tests to be as reasonably required by the instigating entity to determine its accuracy and suitability to monitor train performance in respect of the relevant train services.

B4.3 Costs to be borne by investigating party

Subject to Condition B4.4, any audit, inspection, analysis, investigation or testing carried out in accordance with Condition B4.2 shall be at the cost of the entity requesting the audit, inspection, analysis, investigation or testing.

B4.4 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 GBR or the Train Operator which is the subject of the audit, inspection, analysis, investigation or testing, GBR or the Train Operator, as the case may be, shall bear the reasonable cost of the audit, inspection, analysis, investigation or testing.

CONDITION B5 - CO-OPERATION

5.1 Obligations in Access Agreement

Nothing in this Part B shall restrict GBR and Train Operators 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 - APPEALS

- 5.6.1** A Train Operator not satisfied with the outcome of the processes in this Condition B may raise a dispute with the Dispute Resolution Body in accordance with Part M or Appeal to the Office and Rail and Road pursuant to the exercise of its statutory functions under

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applicable law. Access Beneficiaries and GBR shall be entitled to decide to accept or not to accept, in whole or in part, the outcome of any facilitative processes conducted by the Dispute Resolution Body. .

- 5.6.2 If any Appeal is made to the Office of Rail and Road concerning a decision taken under this Condition B, or any failure to comply with any part of the procedure relating to a Part B Amendment Proposal, such change will remain in full force and effect as though no complaint had been made pending the outcome of any such appeal or complaint.

PART C - Modifications to the GBR Code

CONDITION C1 ADMINISTRATION OF THE GBR CODE

C1 Maintenance and publication of the GBR Code

- 1.1.1 GBR shall be responsible for administering the GBR Code, including producing amended versions of the GBR Code following adoption and implementation of any changes to the GBR Code in accordance with this Part C.
- 1.1.2 GBR shall establish, maintain, and update, as necessary, a website (or any other reasonably accessible electronic portal), which shall be accessible via a prominent link on the GBR website (or other comparable means in the case of an electronic portal), containing:
- (a) the current version of the GBR Code and all documents or other instruments which the GBR Code expressly states are incorporated into it;
 - (b) all previous versions of the GBR Code and all documents or other instruments which the GBR Code expressly states are incorporated into it since 1 January 2028 (together with a note of the dates between which each respective version was in force);
 - (c) the current procedure to be followed by those entities entitled to propose changes to the GBR Code;
 - (d) a summary of Suggestions for Change and Proposals for Amendment and any related consultations and a summary of the responses received and decisions made in relation to such Suggestions for Change and Proposals for Amendment and the reasons for such decisions;
- 1.1.3 GBR shall publish on its website (or other electronic portal) as soon as reasonably practicable after receipt information under C1.1.2 (d) and continue to make such information available on its website (or other electronic portal) for a period of at least five years.
- 1.1.4 GBR shall provide copies of the whole or any part of any of the documents contained on the website to any person upon request and GBR shall be entitled to charge a reasonable sum for the provision of such copies.
- 1.1.5 GBR shall bear its own costs of administering the GBR Code in accordance with this Condition 1.
- 1.1.6 Changes to the GBR Depot Code and GBR Station Code shall follow the provisions and procedures set out in this Part C; for the purpose of changes to those Codes only, references to the GBR Code in this Part C may also be read as meaning the respective GBR Depot or GBR Station Code.

C2 Changing the GBR Code

C2.1 Industry Suggestions for Change to the GBR Code

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- 2.1.1 A Suggestion for Change may be submitted to GBR in respect of any established Part of the GBR Code by an access beneficiary that is party to that Code.
- 2.1.2 Any Adjacent Infrastructure Manager which maintains and publishes its own network code, may submit a Suggestion for Change to the GBR Code.
- 2.1.3 Any Suggestion for Change shall be sent to GBR and shall;
- (a) be in writing
 - (b) be supported by an explanation in reasonable detail of the reasons for the suggested change;
 - (b) contain the particulars of the suggested change including the revised wording of the change to the GBR Code and the date or series of dates on which it is proposed that it come into effect; and
 - (c) include, to the extent possible, an assessment of any wider impact (including commercial impact) that the suggested change is reasonably likely to have on other Access Beneficiaries, GBR and Adjacent IMs and, where relevant, proposals to mitigate such impact.
- 2.1.4 GBR may seek further information or clarification from the proposer of any Suggestion for Change, including financial information, to clarify and assist assessment of the suggestion, and provide the proposer with a reasonable period of time in which to provide such further information or clarification.
- 2.1.5 If the proposer of a Suggestion for Change fails to provide further information or clarification as requested by GBR under C2.1.4, GBR shall not be obliged to consider the suggestion any further.

C2.2 GBR response to a Suggestion for Change

- 2.2.1 GBR shall, within 28 working days following receipt of a Suggestion for Change and any subsequent information or clarification requested from the proposer in accordance with C2.1.4, respond in writing with its initial assessment of the Suggestion for Change; and (if not also the final response to the suggestion) an estimate of how long it requires to provide a final response.
- 2.2.2 In its response to the Suggestion for Change in accordance with C2.1.1, GBR may propose changes to the wording of the suggested change to the GBR Code that it considers better effect the change and afford the proposer of the Suggestion for Change an opportunity to agree to the revised wording within seven working days of the date of GBR's response. If the proposer does not agree to the revised wording, GBR shall not be obliged to progress the Suggestion for Change any further.
- 2.2.3 In assessing the Suggestion for Change, GBR may engage or consult with other entities including the Secretary of State, the Scottish Ministers and the Welsh Ministers, or other body that is a Public Passenger Specifier of services, in order to inform its assessment and shall be entitled to take into account the representations of such entities in making its assessment.

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- 2.2.4 When GBR provides its written final response in accordance with C2.2.1, it shall state whether:
- (a) it will sponsor the Suggestion for Change which shall be deemed a Proposal for Amendment and that GBR will instigate the process for progressing a Proposal for Amendment in accordance with Condition 3;
 - (b) GBR will consult Access Beneficiaries and Adjacent IMs on the Suggestion for Change as if it were a Proposal for Amendment and follow the process in Condition 3, but reserving its position as to whether it will adopt the Suggestion for Change pending the outcome of such consultation; or
 - (c) it rejects the Suggestion for Change and will not progress the Suggestion for Change and give its reasons in writing for such rejection.
- 2.2.5 Where GBR proceeds to consult in accordance with C.2.2.3(b) it shall, following conclusion of the consultation, inform the proposer whether:
- (a) GBR will sponsor the Suggestion for Change as consulted on or with amendment or revised wording, in either such latter case affording the proposer of the Suggestion for Change an opportunity to agree to the revised wording within seven working days of the date of GBR informing the proposer. If the proposer does not agree to the amendment or revised wording, GBR shall not be obliged to progress the Suggestion for Change any further; or
 - (b) GBR rejects the Suggestion for Change and will not progress the Suggestion for Change and give its reasons for such rejection.
- 2.2.6 GBR shall keep each proposer of a Suggestion for Change advised at reasonable and regular intervals of the progress being made in the assessment of and consultation relating to, the Suggestion for Change.

C2.3 GBR Proposals for Amendment of the GBR Code.

- 2.3.1 GBR may propose changes ('Proposals for Amendment') to the GBR Code at any time where it considers it necessary to do so in furtherance of GBR's functions, duties or obligations under the Act or GBR's Licence, or in order to comply with a Direction.
- 2.3.2 Where GBR proposes a change in accordance with C2.3.1 or sponsors a Suggestion for Change in accordance with C2.2.3 or 2.2.4, GBR shall notify Access Beneficiaries and, where relevant, Adjacent IMs, of the change in a Proposal for Amendment of the GBR Code, through issuing a Notice of Consultation which shall:
- (a) be in writing and setting out the proposed change(s) to the relevant GBR Code
 - (b) be supported by an explanation in reasonable detail of the reasons for the suggested change and whether it is a change proposed under C2 (including explaining whether it is a supported Suggestion for Change or a

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Suggestion for Change in respect of which GBR is reserving its position pending conclusion of the consultation) or C2.3.1;

- (c) contain the particulars of the suggested change including the revised wording of the change to the GBR Code and the date or series of dates on which it is proposed that it come into effect;
- (d) include, to the extent possible, an assessment of any wider impact (including commercial impact) that the suggested change is reasonably likely to have on other Access Beneficiaries and, where relevant, proposals to mitigate such impact; and
- (e) invite the submission to GBR of written representations in respect of the proposal within the Change Consultation Period.

2.3.3 In making representations in accordance with C2.3.2(e), an Access Beneficiary shall (and, where relevant, an Adjacent IM is invited to):

- (a) specify whether or not it accepts the proposed change in the Notice of Consultation and provide an explanation for its position;
- (b) indicate any wider impact (including commercial impact) that the proposed change is reasonably likely to have on its business;
- (c) confirm, where relevant, whether it is content with any mitigation proposed by GBR in relation to any wider impact that GBR has notified in accordance with C2.3.2(d);
- (d) provide details, where relevant, of any alternative mitigation it considers appropriate to address the wider impact (including commercial impact) and indicate whether such an alternative has been discussed or agreed with GBR or a potentially affected entity.

C2.4 Modification to a Proposal for Amendment

2.4.1 A modification to any Proposal for Amendment may be proposed:

- (a) by any of the persons notified in accordance with C2.3.2 during the Change Consultation Period; or
- (b) by GBR.

2.4.2 If the proposed modification to any Proposal for Amendment is, in GBR's opinion, a material modification and GBR decides to continue with the Proposal for Amendment as modified, GBR shall treat the proposal as a new Proposal for Amendment and GBR shall carry out further consultation by issuing a new Notice of Consultation in respect of such a Proposal for Amendment incorporating the proposed modification and specify a Change Consultation Period which in this instance may be shorter than 30 working days but no fewer than 10 working days.

2.4.3 If the proposed modification to any Proposal for Amendment is, in GBR's opinion, a non-material modification, GBR shall be entitled to:

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- (a) consider the Proposal for Amendment, as modified; or
- (b) disregard the modification.

C3 – CONSIDERATION OF PROPOSAL FOR AMENDMENT

3.1 Assessment by GBR

- 3.1.1 GBR shall assess the Proposal for Amendment (including, where relevant, as modified in accordance with C2) in light of the representations made, and other information collated, during the Change Consultation Period, including any impact on affected entities and, where relevant, any mitigation of that impact.
- 3.1.2 In making its assessment, GBR shall be entitled to satisfy itself that adoption of the Proposal for Amendment would:
 - (a) be in furtherance of GBR's functions, duties or obligations under the Act or GBR's Licence;
 - (b) be necessary in order to maintain consistency with the Access and Use Policy or in order to comply with a Direction;
 - (c) not unfairly prejudice the rights of any entity directly affected by the Proposal for Amendment.

C3.2 Part C Notice of Adoption or Rejection

- 3.2.1 Any decision by GBR to adopt a Proposal for Amendment shall be confirmed by a Notice of Adoption published by GBR that states the revised wording of the relevant part of the GBR Code to effect the Proposal for Amendment, the date on which the decision was taken and the date, or series of dates, on which the change in the Proposal for Amendment is to take effect, being a date or dates no earlier than the date on which GBR reached its decision.
- 3.2.2 Where GBR issues a Notice of Adoption in accordance with C3.2.1, GBR shall accompany publication of the Notice of Adoption with a written statement :
 - (a) explaining in reasonable detail the reasons for GBR's decision to issue the Notice of Adoption;
 - (b) containing a summary of the results of the consultation carried out in relation to the relevant Proposal for Amendment (including copies of any representations made pursuant to C2.3);
 - (c) detailing what, if any, modifications were made to the original Proposal for Amendment in the light of representations made pursuant to C2.3 and why these modifications have been made;
 - (d) stating the reasons behind the rejection of any representations or modifications in respect of the Proposal for Amendment;

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- (e) providing, if relevant, details of where a number of Proposals for Amendments put forward to GBR have been merged.
- 3.2.3 As soon as reasonably practicable following publication of the Notice of Adoption, GBR shall issue an amended version of the GBR Code containing the revised wording contained in the Notice of Adoption and ensure its publication in accordance with C1.
- 3.2.4 If GBR decides to reject the Proposal for Amendment, it shall publish a Notice of Rejection which shall be in writing and give GBR's reasons for rejecting the Proposal for Amendment.

C4 – OTHER RELATED CONDITIONS

4.1 Power of GBR to make non-material modifications to the GBR Code

- 4.1.1 Without prejudice to Condition C3, GBR is entitled to make modifications to the GBR Code provided that such modifications are notified to Access Parties 28 days in advance of the proposed date they will take effect, and are non-material or are modifications required or made pursuant to the exercise of statutory functions under applicable law.

C4.2 Appeals and Complaints

- 4.2.1 An Access Beneficiary not satisfied with the outcome of the processes in this Condition C shall be entitled to appeal that decision by GBR to the Office of Rail and Road pursuant to the exercise of statutory functions under applicable law.
- 4.2.2 If any Appeal is made to the Office of Rail and Road concerning a decision taken under this Condition C, or any failure to comply with any part of the procedure relating to a Suggestion for Change or Proposal for Amendment, such change will remain in full force and effect as though no complaint had been made pending the outcome of any such appeal or complaint.

C4.3 Costs

- 4.3.1 Each Access Beneficiary and Adjacent IM, shall bear its own costs in participating in the processes in this Condition C, including in preparing representations or providing any information contemplated in this Condition C.
- 4.3.2 Changes made to the GBR Code under this Part C shall not be eligible for compensation under Part G of this GBR Code.

Part D – Timetable Change

1 Introduction

1.1 Overview

- 1.1.1 It is the responsibility of GBR to establish a timetable for the Network, referred to as the “Working Timetable”.
- 1.1.2 GBR and Timetable Participants may participate in the processes set out in this Part D.
- 1.1.3 The Working Timetable is re-issued in revised form at such intervals as GBR considers appropriate. The process for producing the revision of the Working Timetable is described in Condition D2.
- 1.1.4 In the period between revisions of the Working Timetable, either GBR or Timetable Participants may wish to vary the Working Timetable, whether by altering or removing a scheduled Train Slot or by inserting a new Train Slot. The process to facilitate variations to a Working Timetable is described in Condition D3.
- 1.1.5 GBR requires access to the Network in order to fulfil its obligations in relation to the Network. The processes by which:
 - (a) the Working Timetable is updated in line with Condition D1.1.3 (as described in Condition D2); and
 - (b) variations to the Working Timetable outside that process are facilitated in line with Condition D1.1.4 (as described in Condition D3);include arrangements to procure access to the Network required by GBR.
- 1.1.6 In conducting the processes set out in this Part, decisions must be made by GBR in accordance with the principles set out in Condition D4.
- 1.1.7 Condition D5 describes the processes by which a Timetable Participant, dissatisfied with a decision of GBR made in respect of this Part D, may in specified circumstances appeal against that decision.
- 1.1.8 GBR shall not be required to keep confidential the identity of, or any information provided to it by, any Timetable Participant in relation to the processes detailed under this Part D.
- 1.1.9 All Timetable Participants shall have access to the evolving draft of the New Working Timetable or a Working Timetable either:
 - (a) by way of “read-only” remote computer access or such other electronic means reasonably requested by a Timetable Participant ; or

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- (b) to the extent that a Timetable Participant does not have the required systems to facilitate remote computer access, by read-only computer access upon attendance at such of GBR's offices specified by GBR;
- 1.1.10 It is the responsibility of GBR and all Timetable Participants to collaborate with each other so that the implementation of the procedures in this Part D are carried out. GBR and Timetable Participants shall each establish and maintain systems and resources which are necessary and sufficient to facilitate such collaboration and their compliance with the procedures set out in this Part D.
- 1.1.10 In addition to compliance with the processes described in this Part D, both GBR and Timetable Participants may be separately required to consult with such persons as, and or parties with, the right to be so consulted, regarding proposals for the development of Services.
- 1.1.11 Where in this Part D, any party is under an obligation to consult with another, the party obliged to initiate the consultation shall provide the consultee with:
 - (a) Sufficient information for the consultee to be able to comment on the subject matter of the consultation; and
 - (b) A reasonable time in which to respond to the information provided.

2 Working Timetable Revision Process

2.1 Preliminary

- 2.1.1 The Working Timetable shall show every train movement on the Network.
- 2.1.2 This Condition D2 describes the process by which GBR will revise the Working Timetable. This change implementation is referred to as a “Timetable Change Date”. GBR shall re-issue the Working Timetable in revised form as it considers appropriate, after a consultation and revision process.
- 2.1.3 Following consultation with other Infrastructure Managers and Timetable Participants, GBR may decide to vary the change implementation dates from time to time.
- 2.1.4 The process for adopting a revised Working Timetable is defined by a series of milestone dates and steps and these shall be designated by “D-X” which represents the number of weeks before the Timetable Change Date.
 - (a) Each week commences at 02:00 on a Sunday and expires at 01:59 on the following Sunday.

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- (b) Any step or event that is required to occur by a specified week, must occur no later than 17:00 on the Friday of the previous week.
- 2.1.5 The process for publishing the Advanced Register of Possessions is defined by a series of milestone dates and steps and these shall be designated by “F-X” which represents the number of weeks before the start of the Financial Half Year.
 - (a) Each week commences at 00:01 on a Saturday and expires at 23:59 on the following Friday.
 - (b) Any step or event that is required to occur by a specified week, must occur no later than 17:00 on the Friday of the previous week.
- 2.1.6 Not later than D-73 in relation to the Timetable Change Date, GBR shall publish to all Timetable Participants a calendar showing the milestone dates which will apply (for the purposes of this Condition D2) to the process of planning the New Working Timetables to take effect as Working Timetables on the Timetable Change Date.
- 2.1.7 To produce the timetable to take effect on a Timetable Change Date, GBR shall use as the starting point the timetable published for the immediately preceding Timetable Change Date at the D-Date specified by GBR in the calendar published at D-73 under Condition D2.1.6, subject to the following amendments only:
 - (a) any variations as a result of the appeals process;
 - (b) indicative paths to represent classifications in GBR’s Infrastructure Capacity Plan that are not associated with Capacity Commitments;
 - (c) GBR may reflect the content of a Development Timetable provided it has consulted with affected Timetable Participants;
 - (d) Any changes to the previous timetable that GBR wishes to make that are consistent with its own Capacity Commitments.
 - (e) GBR may delete any Train Slots in respect of which it believes, acting reasonably and after consultation with the relevant Timetable Participant (if appropriate), that the relevant Timetable Participant, or its successor, will not have the right to operate services at the time of the intended operation of the Train Slots.

This starting point is referred to as “the Draft Working Timetable”.

- 2.1.8 Not later than D-45, GBR shall provide to the Timetable Participants a copy of the Draft Working Timetable. If any changes are made to the Draft Working Timetable as a result of the appeal process under Condition D2.9.6, then GBR shall notify these changes to Timetable Participants as soon as reasonably practicable.

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- 2.1.9 The Draft Working Timetable shall be the basis for the preparation and compilation of the New Working Timetable, subject to any changes made in accordance with this Part D.

2.2 Revision of the Timetable Planning Rules

- 2.2.1 The Timetable Planning Rules are to be reviewed in advance of every Timetable Change Date, with each and any revised version being operative for the same Timetable Period as the Working Timetable to which they pertain. The Timetable Planning Rules must be revised and updated, in accordance with the procedures described in this Condition D2.2, as a first stage in the preparation of a New Working Timetable.
- 2.2.2 Between D-64 and D-54, GBR shall consult with Timetable Participants in respect of any proposed changes to the Timetable Planning Rules.
- 2.2.3 Following consultation in accordance with Condition D2.2.2 and not later than D-53, GBR shall provide to all Timetable Participants a draft of the revised Timetable Planning Rules (“The Draft Timetable Planning Rules”).
- 2.2.4 Following distribution of the Draft Timetable Planning Rules and by D-49, Timetable Participants may make representations to GBR in respect of any changes they propose or objections they may have to the Draft Timetable Planning Rules provided to them in accordance with D2.2.3.
- 2.2.5 Following D-49 and by D-46, GBR shall consider the representations and objections made to it by Timetable Participants pursuant to Condition D2.2.4 and may amend the Draft Timetable Planning Rules. Not later than D-46, GBR shall issue the final revised Timetable Planning Rules to all Timetable Participants.
- 2.2.6 In preparing revised Timetable Planning Rules, GBR shall be required to act in accordance with the duties and powers set out in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the Timetable Planning Rules.
- 2.2.7 Between D-46 and publication of the New Working Timetable at D-26, GBR may further revise the Timetable Planning Rules where it considers, acting reasonably, such revision necessary or desirable in order to optimise that New Working Timetable. Before making any such further revisions to the Timetable Planning Rules, GBR must first consult with all Timetable Participants who may be affected by the proposed changes. GBR will then inform all affected Timetable Participants of any such changes as soon as practicable after they are made. The amending power created in this Condition D2.2.7 is without prejudice to the amending power referred to in Condition D3.4.
- 2.2.8 Nothing in this Part D gives rise to a right of appeal to a Dispute Resolution Body under Part M in relation to any decision made under this Condition D2.2.

2.3 Revision of the Engineering Access Statement (Excluding the Advanced Register of Possessions)

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- 2.3.1 The Engineering Access Statement (excluding the Advanced Register of Possessions) is to be reviewed in advance of every Timetable Change Date, with each and any revised version being operative for the same Timetable Period as the Working Timetable to which they pertain. The Engineering Access Statement (excluding the Advanced Register of Possessions) must be revised and updated in accordance with the procedures described in this Condition D2.3, as a first stage in the preparation of a New Working Timetable.
- 2.3.2 No later than D-64 and concluding by D-60, GBR shall consult with Timetable Participants in respect of any proposed changes to the Engineering Access Statement (excluding the Advanced Register of Possessions).
- 2.3.3 Following consultation in accordance with Condition D2.3.2, and not later than D-59, GBR shall provide to all Timetable Participants a draft of the revised Engineering Access Statement (excluding the Advanced Register of Possessions) (“the Draft Engineering Access Statement”).
- 2.3.4 Following distribution of the Draft Engineering Access Statement and by D-54 Timetable Participants may make representations to GBR in respect of any changes they propose or objections they may have to the Draft Engineering Access Statement provided to them in accordance with Condition D2.3.3.
- 2.3.5 Following D-54 and by D-44, GBR shall consider the representations and objections made to it by Timetable Participants pursuant to Condition D2.3.4 and may amend the Draft Engineering Access Statement. Not later than D-44, GBR shall issue the final revised Engineering Access Statement (excluding the Advanced Register of Possessions) to all Timetable Participants.
- 2.3.6 In preparing revised Engineering Access Statement, GBR shall be required to act in accordance with the duties and powers set out in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the Engineering Access Statement.
- 2.3.7 Between D-44 and publication of the New Working Timetable at D-26, GBR may further revise the Engineering Access Statement (excluding the Advanced Register of Possessions) where it considers, acting reasonably, such revision necessary or desirable in order to optimise that New Working Timetable. Before making any such further revisions to the Engineering Access Statement, GBR must first consult with all Timetable Participants who may be affected by the proposed changes. GBR will then inform all affected Timetable Participants of any such changes as soon as practicable after they are made. The amending power created by this Condition D2.3.7 is without prejudice to the amending power referred to in Condition D3.4.
- 2.3.8 Nothing in this Part D gives rise to a right of appeal to a Dispute Resolution Body under the Part M in relation to any decision made under this Condition D2.3.

2.4 Revision of the Advanced Register of Possessions

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- 2.4.1 The Advanced Register of Possessions is revised on a bi-annual basis, each version being aligned to a Financial Half Year. The Advanced Register of Possessions must be revised and updated in accordance with this Condition D2.4.
- 2.4.2 By F-60 GBR shall consult with Timetable Participants in respect of proposed changes to the Advanced Register of Possessions.
- 2.4.3 Following consultation in accordance with D2.4.2 and not later than F-59, GBR shall provide to all Timetable Participants a draft of the revised Advanced Register of Possessions (the “Draft Advanced Register of Possessions”).
- 2.4.4 Following distribution of the Draft Advanced Register of Possessions, and by F-54, Timetable Participants may make representations to GBR in respect of any changes they propose or objections they may have to the Draft Advanced Register of Possessions provided to them in accordance with Condition D2.4.3.
- 2.4.5 Following F-54 and by F-46 GBR shall consider representations and objections made to it by Timetable Participants pursuant to Condition D2.4.4 and may amend the Draft Advanced Register of Possessions. Not later than F-46, GBR shall issue the final revised Advanced Register of Possessions to all Timetable Participants.
- 2.4.6 In preparing the Advanced Register of Possessions, GBR shall be required to act in accordance with the duties and powers set out in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the Advanced Register of Possessions.
- 2.4.7 Between F-46 and publication of the New Working Timetable at D-26, GBR may further revise the Advanced Register of Possessions where it considers, acting reasonably, such revision necessary or desirable. Before making further revisions to the Advanced Register of Possessions, GBR must consult with all Timetable Participants who may be affected by the proposed changes. GBR will inform all affected Timetable Participants of any changes as soon as practicable after they are made. The amending power created by this Condition D2.4.7 is without prejudice to the amending power referred to in Condition D3.4.
- 2.4.8 Nothing in this Part D gives rise to a right of appeal to a Dispute Resolution Body under Part M in relation to any decision made under this Condition D2.4.

2.5 Timetable Consultation – D-55 to D-40

- 2.5.1 Each Timetable Participant shall provide to GBR at the earliest opportunity but no later than D-55, an Advanced Notice of Timetable Change (ANTC), that either:
 - (a) summarises any new Services or changes to Services where known by that Timetable Participant for that Timetable Period; and
 - (b) indicates which new Services or changes to Services that the Timetable

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Participant proposes to operate in that Timetable Period are within the remit of a Development Timetable and whether those Services are consistent with the conclusions of that Development Timetable; or

- (c) states if no new Services or changes to Services are anticipated by that Timetable Participant for that Timetable Period.

2.5.2 If GBR considers that the introduction of any such new Services or Changes to Services indicated in an ANTC may necessitate substantial timetable changes, it may commence an initial consultation period, referred to in Condition D2.6.3 below, before D-55. In any event, GBR shall consult with Timetable Participants who may be affected by the proposed new Services or changes to Services and shall provide them with all available relevant information in respect of those proposals.

2.5.3 During the period from D-55 to D-40 (or such extended period referred to in Condition D2.6.2):

- (a) Timetable Participants shall indicate the changes (if any) that they propose should be made in preparing the New Working Timetable;

- (b) GBR shall consult with Timetable Participants in respect of the New Working Timetable.

2.5.4 Not later than D-48, in relation to any timetable change date applicable to the Channel Tunnel timetable planning process, GBR shall consult with International Operators and relevant Infrastructure Managers. GBR shall include in the Draft Working Timetable, the New Working Timetable and the relevant Working Timetable applicable to the year commencing in that Timetable Change Date such International Paths as are agreed with International Operators through that process.

2.6 Notification of Timetable Proposals before and after the Priority Date at D-40

2.6.1 GBR may, at D-40 or between D-40 and D-26, publish proposed additions to or amendments in respect of GBR Train Slots in the New Working Timetable.

2.6.2 A Timetable Participant shall set out its requirements in respect of the New Working Timetable in a written proposal, where:

- (a) it seeks Train Slots for the relevant Timetable Period where those Train Slots have not previously been reflected in the Draft Working Timetable.

- (b) it wishes to make changes to any Train Slot in the Draft Working Timetable;

- (c) it wishes to set out its requirements in response to a notification by GBR under Condition D2.7.8; and/or

- (d) it wishes to use any classification in the Infrastructure Capacity Plan that is

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not associated with a Capacity Commitment where the criteria in the Infrastructure Capacity Plan are met.

- 2.6.3 A proposal published under Condition D2.6.1 or made under Condition D2.6.2 is known as a Timetable Proposal.
- 2.6.4 Where a Timetable Participant does not intend using a Train Slot, which is included in the Draft Working Timetable, in the relevant Timetable Period, it shall notify this fact to GBR in writing by D-40 or as soon as practicable thereafter.
- 2.6.5 Timetable Proposals may be submitted to, or published by, GBR during the period up to D-28, or in the case of a further or revised Timetable Proposal submitted under Condition D2.7.8(c), during the period up to D-26. However, Timetable Participants shall submit their Timetable Proposals (and any revised Timetable Proposals) as early as reasonably practicable in order to facilitate optimal planning of the New Working Timetable by GBR and to ensure optimal consultation between GBR and all Timetable Participants.
- 2.6.6 Timetable Proposals submitted by D-40 (“the Priority Date”), and Rolled Over Timetable Proposals, are given priority in the compilation of the New Working Timetable in accordance with Condition D4.2. Timetable Proposals submitted after the Priority Date but by D-28, and any further or revised Timetable Proposals submitted under Condition D2.7.8(c) by D-26 will be included in the New Working Timetable as far as reasonably practicable.
- 2.6.7 Where a Timetable Participant submits a further Timetable Proposal, or a revised Timetable Proposal that sets out different requirements from the original proposal, the new date of receipt replaces that of any previous Timetable Proposal.
- 2.6.8 Where a Timetable Participant has:
- (a) submitted a Timetable Proposal which cannot be accommodated in the New Working Timetable; or
 - (b) a Train Slot in the Draft Working Timetable which cannot be accommodated in the New Working Timetable; or
 - (c) submitted a proposal purporting to be a Timetable Proposal but which is defective or incomplete (which may include, as an example, providing insufficient information required under Condition D2.8); or
 - (d) submitted a Timetable Proposal which is within itself inconsistent with the Timetable Planning Rules,

GBR must notify the Timetable Participant of this fact, as soon as possible after it has become aware of it, so that the Timetable Participant has the opportunity to submit a further Timetable Proposal under Condition D2.7.3(c).

2.7 Content of a Timetable Proposal

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- 2.7.1 Each Timetable Proposal shall include as a minimum in respect of each Train Slot, save to the extent that GBR expressly agrees in writing to the contrary:
- (a) Confirmation of the Capacity Commitment being requested in the New Working Timetable, or that no Capacity Commitment exists in support of the requested Train Slot;
 - (b) the dates on which Train Slots are intended to be used;
 - (c) the start and end points of the train movement;
 - (d) the intermediate calling points;
 - (e) the times of arrival and departure from, and routing between, any point specified under paragraphs (b) and (c) above;
 - (f) the railway vehicles or Timing Load to be used;
 - (g) any required train connections with other railway passenger services;
 - (h) any proposed Ancillary Movements;
 - (i) any required platform arrangements at the start, end and all intermediate calling points;
 - (j) any relevant commercial and service codes;
 - (k) the proposed maximum train speed and length and, in relation to a freight train, the proposed maximum train weight;
 - (l) the proposed previous and next working of the railway vehicles of the proposed Train Slot provided that the vehicles have not left the Network: and
 - (m) where required, a valid RT3973 form reference.
- 2.7.2 Where a Timetable Proposal has been submitted by a Timetable Participant, GBR shall be entitled to require any further information in respect of that Timetable Proposal that it reasonably considers to be necessary or beneficial to the preparation of the New Working Timetable.

2.8 New Working Timetable Preparation and Publication– D-40 to D-26

- 2.8.1 Between D-40 to D-26, (“Timetable Preparation Period”), GBR shall compile the proposed New Working Timetable.
- 2.8.2 In compiling the New Working Timetable, GBR shall be required and entitled to act in accordance with the duties and powers set out in Condition D4.2.

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- 2.8.3 The New Working Timetable shall be published by GBR at D-26, subject only to variations made in the course of Conditions D2.8.4, D2.8.5 and the appeal process described in this Condition D2.8.6.
- 2.8.4 Not later than D-24, any Timetable Participant affected by the publication of the New Working Timetable must respond to GBR stating where it disputes, seeks alternative proposals or requires further information regarding the published New Working Timetable. Any response regarding a dispute must identify the disputed Train Slot and grounds. Any alternative proposals are to be submitted under Condition D3.
- 2.8.5 Where a Timetable Participant has responded to GBR by D-24, GBR shall respond, taking into account the nature of the enquiry or information requested, provide that Timetable Participant with any further information and revisions to the New Working Timetable by D-22, so as to enable a Timetable Participant to comply with the timescales in Condition D2.8.6. Any revisions in accordance with this Condition to the New Working Timetable are to be by consent only.
- 2.8.6 Any Timetable Participant affected by the New Working Timetable shall be entitled to appeal against any part of it, provided that an appeal is lodged within twenty Working Days of its publication. Any appeal against the New Working Timetable must detail the specific Train Slots and the reason for the appeal. All such appeals shall be conducted in accordance with Part M.
- 2.8.7 Where a Timetable Participant fails to comply with Conditions D2.8.4 and 2.8.5, including by not responding to GBR within the prescribed timescale, that Timetable Participant shall be deemed to have accepted the New Working Timetable as published and shall not be entitled to make any appeal under Condition D2.8.6 in respect of GBR decision.
- 2.8.8 GBR shall promptly make all revisions to the New Working Timetable required by all appeal decisions and shall notify all Timetable Participants upon completion of those changes

3 Variations to the Working Timetable

3.1 Overview

- 3.1.1 From D-26 and during the relevant Timetable Period, Timetable Participants and/or GBR, may wish to vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (a) adding an additional Train Slot on one or more occasions;
- (b) amending the detail of one or more Train Slots;
- (c) removing one or more Train Slots.

Any such variation is referred to as a “Train Slot Variation”. The process to be followed where either a Timetable Participant or GBR seeks a Train Slot Variation is set out in Condition D3.3.

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3.1.2 From D-26 and during the relevant Timetable Period, GBR may wish to vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis to facilitate a Restriction of Use by:

- (a) adding an additional Train Slot on one or more occasions;
- (b) amending the detail of one or more Train Slots;
- (c) removing one or more Train Slots.

Any such variation is referred to as a “Restriction of Use Variation”. The process to be followed where a Restriction of Use Variation is sought with more than 12 weeks notice is set out in Condition D3.4. The process to be followed where a Restriction of Use Variation is sought with less than 12 weeks notice is set out in Condition D3.5.

3.1.3 Train Slot Variations and Restriction of Use Variations are collectively referred to as “Timetable Variations”.

3.1.4 In considering or making any Timetable Variation, GBR shall be required and entitled to act in accordance with the duties and powers set out in Conditions D4.3 and D4.4.

3.2 Timeline for the Planning of Timetable Variations

3.2.1 Timetable Variations are planned by GBR on a week by week basis. Each week of a Working Timetable is referred to as a “Timetable Week”. Each Timetable Week commences at 00:01 on a Saturday and expires at 23:59 on the following Friday. The sequence of events by which variations are finalised is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to the commencement of Timetable Week “TW”. So, for example, “TW minus 12” (or “TW-12”) refers to the 12th week prior to the start of a given Timetable Week “TW”. Where in this Part D any step or event is required or stated to occur by any week designated in this way, it must occur no later than 5pm on Friday of the preceding week. So, for example, a step which is required to occur no later than “TW-12” must occur no later than:

- (a) 17:00 on Friday;
- (b) in the week commencing on the Sunday which occurs 13 weeks prior to the commencement of week TW.

3.2.2 Not later than D-26, GBR shall provide to all Timetable Participants a calendar pertaining to each Timetable Week, showing the milestone dates which will apply (pursuant to this Condition D3) to the planning of all Timetable Variations in respect of that Timetable Week.

3.3 Train Slot Variations after D-26

3.3.1 Where a Timetable Participant seeks a Train Slot Variation, it shall submit to GBR a written request.

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- 3.3.2 A written Train Slot Variation shall contain a full description of the variation sought and, where it relates to the addition or amendment of any Train Slot to be included in the Working Timetable, shall provide the same information in respect of the variation as would be contained in a Timetable Proposal, (save that where a proposed Train Slot amendment does not involve revision of any information previously supplied to GBR in a Timetable Proposal for that Train Slot, the Train Slot Variation need not repeat that information).
- 3.3.3 From D-26 and during the relevant Timetable Period, a Timetable Participant is entitled to request a Train Slot Variation in writing and GBR shall have the power to accept, reject or modify it, subject to the timeframes set out in Conditions D3.3.6 and D3.3.7 below and acting in accordance with Condition D4.3.
- 3.3.4 Where a written Train Slot Variation is received:
- (a) on any day which is not a Working Day; and/or
 - (b) after 10:00 hours on a Working Day;
- it shall be deemed to have been received on the next Working Day thereafter.
- 3.3.5 For the purposes of calculating GBR's response time to a written Train Slot Variation set out in Condition D3.3.6, the day of GBR's receipt of a Train Slot Variation is described as day 1 and each Working Day following this adds a day onto the description. For example, the Working Day after the day of receipt of the request is day 2.
- 3.3.6 Except in relation to a written Train Slot Variation which includes a One Stop Shop Service which is dealt with in Condition D3.3.7, GBR shall notify its acceptance, rejection or modification of a Train Slot Variation, by the following latest times:
- (a) as soon as reasonably practicable, where the request is to operate a Train Slot on day 1 or day 2.
 - (b) by 15:00 hours on day 1, where the request is to operate a Train Slot on day 3;
 - (c) by 10:00 hours on day 2, where the request is to operate a Train Slot on day 4;
 - (d) by 15:00 hours on day 2, where the request is to operate a Train Slot on day 5;
 - (e) by 15:00 hours on day 3, where the request is to operate a Train Slot on day 6;
 - (f) by 10:00 hours on day 4, where the request is to operate a Train Slot on day 7;

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- (g) where (a), (b), (c), (d), (e) or (f) do not apply, within five Working Days of receipt of the request unless otherwise agreed between the Timetable Participant and GBR, where the parties acting reasonably, consider the volume of changes requested and the timescales over which the variations are required to operate.
- 3.3.7 In relation to a written Train Slot Variation which includes a One Stop Shop Service, GBR shall notify its acceptance, rejection or modification of the Train Slot Variation as soon as reasonably practicable.
- 3.3.8 Where GBR fails to notify its response to a written Train Slot Variation in accordance with Condition D3.3.6 and the request, if accepted, would not give rise to any conflict with:
 - (a) the New Working Timetable after it is published at D- 26; or
 - (b) the relevant Working Timetable; or
 - (c) the Rules,it shall be deemed to have accepted the request.
- 3.3.9 Subject to Condition D3.3.10 below, where a Timetable Participant is dissatisfied with any final decision of GBR in response to a written Train Slot Variation, it may appeal against that decision in accordance with Part M, provided that it submits its appeal no later than five Working Days after it is notified of the relevant decision by GBR.
- 3.3.10 Any appeal regarding a Train Slot Variation which includes a One Stop Shop Service can only be made in relation to the part of the request concerning the Network.
- 3.3.11 (a) Where GBR rejects any Train Slot Variation it must provide written reasons for its decision.

(b) Where GBR modifies any Train Slot Variation it must provide written reasons for its decision upon request from the Train Operator.
- 3.3.12 Any decision made regarding a proposal for a Train Slot Variation sought by GBR must be taken in accordance with Condition D4.3.
- 3.4 **Restriction of Use Variations with at least 12 Weeks Notice**
 - 3.4.1 The procedures described in this Condition D3.4 are designed to facilitate the planning of Restrictions of Use at least 12 weeks prior to the start of each Timetable Week.
 - 3.4.2 GBR shall be entitled to make a variation to the Working Timetable provided that:
 - (a) the Restriction of Use Variation is made only for the purpose of taking Restrictions of Use which are consistent with the Rules, as published following the process set out in Condition D2.2

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or as amended in accordance with the procedure established pursuant to Condition D3.4.3; and

- (b) GBR complies with the procedure set out in this Condition D3.4.
- 3.4.3 GBR shall include in the Rules a procedure to enable amendment of the Rules, following their finalisation in accordance with Condition D2.2. This amending power is without prejudice to the amending power referred to in Conditions D2.3.7 and D2.4.7, and is to be utilised in order to facilitate changes which GBR considers necessary to take Restrictions of Use.
- 3.4.4 The procedure referred to in Condition D3.4.3:
 - (a) must require that no amendment to the Rules may be made unless GBR has consulted with all Timetable Participants likely to be affected by the amendment;
 - (b) must require that all decisions of GBR be made by application of the Decision Criteria in accordance with Condition D4.6;
 - (c) may authorise changes to the procedure.
- 3.4.5 All amendments to the Rules made pursuant to the procedure referred to in Condition D3.4.3 shall take effect in accordance with this Part D and may be challenged only in accordance with Part M.
- 3.4.6 The making of any statutory appeal shall not of itself suspend the operation of any amendment made under Condition D3.4.3 unless otherwise directed by ORR.
- 3.4.7 Where GBR proposes to make any variation to the Working Timetable consequent upon an amendment to the Rules made in accordance with this Condition D3.4, GBR shall provide to each Timetable Participant, by TW-30, its proposals for Restrictions of Use in respect of the corresponding Timetable Week. All such proposals may be amended or supplemented by GBR at any time prior to TW-26 and such amendments or supplements should also be provided to Timetable Participants prior to TW-26.
- 3.4.8 After TW-30 but by TW-26, GBR shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all Restriction of Use Variations to be made.
- 3.4.9 To facilitate the planning of any Restriction of Use Variation, GBR may require that any Timetable Participant shall submit a revised Timetable Proposal in respect of any Train Slot.
- 3.4.10 Where GBR requires a revised Timetable Proposal:
 - (a) the requirement must be notified to the affected Timetable Participant no later than TW-22;

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- (b) GBR shall specify the aspects of the Timetable Proposal which need to be revised and its reasons for this;
 - (c) GBR shall specify a reasonable period in which the revised Timetable Proposal must be provided, and in any event the revised Timetable Proposal shall be submitted no later than TW-16.
- 3.4.11 GBR may modify, accept or reject a revised Timetable Proposal and where it modifies or rejects any revised Timetable Proposal, it must provide written reasons for its decision.
- 3.4.12 Where a revised Timetable Proposal has not been submitted by a Timetable Participant as required by GBR, GBR shall be entitled to make a Restriction of Use Variation of any Train Slot in respect of which the revised Timetable Proposal was required and no appeal may be made in respect of GBR's decision.
- 3.4.13 Not later than TW-14, GBR shall notify all Timetable Participants of its proposed decision in respect of Restriction of Use Variations to be made pursuant to the procedure in this Condition D3.4.
- 3.4.14 Not later than TW-13, any Timetable Participant affected by GBR's decision notified pursuant to Condition D3.4.13 shall inform GBR whether it accepts or disagrees with that proposal.
- 3.4.15 At TW-12, GBR shall record and provide to all Timetable Participants, in accordance with Condition D3.7.1, the Restriction of Use Variations to be made pursuant to this Condition D3.4.
- 3.4.16 Subject as provided in Condition D3.4.12, any Timetable Participant which is dissatisfied with any final decision of GBR in respect of a Restriction of Use Variation may appeal against it in accordance with Condition D5.
- 3.4.17 In the event that any deadline set within this Condition D3.4 cannot be met, Condition D3.5 must be utilised.

3.5 Restriction of Use Variations with less than 12 Weeks Notice

- 3.5.1 It may be necessary for Restrictions of Use to be arranged by GBR with less than 12 weeks notice or otherwise outside the process described in Condition D3.4. The following paragraphs of this Condition D3.5 are intended to facilitate such Restrictions of Use.
- 3.5.2 Where GBR proposes to make any variation to the Working Timetable in circumstances where it is not reasonably practicable to comply with the timing requirements of Condition D3.4, GBR shall follow the procedures set out in Condition D3.4 save that:
 - (a) the timing requirements specified there; and
 - (b) Conditions D3.4.13, D3.4.14 and D3.4.15;

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shall not apply. In carrying out those procedures, GBR shall be permitted (for itself) and shall prescribe (for affected Timetable Participants) such time periods for each step as are reasonably practicable in the circumstances. GBR shall notify all affected Timetable Participants of its final decision in respect of any such change as soon as reasonably practicable. Any variation to a Working Timetable made pursuant to this Condition D3.5.2 shall be a “Restriction of Use Variation” for the purposes of this Part D.

- 3.5.3 Any Timetable Participant which is dissatisfied with any final decision of GBR in respect of a Restriction of Use Variation made pursuant to Condition D3.5.2 may appeal in accordance with Part M.

3.6 Timetable Variations by consent

- 3.6.1 Notwithstanding anything stated in this Condition D3, where GBR and all affected Timetable Participants have so consented in writing, a Timetable Variation may be made without the need for compliance with such of the requirements of this condition D3 as are specified in the consent. Such a variation is referred to as a “Timetable Variation by Consent”.

3.7 Publication of Timetable Variations

- 3.7.1 Where, pursuant to the processes described in this Condition D3, any Timetable Variation or Timetable Variation by Consent has been finalised, it shall be recorded by GBR in one or more schedules (each referred to as a “Short Term Plan”). Each Short Term Plan shall be made available to affected Timetable Participants (by the same means as are described in Condition D1.1.9 as soon as reasonably practicable after the relevant variation has been approved by GBR, and the affected part(s) of the New Working Timetable or Working Timetable shall be annotated to refer to the relevant Short Term Plan(s).

3.8 Operation of Part H

- 3.8.1 In addition to any variation to the New Working Timetable or Working Timetable arising pursuant to the procedures set out in this Condition D3, variations may also arise from time to time by reason of the operation of the Railway Operational Code, and this Condition D3 is subject to the operation of that Code.

4 Decisions by GBR

4.1 Decisions concerning the Rules

- 4.1.1 In conducting the processes set out in Condition D2.2, D2.3 and D2.4 by which the Rules are revised (including the amendment process’ described in Condition D2.2.7, D2.3.7 and D2.4.7), GBR shall make all decisions by application of the Decision Criteria in the manner set out in Condition D4.5. In applying the Decision Criteria, GBR shall give particular weight to any proposed revision to the Rules which arises from, or is necessary to

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support the implementation of, an update to the Infrastructure Capacity Plan.

4.2 Decisions arising in the preparation of a New Working Timetable

4.2.1 In compiling a New Working Timetable in accordance with Condition D2.9, GBR shall apply the Decision Criteria in accordance with Condition D4.5 and conduct itself as set out in this Condition D4.2.

4.2.2 GBR shall seek to include all Rolled Over Timetable Proposals and Timetable Proposals made in accordance with Conditions D2.7 and D2.8, subject to the following principles:

- (a) a New Working Timetable shall conform with the Rules for the corresponding Timetable Period;
- (b) each New Working Timetable shall be consistent with Firm Capacity Commitments where Train Slots have been the subject of either a Timetable Proposal or a Rolled Over Timetable Proposal;
- (c) any Train Slot included in a Timetable Proposal on the basis of a pending application for a Capacity Commitment shall cease to qualify for inclusion in the New Working Timetable if GBR determines, before publication of the New Working Timetable, not to grant that Capacity Commitment, unless the applicant holds a contractual entitlement to request the Train Slot as an Uncommitted Freight Service.
- (d) GBR is entitled to apply its Flexing Right when determining how Train Slots are included in the timetable;
- (e) where it is not possible to include all requested Train Slots in the New Working Timetable, GBR shall allocate capacity in the following order of priority with (i), (ii) and (iii) being applicable to requests notified in a Rolled Over Timetable Proposal or Timetable Proposal by the Priority Date and (iv) applying to requests notified in a Timetable Proposal after the Priority Date:
 - (i) first to:
 - (A) Train Slots which are consistent with Firm Capacity Commitments and/or Firm Rights; and
 - (B) Network Services specified in the Rules;
 - (C) Train Slots which represent capacity classified in the Infrastructure Capacity Plan

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but not allocated to a Capacity Commitment
in the Capacity Commitments Register.

- (ii) second to:
 - (A) Train Slots which are consistent with Contingent Capacity Commitments; and
- (iii) third to Train Slots which are not consistent with any Capacity Commitment but are;
 - (A) consistent with a proposed Capacity Commitment which is the subject of a live application to GBR; or
 - (B) the subject of a Timetable Proposal published by GBR; or
 - (C) consistent with a contractual right for Uncommitted Freight Services
- (iv) fourth to any Train Slots contained in a Timetable Proposal made after D-40 but before D-26. Capacity is to be allocated in the order in which these Timetable Proposals are submitted to GBR.

4.3 Decisions concerning Train Slot Variations

4.3.1 In responding to a Train Slot Variation, GBR shall conduct itself as follows:

- (a) it is entitled to exercise its Flexing Right;
- (b) when exercising its power set out in Condition D3.3.3 GBR shall apply the Decision Criteria in accordance with Condition D4.5 except that it shall not accept a Train Slot Variation if to do so would give rise to any conflict with any Train Slot already scheduled in:
 - (i) the New Working Timetable after it is published at D-26; or
 - (ii) the relevant Working Timetable; or
 - (iii) the Rules;
- (c) where the Decision Criteria have been applied as set out in sub-paragraph (b) immediately above but two or more such requests would give rise to conflict were they to be accepted, they shall be prioritised in the order in which they were submitted and any conflict resolved accordingly.

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4.3.2 Where a Train Slot Variation sought by either a Timetable Participant or GBR:

- (a) pertains to a Train Slot to be used for the carriage of passengers in connection with any sporting or other public event; and
- (b) would, if accepted, conflict with any Train Slot already scheduled in the New Working Timetable or Working Timetable, unless it is a Strategic Train Slot; and
- (c) would in the absence of such conflict be accepted (or accepted on varied terms) by GBR;

GBR shall consult with the Timetable Participant entitled to the Train Slot and shall seek its consent to effect a variation of the scheduled Train Slot to the extent necessary to accommodate the relevant request (or that request as may be varied). Any Timetable Participant so consulted shall not unreasonably withhold or delay its consent to the proposed variation where the relevant request proposes the use of a Train Slot for the carriage of passengers in materially greater numbers than are usually carried on the relevant part of the Network on the days and times in question.

4.3.3 Where any Timetable Participant consulted by GBR in accordance with Condition D4.3.2:

- (a) consents to the proposed variation of its Train Slot; or
- (b) unreasonably withholds or delays its consent in breach of Condition D4.3.2;

GBR shall be entitled to make a variation in respect of that Train Slot (including the removal of that Train Slot) to the extent necessary to facilitate the relevant request. Where, consequent upon such variation, GBR is required by the terms of an Access Agreement to pay any compensation to the affected Timetable Participant, the Timetable Participant which sought the relevant Train Slot Variation shall reimburse the amount of that payment to GBR.

4.3.4 Notwithstanding anything stated elsewhere in this Part D, GBR shall be entitled to reject any Train Slot Variation if it:

- (a) is substantially the same as any part of an Timetable Proposal made and rejected during the course of the timetable revision process described in Condition D2; or
- (b) pertains to a Timetable Variation which has in substance been made previously pursuant to Condition D3 and has been rejected; or

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- (c) relates to a Train Slot which has previously been removed by GBR in accordance with Condition D7.3 or Part J;

unless there has been a material change in circumstances which would affect GBR's application of the Decision Criteria in Condition D4.5 when deciding whether or not to accept the Train Slot Variation.

4.4 Decisions concerning Restriction of Use Variations

4.4.1 In making any decision in the course of implementing the procedures set out in Conditions D3.4 or D3.5, GBR:

- (a) is entitled to exercise its Flexing Right when responding to a Timetable Proposal submitted under Condition D3.4.10;
- (b) may not effect any Restriction of Use Variation to the extent that the variation is inconsistent with the Rules, except to the extent that such inconsistency is reasonably necessary to give effect to a Restriction of Use;
- (c) where (b) applies, GBR may only depart from the Timetable Planning Rules and only to the extent reasonably necessary, and shall have regard to the impact of such departure on affected Timetable Participants; and
- (d) shall, subject to the over-riding principles set out in sub-paragraphs (a), (b) and (c) above, apply the Decision Criteria in accordance with Condition D4.5.

4.5 The Decision Criteria

4.5.1 Where GBR is required to decide any matter in this Part D its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective railway users and funders (“the Objective”).

4.5.2 In achieving the Objective, GBR shall apply any or all of the considerations in paragraphs (a)-(j) below (“the Considerations”) in accordance with Condition D4.5.3 below:

- (a) maintaining, developing and improving the safety and capability of the Network;
- (b) that the spread of services reflects demand;
- (c) maintaining and improving train service safety and performance;
- (d) that journey times are as short as reasonably possible;
- (e) maintaining and improving an integrated system of transport for passengers and goods;

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- (f) the commercial interests of GBR or any Timetable Participant of which GBR is aware;
- (g) the content of any relevant Infrastructure Capacity Plan and any relevant Development Timetable, including, as far as possible, preserving any capacity identified in the Infrastructure Capacity Plan which is not allocated to a Capacity Commitment except where changes are consistent with the intended purpose of that capacity;
- (h) that, as far as possible, International Paths included in the New Working Timetable are not subsequently changed;
- (i) mitigating the effect on the environment; and
- (j) enabling operators of trains to utilise their assets efficiently.

4.5.3 When applying the Considerations, GBR must ensure that it retains sufficient capacity over the Network to allow for the operation of GBR passenger services and the carrying out of work necessary to maintain and improve the Network. Subject to that constraint, GBR must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and GBR and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services). Where, in light of the particular circumstances, GBR considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.

4.5.4 The Objective and the Considerations together form the Decision Criteria.

4.6 **Finality of decisions**

4.6.1 Save where expressly otherwise stated in this Part D, where GBR has announced a final decision in respect of any process regulated by this Part D, that decision shall be:

- (a) binding on Timetable Participants save to the extent that it is changed by an appeal authorised by this Part D;
- (b) binding on GBR save to the extent that:
 - (i) GBR is expressly permitted by any provision of this Part D to deviate from or amend that decision; or
 - (ii) a decision is changed by an appeal authorised by this Part D.

5 **Disputes and Appeals**

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5.1 Disputes

- 5.1.1 Where a dispute is expressly authorised by this Part D, a Timetable Participant may refer a decision of GBR to the dispute resolution process in accordance with Part M.
- 5.1.2 Where a deadline for bringing an appeal is expressly stated in this Part D, a dispute or appeal in respect of such a decision must be made by the stated deadline. Otherwise, a referral to the Dispute Resolution Body or a direct appeal to the Office of Rail and Road or an appeal under the applicable rules must be made:
- (a) within five Working Days of receipt of the decision to which objection is made; or
 - (b) where the period referred to in (a) includes Christmas Day, within ten Working Days of that decision.
- 5.1.3 Where expressly authorised by this Part D and Part M, the dispute process shall be concluded by the Dispute Resolution Body within ten Working Days of final submission to it of all relevant information.
- 5.1.4 For the avoidance of doubt, and notwithstanding any right of appeal to the Office of Rail and Road, decisions relating to the publication, amendment or revision of the Timetable Planning Rules, or the Engineering Access Statement (including the Advanced Register of Possessions) are not disputable to the Dispute Resolution Body under this Condition D5.

5.2 Status of Decisions

- 5.2.1 Save where expressly stated otherwise in this Part D, the relevant decision of GBR shall remain binding unless and until amended, replaced or otherwise affected by an outcome reached in accordance with Part M or a decision by the Office of Rail and Road.
- 5.2.2 Notwithstanding anything else stated in this Part D, GBR shall be bound and entitled to make or give effect to such amendments or changes to a Working Timetable as may be directed from time to time by the Office of Rail and Road in the exercise of its statutory powers, except in relation to any amendment or change which would be impossible to make without infringing the Firm Capacity Commitments of another.

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- 5.2.3 The status and effect of any determination made by a Dispute Resolution Body pursuant to this Condition shall be determined in accordance with Part M.

5.3 Liability of GBR

- 5.3.1 Where a decision of GBR is overturned on dispute or appeal, GBR shall only be liable to any Timetable Participant in damages in respect of that decision where it was made in bad faith.

6 Timetable Risk Register

- 6.1 GBR shall maintain and publish a Timetable Risk Register. Timetable Participants shall provide sufficient relevant information in a timely manner to enable GBR to keep the Timetable Risk Register up-to-date.
- 6.2 The Timetable Risk Register shall include any matter considered by GBR or any Timetable Participant to have the potential to materially and adversely affect the use of Train Slots to be included in the Working Timetable or in relation to a future Timetable Period.
- 6.3 GBR, in consultation with Timetable Participants, shall regularly review and update the Timetable Risk Register. GBR shall publish the Timetable Risk Register to Timetable Participants every four weeks.

7 Removal of Train Slots

7.1 Removal of Train Slots from the Working Timetable where no right to operate services exists

- 7.1.1 Any movements of trains operated by any person other than GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) must be made pursuant to a right to operate services and use the track for the purpose of or in connection with the operation of those trains under an Access Agreement. If, after consultation with the person proposing to move the trains, GBR reasonably considers that it will not have agreed the necessary right to operate services with the person proposing to move the trains by the intended date of operation of the Train Slots, then it may remove the Train Slot(s) for the movement of those trains from the Working Timetable.

7.2 Removal of Train Slots obtained by a Train Operator that are not being used

- 7.2.1 Where:
- (a) A Train Operator has obtained Train Slots in the Working Timetable; and
 - (b) The Train Slots are not underpinned by a Capacity Commitment; and

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(c) GBR considers that the Train Slots are not being used;

then GBR shall notify the Train Operator of its intention to remove the Train Slots from the relevant Draft Working Timetable, New Working Timetable and Working Timetables.

- 7.2.2 GBR must not accept any Train Slot Variations related to Train Slots identified in any notice issued under Condition D7.2.1 until the process under Condition D7.2 has concluded and must account for Condition D4.3.4.
- 7.2.3 Upon receipt of a notice under Condition D7.2.1, the Train Operator shall respond to GBR in writing within 10 Working Days stating that it either accepts or disagrees with GBR's decision.
- 7.2.4 If the Train Operator disagrees with GBR's decision under Condition D.7.2.1, then in addition to its response under Condition D7.2.2, it may also at the same time refer the matter for determination in accordance with Part M.
- 7.2.5 If the Train Operator fails to respond to GBR in writing within 10 Working Days of receiving a notice under Condition D7.2.1, it will be deemed to have accepted GBR'S decision.
- 7.2.6 Where a notification made under Condition D7.2.1 has been;
 - (a) accepted; or
 - (b) deemed to be accepted by the relevant Train Operator; or
 - (c) upheld following the process in Part M,

GBR will remove the identified Train Slots within 5 Working Days.

- 7.2.7 Where a Timetable Participant reasonably believes that sub-Conditions D7.2.1(a) and (b) apply then it may report this to GBR who shall consider whether to remove the Train Slots from the Working Timetable in accordance with Condition D7.2.1.
- 7.2.8 Where a Timetable Participant reasonably believes that GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) has obtained Train Slots in the Working Timetable and the Train Slots are not underpinned by a Capacity Commitment then it may report this to GBR who shall consider whether to remove the Train Slots from the Working Timetable.
- 7.2.9 Within 10 Working Days of making its decision following the process set out in Condition D7.2.7 or D7.2.8, GBR shall advise the Timetable Participant who made the relevant report of the outcome.

Part E – Environmental Protection

CONDITION E1 - ENVIRONMENTAL INFORMATION REQUIREMENTS

E1.1 Licence compliance

Each Access Beneficiary that is licenced to operate trains shall provide GBR with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy.

E1.2 GBR's environmental protection policy

GBR shall provide each Access Beneficiary with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy.

E1.3 Information as to materials to be transported

Each Access Beneficiary that operates trains, shall from time to time, and within a reasonable time of being requested to do so by GBR, provide GBR 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.

E.1.4 General information - Access Beneficiary

Each Access Beneficiary that operates trains shall promptly notify GBR (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which it is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage as a result of, or affecting, its activities.

Each Access Beneficiary shall at all times exercise due diligence to inform itself of any circumstances which would require such notification under this Condition E1.4.

E.1.5 General information - GBR

GBR shall promptly notify an affected Access Beneficiary (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which GBR is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage which may affect that Access Beneficiary or GBR. GBR shall at

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all times exercise due diligence to inform itself of any circumstances which would require such notification.

CONDITION E2 - REMEDIAL ACTION

E2.1 Assessment as to appropriate persons to take Relevant Steps

E2.1.1 GBR's assessment

Where:

- (a) GBR becomes aware that, as a direct or indirect result of the activities of an Access Beneficiary that operates trains or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), an Environmental Condition exists or has occurred and GBR reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
- (b) GBR 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 an Access Beneficiary that operates trains or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services)

GBR shall make an assessment, on the best information available to it at the relevant time, as to which of GBR, any relevant Access Beneficiary with the right to operate services that use the relevant part of the Network is or are the person or persons who would be the most appropriate to take any Relevant Steps, and, if more than one is appropriate, in what proportions.

E2.1.2 Relevant criteria

In making an assessment under Condition E2.1.1, GBR 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 refrain from taking 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) to all other relevant circumstances of the case.

E2.1.3 Notice of GBR's assessment

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Within 60 days of making its assessment, GBR shall give notice to each affected Access Beneficiary 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 relevant Access Beneficiary of such information as GBR shall have used in making the assessment; and
- (e) the steps which GBR 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) should be taken by each person identified in GBR's assessment.

E2.1.4 Compliance with Train Operator's request for information

GBR shall comply with any reasonable request of an affected Access Beneficiary for additional information in relation to the Relevant Liability or GBR's assessment, within a reasonable time of the request.

E2.1.5 Disagreement with GBR's assessment

If an affected Access Beneficiary shall be dissatisfied with GBR's assessment or with any other statement or information provided by GBR pursuant to Condition E2.1.3, it shall be entitled to refer the matter for resolution in accordance with Part M. 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 GBR's assessment; and
- (b) the date upon which it receives any further information to which it is entitled pursuant to this Condition E2.1.

E2.2 Requirement to take Relevant Steps

E2.2.1 Obligation

Subject to Conditions E2.1.5, E2.7 and E2.8, the relevant Access Beneficiary shall:

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

E2.2.2 GBR assistance and supervision

Where an Access Beneficiary reasonably requires access to any part of the Network in order to take any Relevant Steps, GBR shall provide it with such assistance and co-operation as shall be reasonable in that respect.

E2.3 GBR's right to take Relevant Steps

If:

- (a) an Access Beneficiary fails to take any relevant step within a reasonable time or to the reasonable satisfaction of GBR; or
- (b) in GBR'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 relevant Access Beneficiary to take any relevant step,

GBR shall be entitled to take the step in question and to be reimbursed by the relevant Access Beneficiary for a fair proportion of the reasonable costs of doing so. GBR shall give notice to that Access Beneficiary of any step taken pursuant to this Condition E2.3.

E2.4 Liability of GBR

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

E2.5 Access to land

Each Access Beneficiary that operates trains shall use all reasonable endeavours to procure that GBR shall be given such right of access to any land upon which plant, equipment, rolling stock or machinery used by or on behalf of that Access Beneficiary is located as may be reasonably necessary to enable GBR to take any Relevant Steps.

E2.6 General right to restrict access to Network

E2.6.1 Subject to having complied with Conditions F4 and G5 and to having given to all affected Access Beneficiaries railway passenger services and any related train services as much notice as shall be reasonably practicable, GBR shall have the right to restrict the right to operate services that use the Network to the extent and for such period as is reasonably necessary to:

- (a) prevent, mitigate or remedy an Environmental Condition; or

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(b) comply with a relevant Direction of a Competent Authority in respect of an Environmental Condition.

E2.6.2 Where the right to operate services that use the Network is restricted pursuant to Condition E2.6.1, GBR shall use all reasonable endeavours to keep the extent and duration of such a restriction to a minimum and shall keep all affected Access Beneficiaries reasonably and regularly informed of the steps being taken by GBR to remove the restriction.

E2.7 Payments to be made on a without prejudice basis

Payments by an Access Beneficiary or GBR railway passenger services and any related train services under this Condition E2 shall be made without prejudice to its right to recover the whole or any part of the amounts in question from GBR or any other person, whether under an Access Agreement or in any other way.

E2.8 Action taken will not prejudice later claim

No action taken by an Access Beneficiary or GBR in compliance with its obligations under this Condition E2 shall prejudice its right subsequently to claim that another person has the Relevant Liability.

Part F - Vehicle Change

CONDITION F.1 FACILITATION OF VEHICLE CHANGE

F1.1 Obligation to facilitate Vehicle Change

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

F1.2 Limit of obligation

Condition F1.1 does not oblige GBR to do anything which it is not required to do under its obligations under the Act or Licence.

F1.3 Facilitation

The obligation of GBR under Condition F1.1 includes:

- (a) the provision to an Access Beneficiary of such information concerning the condition, capacity and/or capability of the Network as:
 - (i) GBR is required at any time to hold or have appropriate access to under its Licence; and
 - (ii) that Access Beneficiary may reasonably request in connection with the development of a proposal for Vehicle Change (whether the proposal is made by that Access Beneficiary or another person);
- (b) the publication on its website (subject to Condition A3 of the GBR Code) of:
 - (i) every proposal for Vehicle Change made by an Access Beneficiary and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) under Condition F2.1;
 - (ii) every response to a proposal for Vehicle Change made by GBR under Condition F3.1;
 - (iii) every determination of matters which have been referred for dispute resolution in accordance with Part M under Condition F5.1;
 - (iv) every authorised Variation;
 - (v) standard forms, produced after consultation with every other Access Beneficiary, 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

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- (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 Beneficiary, by way of supplement to the terms of this Part F and on which GBR is prepared to contract for or in connection with the implementation of a Vehicle Change which:
- (vii) 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;
 - (A) may include variation procedures; and
 - (B) shall, so far as reasonably practicable, form the basis of any terms and conditions relating to the implementation of a Vehicle Change which are proposed by an Access Beneficiary and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) or under Condition F2;
- (c) the provision of a preliminary response to an Access Beneficiary's proposal for Vehicle Change under Condition F2.4;
- (d) such consultation before a notice of a proposal for a Vehicle Change is submitted by an Access Beneficiary as may reasonably be expected to enable that operator to assess the feasibility and affordability of the proposed change; and
- (e) such consultation with the persons specified in Condition F2.1(b) before a notice of a proposal for a Vehicle Change is submitted by an Access Beneficiary as:
 - (i) GBR considers necessary; and
 - (ii) any such person may reasonably request,to enable the proposal to be developed in an efficient and economical manner; and
- (f) If requested, provision of the names and contact details of each Access Beneficiary which GBR considers may be affected by the implementation of the proposed Vehicle Change.

CONDITION F.2 INITIATION OF VEHICLE CHANGE PROCEDURE

F2.1 Submission and notification of proposal

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

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- (a) submit to GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) and every Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change as advised by GBR to the Access Beneficiary under Condition F1.3(f), or which has notified the Access Beneficiary that it may be so affected, a proposal for such change;
- (b) indicate to each Access Beneficiary and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) referred to under Condition F2.1 (a) whether it wishes to implement the proposed change using the Expedited Procedure;
- (c) provide details to GBR of all Access Beneficiaries to which the proposal for change has been submitted under Condition F2.1 (a);
- (d) notify:
 - (i) the Secretary of State;
 - (ii) the Office of Rail and Road; and
 - (iii) each Passenger Transport Executive, Transport for London, the Scottish Ministers, and the Welsh Government if such bodies may be affected by the implementation of the proposed Vehicle Change;that it has submitted a proposal for Vehicle Change to GBR; and
- (e) permit GBR to consult with the persons specified in Condition F2.1(d) to the extent provided for under Condition F2.3 subject to such requirements as to confidentiality as are reasonable.

If GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) wishes to make a Vehicle Change, it shall submit to every Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change, a proposal for such change and indicate to each such Access Beneficiary whether it wishes to implement the proposed change using the Expedited Procedure.

F2.2 Content of Sponsor's notice of proposal

A notice of proposal for Vehicle Change given by a Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) 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 or in the case of GBR (acting in

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- its capacity as the provider and operator of railway passenger services and any related train services), to any vehicle which it operates; 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 or in the case of GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), any vehicle which GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) doesn't operate and which it proposes to operate;
- (iii) in the case of any vehicle of the kind referred to in Condition F 2.2(a)(ii)(A):
- (A) whether it is proposed to operate it on any part of the Network on which it does not already operate; and
- (B) whether it is proposed to operate it at higher speeds or tonnages or to a larger gauge than it has previously been operated over any part of the Network on which such a vehicle already operates;
- (iv) in the case of any vehicle of the kind referred to in Condition F2.2(a)(ii)(B), over what parts of the Network, and at what speeds, it proposes to operate such vehicles;
- (v) the proposed timetable for the implementation of the change, including whether it intends to implement the change using the Expedited Procedure;
- (vi) the Sponsor's or GBR's (acting in its capacity as the provider and operator of railway passenger services and any related train services) proposals (if any) for the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to any Access Beneficiary and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) in respect of the change; and
- (vii) any additional terms and conditions which the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) 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) GBR; and
- (ii) any other persons specified in Condition F2.1(b),

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

F2.3 Evaluation of proposal and consultation

F2.3.1 If GBR 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 GBR and other operators of trains;
- (b) within 30 days of the date on which the Sponsor's or GBR's (acting in its capacity as the provider and operator of railway passenger services and any related train services) notice under Condition F2.1 was given, give a notice to the persons specified in Conditions F2.1 (a) (with the exception of GBR) and (d), with a copy to the Sponsor, inviting them to submit comments on the proposed Vehicle Change by a specified date, which shall not be earlier than 10, or later than 7 days before the Relevant Response Date, stating:
 - (i) the Relevant Response Date and the obligations of Access Beneficiaries under Conditions F2 and F3;
 - (ii) GBR's estimate of the likely impact of the change on the operation and performance of the Network; and
 - (iii) GBR's own proposals as to:
 - (A) the arrangements for, and any proposed terms applicable to, the implementation of the change;
 - (B) the arrangements for determining and paying any compensation in respect of the change;
 - (C) the timetable for implementation of the change;
 - (D) the division of the costs of carrying out the change; and
 - (E) the additional terms and conditions (if any) which should apply to the change, including any variation procedure;
- (c) send the proposal for Vehicle Change to any Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change if the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) has not already done so; and
- (d) provide details to the Sponsor of all Access Beneficiaries (if any) to which GBR has sent the proposal for Vehicle Change under Condition F2.3.1 (c).

F2.3.2 In preparing a notice under Condition F2.3.1, GBR:

- (a) shall comply with the standards specified in Condition F2.2(b); and

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- (b) in respect of each of the matters specified in Condition F2.3.1(b)(iii):
- (i) shall have regard to any relevant statements and proposals contained in the Sponsor's or GBR's (acting in its capacity as the provider and operator of railway passenger services and any related train services) notice under Condition F2.1;
 - (ii) shall give reasons for any differences between those statements and proposals and its own proposals under Condition F2.3.1(b)(iii); and
 - (iii) may annex to its notice any proposal contained in the Sponsor's or GBR's (acting in its capacity as the provider and operator of railway passenger services and any related train services) 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.

F2.3.3 If an Access Beneficiary receives a proposal for Vehicle Change under Condition F2.1 or Condition F2.3.1 (c), it shall evaluate and discuss the proposal with GBR for such period as is reasonable having due regard to the likely impact of the proposed Vehicle Change on that Access Beneficiary.

F2.4 Preliminary response and estimate

2.4.1 Except in the circumstances and to the extent specified in Condition F2.4.2, GBR shall, when consulted by the Sponsor, take all reasonable steps to comply with any request of the Sponsor to provide the Sponsor, within a reasonable period of time, and at no cost to the Sponsor:

- (a) a preliminary estimate of those costs, losses and expenses referred to in Condition F3.2 which may be incurred by GBR; or
- (b) a preliminary written response in respect of a proposed Vehicle Change, which shall:
 - (i) be binding on GBR, unless GBR indicates otherwise; and
 - (ii) if it is negative, include reasons.

F2.4.2 GBR 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 GBR's notice under Condition F2.3.1(b) was given; and
 - (ii) the request is made within 7 days of the Sponsor receiving GBR's notice under Condition F2.3.1(b); or
- (b) to the extent that GBR is unable to comply with such a request, having regard to the information reasonably available to it.

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F2.4.3 After consultation with the Sponsor GBR may notify a later relevant response date to the Sponsor and the persons to whom it gave its notice under Condition F2.3.1(b).

F2.5 Reimbursement of costs

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

F2.6 Provision of estimate of costs by GBR

GBR shall, upon request from the Sponsor from time to time, provide the Sponsor with written estimates of the costs of assessing a proposal for Vehicle Change submitted by the Sponsor (as referred to in Condition F2.5) including estimated costings of the work to be carried out and shall:

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

F2.7 Accuracy of estimates

GBR 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.

F2.8 Obligation to incur no further costs

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

F2.9 Relationship with Network Change

If the implementation of a proposed Vehicle Change also requires the implementation of a Network Change, the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), as the case may be, shall follow the procedures and satisfy the requirements of both this Part F and Part G insofar as applicable to it and the requirement for a Network Change shall not preclude the right of the Sponsor or GBR (acting in its capacity as the provider and

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operator of railway passenger services and any related train services) to follow the procedure in this Part F for a Vehicle Change or vice versa.

F2.10 Vehicle Change for safety reasons

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

F.3 RESPONSE TO VEHICLE CHANGE PROPOSAL

F3.1 Obligation to give notice of response

GBR 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 GBR breaching any Access Agreement including associated Capacity Commitments in the Capacity Commitments Register (other than an Access Agreement to which the Sponsor is a party);
 - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition F2.2 provided that GBR shall first have given the Sponsor a reasonable opportunity to remedy that failure; or
 - (iii) the implementation of that change would result in a material adverse effect on the maintenance or operation of the Network or operation of trains on the Network, which in any such case cannot adequately be compensated under this Condition F3;
- (b) any Access Beneficiary shall have given notice to GBR that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either
 - (i) in accordance with compensation terms proposed under Condition F2,

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- (ii) in the absence of any compensation terms proposed under Condition F2, or
- (iii) on compensation terms other than those proposed under Condition F2; and/or
- (d) any other operator of railway assets or facilities shall have given notice to GBR that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either
 - (i) in accordance with compensation terms proposed under Condition F2,
 - (ii) in the absence of any compensation terms proposed under Condition F2, or
 - (iii) on compensation terms other than those proposed under Condition F2. Any notice of the kind referred to in paragraphs (a) or (b) above shall include the reasons for the opinion in question.

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

- 3.1A In the case of a Vehicle Change proposed by GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), any Access Beneficiary may notify GBR if it considers that GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) has failed in a material respect to comply with its obligations under Condition F2.2 or that it considers that it should be entitled to compensation for the consequences of the implementation of the change. Any other operator of railway assets or facilities may notify GBR that it considers that it should be entitled to compensation for the consequences of the implementation of the change.

F3.2 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 GBR or the Access Beneficiary in question as a consequence of the implementation of the proposed change other than any such costs, losses or expenses which are attributable to the Sponsor improving its ability to compete with other operators of railway assets.

F3.3 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 GBR or any other operator of trains as a result of the proposed Vehicle Change; and

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- (b) the ability or likely future ability of GBR or any other operator of trains to recoup any costs, losses and expenses from third parties including passengers and customers.

F3.4 Rights in relation to implementation of Vehicle Change under the Expedited Procedure

3.4.1 If

- (a) the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) has elected under Condition F2.1 (b) to use the Expedited Procedure; and
- (b) within 14 days of the date of the notice in question:
 - (i) the Sponsor's or GBR's (acting in its capacity as the provider and operator of railway passenger services and any related train services) notice under Condition F2.1; or, if later
 - (ii) within 14 days of GBR sending the Sponsor's or GBR's (acting in its capacity as the provider and operator of railway passenger services and any related train services) proposal to any Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change in accordance with Condition F2.3.1 (c),

an Access Beneficiary gives notice to the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) that it considers that any of the conditions specified in Condition F3.1(a) may be satisfied or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) has failed in a material respect to comply with its obligations under Condition F2.2, which notice has not been withdrawn, the proposed Vehicle Change shall not be implemented using the Expedited Procedure.

In any other case and subject to the other provisions of the GBR Code and the remainder of this Condition F3.4, the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) shall be entitled for the purposes of the GBR Code (but subject to any such other authorisations, approvals, consents and certifications as may be required) to implement the proposed change.

- 3.4.2 The Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) shall be liable to pay compensation (if any) to each person specified in Condition F2.1 (b) calculated in accordance with the relevant provisions of Condition F3.
- 3.4.3 If, at any time between the implementation of the change and the relevant response date, an Access Beneficiary gives notice to the Sponsor and GBR as appropriate that it considers that any of the conditions specified in Condition F3.1(a) have been satisfied or in the case of GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) has

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failed in a material respect to comply with its obligations under Condition F2.2, the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), as the case may be, shall, as soon as reasonably practicable take all action necessary to reverse the implementation of the Vehicle Change.

- 3.4.4 All notices served by an Access Beneficiary under Conditions F3.4.1 and F3.4.3 shall specify the reasons why that Access Beneficiary believes that any of the conditions specified in Conditions F3.1(a) have been satisfied or, in the case of GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) has failed in a material respect to comply with its obligations under Condition F2.2.
- 3.4.5 If a Vehicle Change is not implemented in accordance with the Expedited Procedure or the implementation of the Vehicle Change is reversed in accordance with Condition F3.4.3, unless the change proposal is withdrawn by the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), the change proposal shall be treated as a proposal for change where the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) has not elected under Condition F2.1 (b) to use the Expedited Procedure.

CONDITION F4 - CHANGES IMPOSED BY COMPETENT AUTHORITIES

- F4.1 Where an Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) is required (other than at the request or instigation of the Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services)) to implement a Vehicle Change as a result of any Change of Law or any Direction of any Competent Authority or of the Office of Rail and Road in exercise of its safety functions, duties and powers under the 1993 and 2003 Acts:
- (a) each Access Beneficiary and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), as the case may be, shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1, F2.2 and F2.3 (other than Conditions F2.2(a)(vi) and F2.3.1(b)(iii)(B) and (D)) in respect of that Vehicle Change;
 - (b) GBR shall make such alterations (if any) to the Network as are reasonably necessary to accommodate that Vehicle Change and each Access Beneficiary 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 Beneficiary and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) shall

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bear its own costs and losses arising out of the implementation of the Vehicle Change and the consequences thereof.

CONDITION F5 - APPEAL PROCEDURE

F5.1 Right of appeal in accordance with Part M

If any Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) 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 GBR 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 Dispute Resolution Body in accordance with Part M or insofar as the relevant party has such a right, Appeal to the Office of Rail and Road pursuant to the exercise of its statutory functions under applicable law.

CONDITION F6 - ESTABLISHMENT AND IMPLEMENTATION

F6.1 Implementation of a proposed Vehicle Change

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

- (a) GBR has not given notice to the Sponsor under Condition F3.1 by the relevant response date or in the case of GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), no notification has been given in accordance with F3.1A ; or
- (b) GBR has given notice by the relevant response date under Condition F3.1 (c) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5; or
- (c) GBR has (after taking into account; notices received from Access Beneficiaries, its duties, actions to be taken in mitigation or response to notices and any other relevant information) reasonably addressed any notices received other than in respect of matters subject to Condition F61.1 (d) - in which case it shall set out the basis for its decision in a published statement on its website or other electronic portal; or
- (d) GBR has received notice from an Access Beneficiary under Condition F3.1(d) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated and agreed has been resolved under Condition F5; and

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- (e) there is no other unresolved dispute under this Part F (whether under this Condition F6 or otherwise) as regards the proposed change between the Sponsor and GBR or any Access Beneficiary or between GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) and any Access Beneficiary
- 6.1.2 The Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) may, if it considers it expedient to do so in order to confirm whether or not Condition F6.1.1 has been satisfied, instruct GBR to issue a notice to all affected Access Beneficiaries when the Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) reasonably believes that it is entitled to implement a proposed Vehicle Change and GBR shall then serve such a notice within 7 days of the instruction.
- 6.1.3 The Sponsor's or GBR's (acting in its capacity as the provider and operator of railway passenger services and any related train services) entitlement to implement a proposed Vehicle Change shall be treated as confirmed 35 days after GBR has served a notice in respect of that Vehicle Change in accordance with Condition F6.1.2 unless:
- (a) GBR gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons; or
 - (b) GBR receives notice from an Access Beneficiary within 21 days of the notice served by GBR disputing the Sponsor's entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons.
- 6.1.4 If the Sponsor or GBR railway passenger services and any related train services does not agree with the contents of a notice served by GBR or an affected Access Beneficiary in accordance with Condition F6.1.3, as the case may be, the Sponsor or GBR railway passenger services and any related train services may:
- (a) refer the matter for determination in accordance with Part M and Condition F5; or
 - (b) withdraw the proposed Vehicle Change.

F6.2 When a Vehicle Change may not be Implemented

- 6.2.1 The Sponsor or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) shall not be entitled to implement a proposed Vehicle Change unless it is so entitled to do so under Condition F6.1.1.
- 6.2.2 For the purposes of Condition F6.1.1, unresolved disputes shall include:
- (a) a notice has been served under Condition F3.1(a) or (b) which has not been withdrawn, resolved under Condition F5 or agreed not to apply; and

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

Part G Network Change

GA1 FACILITATION OF NETWORK CHANGE

GA1.1 Obligation to facilitate Network Change

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

GA1.2 Limit of obligation

Condition GA1 does not oblige GBR to do anything which it is not required to do under its obligations under the Act or Licence.

GA1.3 Facilitation

The obligation of GBR under Condition GA1 includes:

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

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- (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 Access Beneficiaries, by way of supplement to the terms of this Part G and on which GBR 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 GBR under Condition G1 or by an Access Beneficiary under Condition G3;
- (c) the provision of a preliminary response to a proposal for Network Change by an Access Beneficiary under Condition G3.4;
- (d) such consultation before a notice of a proposal for a Network Change is submitted by an Access Beneficiary as may reasonably be expected to enable that Access Beneficiary to assess the feasibility and affordability of the proposed change; and
- (e) such consultation with the persons specified in Condition G1.1(a) and G3.1(b) before a notice of a proposal for a Network Change is given by GBR or submitted by an Access Beneficiary as:
 - (i) GBR considers 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.

G.1 NETWORK CHANGE PROPOSAL BY GBR

G1.1 Notice of proposal

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

- (a) give notice of its proposal for Network Change to:
 - (i) each Access Beneficiary that may be reasonably expected to be affected by the implementation of the proposed Network Change;

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(ii) the Secretary of State, Scottish Ministers and Welsh Ministers if they may be reasonably expected to be affected by the implementation of the proposed Network Change;

and

(iv) each Passenger Transport Executive that may be affected and Transport for London if it may be reasonably expected to be affected, by the implementation of the proposed Network Change; and

(b) without undue delay publish on its website a summary of its proposal for Network Change.

G1.2 Content of notice of proposed Network Change

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

- (a) state the relevant response date and the obligations of Access Beneficiaries under Conditions G1 and G2;
- (b) indicate whether and to what extent the proposed Network Change has been progressed using the Complex Projects Procedure;
- (c) indicate whether the proposed Network Change is a Short Term Network Change;
- (d) invite the persons specified in Condition G1.1(a)(ii)-(iv) to submit comments by the relevant response date;
- (e) contain:
 - (i) the reasons why it is proposed to make the change, including the effects it is intended or may reasonably be expected to have on the operation of the Network or on trains operated on the Network;
 - (ii) a specification of the works to be done (including a plan showing where the work is to be done and the parts of the Network and associated railway assets likely to be affected);
 - (iii) the proposed times within which the works are to be done and when they are intended or may reasonably be expected to be begun and completed;
 - (iv) GBR's proposals (if any) for the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to Access Beneficiaries in respect of the change;
 - (v) in the case of a Short Term Network Change:
 - (A) GBR's proposals as to the Effective Date;
 - (B) GBR's proposals as to the Expiry Date;

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- (C) the estimated timescale in which the change could reasonably be reversed if so requested by an Access Beneficiary based on its reasonable expectations as to future use of the Network; and
 - (D) the capability of the relevant section of the Network before the proposed Short Term Network Change (and any Short Term Network Change which it succeeds) and the proposed reduction to that capability;
 - (vi) any additional terms and conditions which GBR proposes should apply to the change, including any proposed variation procedure;
 - (vii) the results of any consultation undertaken in accordance with Condition G5; and
 - (viii) the results of any Preparatory Works undertaken in accordance with Condition G6; and
- (f) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition G1.1(a), to enable any such person to assess the likely effect of the proposed change on its business and its performance of any obligations or the exercise of any discretions which it has in relation to railway services.

G1.3 Consultation

- 1.3.1 GBR shall, after giving notice of any proposal for Network Change under Condition G1.1, consult with each operator of railway assets likely to be materially affected by the proposed change to the extent reasonably necessary so as properly to inform that operator of the change and to enable that operator to assess the consequences for it of the proposed change.
- 1.3.2 After consultation under this Condition G1.3, GBR may notify a later relevant response date to the persons to whom the notice of proposal for Network Change was given.

G1.4 Obligations on Access Beneficiaries to facilitate Network Change

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

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

1.4.2 An Access Beneficiary shall not be obliged to comply with a request from GBR 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 GBR gives its notice under Condition G1.1; or
- (b) to the extent that the Access Beneficiary is unable to comply with such a request, having regard to the information reasonably available to it.

G1.5 Reimbursement of costs

Subject to Conditions G1.4 , G1.6, G1.7 and G2, each Access Beneficiary shall be entitled to reimbursement by GBR of 75% of all costs incurred by that Access Beneficiary in assessing any Network Change proposed by GBR. Those costs shall be the minimum reasonably necessary for that Access Beneficiary to carry out that assessment.

G1.6 Further information regarding costs

Each Access Beneficiary shall, upon request from GBR from time to time, provide GBR with written estimates of the costs of assessing a proposal for Network Change proposed by GBR (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 GBR from time to time, provide GBR with such information as may be reasonably necessary to enable GBR to assess the reasonableness of any estimate.

G1.7 Accuracy of estimates

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

G1.8 Obligation to incur no further costs

An Access Beneficiary shall, if requested by GBR 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 GBR.

G1.9 Changes to the operation of the Network

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

G1.10 Network Change for safety reasons

To the extent that a Network Change within the meaning of paragraph (a) of that term's definition is required to be made by GBR for safety reasons, GBR shall not be obliged to implement the procedure set out in this Part G in relation to that change until the change has lasted for three months. Upon expiry of the relevant period, GBR 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 GBR.

G.2 RESPONSE BY ACCESS BENEFICIARY TO NETWORK CHANGE PROPOSAL

G2.1 Obligation to give notice of response

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

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

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- (iv) the proposed change is not consistent with plans produced under GBR's long term planning programme; and/or
 - (b) one or more of the conditions set out in Condition G2.1.1(a) has been satisfied but it is prevented by Condition G5.7 from objecting to the proposed Network Change and the decision by GBR to propose the Network Change is not reasonably necessary to efficiently deliver its long term plans or to comply with its functions, duties or obligations under the Act; and/or
 - (c) it should be entitled to compensation from GBR for the consequences of the implementation of the change either:
 - (i) in accordance with compensation terms proposed under Condition G1; or
 - (ii) on terms other than those proposed (if any) under Condition G1.
- 2.1.2 Any notice of the kind referred to in Condition G2.1.1(a) above shall include the reasons for the Access Beneficiary's opinion. Any notice of the kind mentioned in Condition G2.1.1(c)(ii) above shall include the reasons why the Access Beneficiary considers that any compensation terms proposed under Condition G1 are inappropriate and shall detail:
- (a) the amount of compensation required, and the methodology used to calculate the amount of compensation required; or
 - (b) if the Access Beneficiary is not reasonably able to provide details of the amount of compensation required, the methodology to be used to calculate the amount of compensation required; and in either case
 - (c) the means by which the compensation should be paid, including any security or other assurances of payment which GBR should provide.

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

G2.2 Amount of compensation

Subject to Condition G2.3 and Condition G2.4.1, the amount of the compensation referred to in Condition G2.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the Access Beneficiary as a consequence of the implementation of the proposed change.

G2.3 Benefits to be taken into account

There shall be taken into account in determining the amount of compensation referred to in Condition G2.2:

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

G2.4 Restrictions of Use

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

G.3 NETWORK CHANGE PROPOSAL BY ACCESS BENEFICIARY

G3.1 Notice of proposal

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

- (a) submit to GBR a proposal for such change; and
 - (b) permit GBR to consult with:
 - (i) each Access Beneficiary that may be affected by the implementation of the proposed Network Change;
 - (ii) the Secretary of State, Scottish Ministers and Welsh Ministers if they may be affected by the implementation of the proposed Network Change;
- and
- (iii) each Passenger Transport Executive that may be affected, and Transport for London 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.

G3.2 Content of Sponsor's notice of proposal

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

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

G3.3 Evaluation of proposal and consultation

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

- (a) evaluate and discuss the proposal for change with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed Network Change on either or both of GBR 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

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- (c) for the purpose of the consultation under Condition G3.3.1(b), within 30 days of the date on which the Sponsor's notice under Condition G3.1 was given, give a notice to the persons specified in Condition G3.1(b), with a copy to the Sponsor, inviting them to submit comments by the relevant response date and stating:
- (i) the relevant response date and the obligations of Access Parties under Conditions G3 and G4;
 - (ii) the reasons given by the Sponsor under Condition G3.2(a)(i) for proposing to make the change;
 - (iii) GBR's estimate of the likely impact of the change on the operation and performance of the Network; and
 - (iv) GBR's own proposals as to:
 - (A) the arrangements for, and any proposed terms applicable to, the implementation of the change;
 - (B) the specification of the works to be done (including a plan or plans showing where the work is to be done and the parts of the Network and associated railway assets likely to be affected);
 - (C) the times within which the works are to be done and when they are intended or expected to be begun and completed;
 - (D) the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to Access Beneficiaries in respect of the change; and
 - (E) any additional terms and conditions which should apply to the change, including any proposed variation procedure.

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

- (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.

G3.4 Facilitation of Network Change by GBR

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- 3.4.1 Except in the circumstances and to the extent specified in Condition G3.4.2, GBR 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 GBR; and/or
 - (b) a preliminary written response in respect of the proposed Network Change, which shall:
 - (i) be binding on GBR, unless GBR indicates otherwise; and
 - (ii) if it is negative, include reasons.
- 3.4.2 GBR 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 GBR's notice under Condition G3.3.1(c) was given; and
 - (ii) the request is made within 7 days of the Sponsor receiving GBR's notice under Condition G3.3.1(c); or
 - (b) to the extent that GBR 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), GBR 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).

G3.5 Reimbursement of costs

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

G3.6 Provision of estimate of costs by GBR

GBR shall, upon request from the Sponsor from time to time, provide the Sponsor with written estimates of the costs of assessing a proposal for Network Change submitted by the Sponsor (as referred to in Condition G3.5) including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that assessment before commencing such work; and

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(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.

G3.7 Accuracy of estimates

GBR 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.

G3.8 Obligation to incur no further costs

GBR shall, if requested by the Sponsor at any time, incur no further costs (except any costs that cannot reasonably be avoided) in respect of any proposal for Network Change made by the Sponsor.

G3.9 Relationship with Vehicle Change

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

G.4 RESPONSE BY GBR TO NETWORK CHANGE PROPOSAL

G4.1 Obligation to give notice of response

4.1.1 GBR 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 GBR breaching any access contract (other than an access contract to which the Sponsor is a party);
 - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition G3.2 provided that GBR shall first have given the Sponsor a reasonable opportunity to remedy that failure;
 - (iii) the implementation of the proposed change would result in a material adverse effect on the maintenance or operation of the Network or the operation of any train on the Network which in any such case cannot adequately be compensated under this Condition G4 or in respect of a Restriction of Use in connection with the implementation of the proposed change under the relevant Train Operator's Access Agreement; or

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- (iv) the proposed change is not consistent with plans produced under GBR's long term planning programme;
- (v) the proposed change does not adequately take account of;
 - i) GBR's Duties, or
 - ii) GBR's Access and Use Policy,
- (b) any Access Beneficiary shall have given notice to GBR that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either:
 - (i) in accordance with compensation terms proposed under Condition G3; or
 - (ii) on terms other than those proposed (if any) under Condition G3; and/or
- (d) any Access Beneficiary shall have given notice to GBR that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either:
 - (i) in accordance with compensation terms proposed under Condition G3; or
 - (ii) on terms other than those proposed (if any) under Condition G3.

4.1.2 Any notice of the kind referred to in Conditions G4.1.1(a) and (b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in Conditions G4.1.1(c)(ii) and (d)(ii) above shall include the reasons why GBR or the relevant Access Beneficiary considers that any compensation terms proposed under Condition G3 are inappropriate and shall detail:

- (a) the amount of compensation required, and the methodology used to calculate the amount of compensation required; or
- (b) if GBR or the relevant Access Beneficiary is not reasonably able to provide details of the amount of compensation required, the methodology to be used to calculate the amount of compensation required; and in either case
- (c) the means by which the compensation should be paid, including any security or other assurances of payment which the Sponsor should provide.

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

G4.2 Amount of compensation

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

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

G4.3 Benefits to be taken into account

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

- (a) subject to Condition G4.4.2 the benefit (if any) to be obtained or likely in the future to be obtained by GBR or the relevant Access Beneficiary as a consequence of the implementation of the proposed change; and
- (b) the ability or likely future ability of GBR or the relevant Access Beneficiary to recoup any costs, losses and expenses from third parties including passengers and customers.

G4.4 Restrictions of Use

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

G.5 SCOPE OF COMPLEX PROJECTS

G5.1 Consultation prior to making a proposal for Network Change using the Complex Projects Procedure

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

- (a) that GBR intends to initiate the Complex Projects Procedure in respect of the proposed Network Change;
- (b) the details of the proposed Network Change which GBR can reasonably make available;
- (c) the reasons why GBR believes that the proposed Network Change is required including the effects it is intended or may reasonably be expected to have on the operation of the Network or on trains operated on the Network;
- (d) the reasons why GBR believes that the proposed Network Change should be established in accordance with the Complex Projects Procedure;
- (e) any other information GBR reasonably believes an affected Access Beneficiary may reasonably require to understand the proposed Network Change;
 - (i) a draft plan setting out the intended stages and timetable for the Complex Projects Procedure; and
 - (ii) the Scope that GBR intends to propose under Condition G5.4.

G5.2 Consultation with affected Access Beneficiaries

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

G5.3 Facilitation by Access Beneficiaries

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

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

G5.4 Notice of intended Scope

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

G5.5 Response to notice of intended Scope

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

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

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

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

G5.6 Failure to agree Scope

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

G5.7 Effect of agreement of Scope

Once the relevant Scope of the proposed Network Change has been agreed under Conditions G5.5 or G5.6 or determined under Condition G5.6 with an Access Beneficiary, that Access Beneficiary shall not be entitled to give notice to GBR subsequently under Condition G2.1.1(a) to challenge any elements of the Network

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Change to the extent included in the Scope except where there is a change to the Scope which is likely materially to affect the Access Beneficiary since the Scope was agreed under Conditions G5.5 or G5.6 or determined under Condition G5.6.

G5.8 Costs incurred by Access Beneficiaries due to the consultation process

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

G5.9 Further information regarding costs

Each Access Beneficiary shall, upon request from GBR from time to time, provide GBR with written estimates of the costs of complying with its obligations under Conditions G5.3 and G5.5 including estimated costings of the work to be carried out and shall:

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

G5.10 Accuracy of estimates

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

G5.11 Obligation to incur no further costs

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

G5.12 Further agreement of Scope

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

CONDITION G6 - PREPARATORY WORKS

G6.1 GBR's obligations in relation to Preparatory Works

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

G6.2 Obligations of Access Beneficiaries in relation to Preparatory Works

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

G6.3 Further Preparatory Works

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

CONDITION G7 - COMPLEX PROJECTS NETWORK CHANGE

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

CONDITION G8 - SHORT TERM NETWORK CHANGE

G8.1 Reversal of a Short Term Network Change

- 8.1.1 An Access Beneficiary may request in writing that GBR reverse the effect of a Short Term Network Change before its Expiry Date if the effect of the Short Term Network Change would prevent the Access Beneficiary using the Network in a manner consistent with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the Network.
- 8.1.2 The Access Beneficiary shall include with any notice requesting the reversal of the effect of a Short Term Network Change served under Condition G8.1.1 evidence to support the Access Beneficiary's claim of reasonable expectations as to the future use of the relevant part of the Network which requires that reversal.

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

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

G8.2 Expiry of a Short Term Network Change

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

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

G8.3 Notification of reversal of a Short Term Network Change prior to the Expiry Date

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

CONDITION G9 - CHANGES IMPOSED BY COMPETENT AUTHORITIES

Where GBR 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 or of the Office of Rail and Road in exercise of its safety functions, duties and powers under the 1993 and 2003 Acts:

- (b) GBR shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 (other than Condition G1.2(e)(iv)) in respect of that Network Change;
- (c) each Access Beneficiary shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that Network Change and shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1, F2.2 and F2.3 (other than Conditions F2.2(a)(vi) and F2.3.1(c)(v)(B) and (D));
- (d) subject to Condition G9(d), each Access Party shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof;
- (e) where GBR recovers compensation in respect of that Network Change from a Competent Authority or some other Governmental Body, it shall pay to Access Beneficiaries:
 - (i) where any compensation paid to GBR in relation to that Network Change is sufficient to cover the Relevant Costs of the Access Beneficiary and of GBR, the Relevant Costs of the Access Beneficiary; and
 - (ii) where such compensation is not so sufficient, such proportion of that compensation as the Access Beneficiary's Relevant Costs bears to the sum of GBR's Relevant Costs and all the Access Beneficiary's Relevant Costs in respect of that Network Change; and
- (f) GBR shall use reasonable endeavours to negotiate with the relevant Competent Authority or Governmental Body (as applicable) a level of compensation in respect of that Network Change which is sufficient to ensure that the Access Beneficiary receives compensation for all of its Relevant Costs. GBR shall from time to time consult with the Access Beneficiary and keep the Access Beneficiary informed in reasonable detail of the progress of such negotiations.

CONDITION G10 - ESTABLISHMENT AND IMPLEMENTATION

G10.1 Implementation of a GBR proposed Network Change

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

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- (a) it has not received a notice from any Access Beneficiary under Condition G2.1 by the relevant response date; or
 - (b) it has (after taking into account; notices received from Access Beneficiaries, its duties, actions to be taken in mitigation or response to notices and any other relevant information) reasonably addressed any notices received other than in respect of matters subject to Condition G2.1 (c) - in which case it shall set out the basis for its decision in a published statement on its website or other electronic portal; or
 - (c) it has received notice by the relevant response date from an Access Beneficiary under Condition G2.1(c) and either the amount of any compensation referred to in Condition G2.1 has been agreed, or resolved, or the method by which such compensation is to be calculated and resolved has been agreed by relevant parties under Condition G11; and
 - (d) there is, other than a dispute under Condition G2.1 (b) or (c), no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed change between GBR and any affected Access Beneficiary.
- 10.1.2 GBR may, if it considers it expedient to do so in order to confirm whether or not Condition G10.1.1 has been satisfied, issue a notice to all affected Access Beneficiaries when it reasonably believes it is entitled to implement a proposed Network Change.
- 10.1.3 GBR's entitlement to implement a proposed Network Change shall be treated as confirmed 21 days after it has served a notice in respect of that Network Change in accordance with Condition G10.1.2 unless it receives notice from an Access Beneficiary within those 21 days disputing GBR's entitlement to implement that proposed Network Change under Condition G10.1.1 and giving full particulars of its reasons.
- 10.1.4 If GBR does not agree with the contents of a notice served by an affected Access Beneficiary in accordance with Condition G10.1.3, GBR may:
- (a) refer the matter itself to the Dispute Resolution Body for in accordance with Part M and Condition G11 shall apply; or
 - (b) withdraw the proposed Network Change; or
 - (c) decide to proceed with the proposed Network Change – in which case it shall set out its reasons for disagreement in a notice published on its website or other electronic portal.

G10.2 Implementation of a Sponsor proposed Network Change

- 10.2.1 The Sponsor shall be entitled to instruct GBR to implement a proposed Network Change if:
- (a) GBR has not given notice under Condition G4.1 by the relevant response date; or

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- (b) GBR has given notice by the relevant response date under Condition G4.1.1(c) and either the amount of any compensation referred to in Condition G4.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11; or
 - (c) GBR has received notice from an Access Beneficiary under Condition G4.1.1(d) and either the amount of any compensation referred to in Condition G4.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11; and
 - (d) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed change between the Sponsor and any Access Party.
- 10.2.2 The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition G10.2.1 has been satisfied, instruct GBR to issue a notice to all affected Access Beneficiaries when the Sponsor reasonably believes that it is entitled to instruct GBR to implement a proposed Network Change and GBR shall then serve such a notice within 7 days of the instruction.
- 10.2.3 The Sponsor's entitlement to instruct GBR to implement a proposed Network Change shall be treated as confirmed 35 days after GBR has served a notice in respect of that Network Change in accordance with Condition G10.2.2 unless:
- (a) GBR gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G10.2.1 and giving full particulars of its reasons; or
 - (b) GBR receives notice from an Access Beneficiary within 21 days of the notice served by GBR disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G10.2.1 and giving full particulars of its reasons.
- 10.2.4 If the Sponsor does not agree with the contents of a notice served by GBR or an affected Access Beneficiary in accordance with Condition G10.2.3, the Sponsor may:
- (a) refer the matter for determination in accordance with Part M and Condition G11 shall apply; or
 - (b) withdraw the proposed Network Change.

G10.3 When a Network Change may not be implemented

- (a) GBR shall not be entitled, and a Sponsor shall not be entitled to require GBR, to implement a proposed Network Change unless it is so entitled to implement, or require the implementation of that Network Change under Condition G10.1.1 or Condition G10.2.1.
- (b) For the purposes of the Conditions G10.1.1 and G10.2.1, unresolved disputes shall include:

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- (a) a notice has been served under Condition G2.1.1(a) or (b) or Condition G4.1.1(a) or (b) which has not been withdrawn, resolved under Condition G11 or agreed not to apply; and
- (b) a notice has been served under Condition G2.1.1(c) or Condition G4.1.1(c) or (d) which has not been agreed or resolved as referred to in Condition G10.1.1(b) or G10.2.1(b) or (c) or otherwise agreed, resolved or withdrawn.

G.11 APPEAL PROCEDURE

G11.1 Right of referral in accordance with Part M

If any Access Beneficiary is dissatisfied as to:

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

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

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

that Access Beneficiary may refer the matter to the Dispute Resolution Body in accordance with Part M or to the Office and Rail and Road in accordance with any statutory right of appeal insofar as the relevant party has such a right. A referral to a Dispute Resolution Body may include a referral to agree the resolution of disputes relating to compensation due under this Part G.

Part H - Railway Operational Code

H.1 Railway Operational Code and Its Objective

H.1.1 Railway Operational Code

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

H.1.2 ROC 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 Access and Use Policy, having regard to:

- (a) the needs of passengers and freight customers;
- (b) the interests of safety and security;
- (c) the efficient and economical operation of the Network and of trains operating on it; and
- (d) GBR's functions, duties and obligations under the Act and its Licence.

H.1.3 Relationship to the GBR Code

The Railway Operational Code:

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

H.2 Obligation to observe the Railway Operational Code

H.2.1 GBR and each Train Operator shall comply with the Railway Operational Code.

H.2.2 Each Access Option Holder shall comply with those ROC Sections that are expressed in the Railway Operational Code to apply to its category of Access Agreement.

H.3 Scope of Railway Operational Code

3.1 The Railway Operational Code contains:

- (a) a specification of the procedures and policies by which GBR, in cooperation with Train Operators and Access Option Holders, will promote achievement of the ROC Objective, including:
 - (i) a procedure for notification of, and communication in relation to, Disruptive Events or reasonably foreseeable Disruptive Events;

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- (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 ROC Objective;
- (b) procedures for reviewing and monitoring the effectiveness of the Railway Operational Code; and
 - (c) procedures for the production, review, approval and publication of Subsidiary Documentation.

H3.2 Publication

The ROC shall be published on its website (or other accessible electronic portal) by GBR subject to:

- (b) Condition A3 of the GBR Code; and
- (c) Permitted Exemptions.

H3.3 Permitted Exemptions

Permitted Exemptions are any matters contained in a ROC Section in respect of which GBR provides by way of publication of a notice following consultation with all Access Beneficiaries, that general publication under Condition H3.2 is not required.

H3.4 Subsidiary Documentation

All Subsidiary Documentation shall be of a standard which is consistent with promoting the achievement of the ROC Objective and the requirement for compliance under Condition H2.

H.4 Disputes and Appeals

H4.1 Right of appeal in accordance with Part M

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

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

the Train Operator or Access Option Holder may refer the matter in accordance with Part M to the Dispute Resolution Body in accordance with Part M or to the Office of Rail and Road pursuant to the exercise of its statutory functions under applicable law.

H4.2 Time limits for disputes

A Train Operator's or Access Option Holder's right of referral or appeal under Condition H4.1 shall lapse if the relevant matter is not referred in accordance with Part M in the case of a variation under Condition HA5:

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

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

Without prejudice to Condition H4.6, if there has been a reference in accordance with Part M under Condition H4.1 or an appeal to the Office of Rail and Road:

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

H4.4 Criteria for referral

Any matter referred under Condition H4.1 or H4.2 shall be determined by reference to the most effective manner of promoting the achievement of the ROC Objective.

H4.5 Issue of adjusted ROC Section

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

H.5 Variations to Railway Operational Code

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

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

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

H5.1 Mandatory Variations

GBR may propose variations to the Railway Operational Code:

- (a) at any time if it considers that this is necessary in order better to promote the achievement of the ROC Objective, striking a balance between:
 - (i) the need for GBR, Train Operators and Access Option Holders 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, where it considers it necessary to do so in furtherance of GBR's functions, duties or obligations under the Act or GBR's Licence, in order to comply with a Direction or in order to maintain consistency with the Access and Use Policy,

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and any Mandatory Variations proposed under this part shall be identified as such.

H5.2 Variations proposed by a Train Operator or Access Option Holder

A Train Operator or Access Option Holder may propose to GBR variations to the Railway Operational Code if it considers that this is necessary in order better to promote the achievement of the ROC Objective and any such proposal shall include:

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

GBR may also propose variations to the Railway Operational Code if it considers that this is necessary in order better to promote the achievement of the ROC Objective and any such proposal must include the reasons why it is proposed and the details of the proposed variation and for the purposes of H5.3 and 5.4, such GBR proposal shall be treated as if it were a Train Operator or Access Option Holder proposed variation.

H5.3 Procedure for variations proposed by a Train Operator or Access Option Holder

Following receipt of a proposed variation to the Railway Operational Code from a Train Operator or Access Option Holder under Condition H5.2 GBR shall:

- (a) evaluate and discuss the proposed variation with that Train Operator or Access Option Holder for such period as is reasonable having due regard to the likely impact of the proposed variation on any of GBR, other operators of trains and other Access Option Holders; and
- (b) following the evaluation and discussion;
 - (i) implement the variation under Condition H5.4; or
 - (ii) propose a variation under Condition H5.1 to implement the proposed variation; or
 - (iii) inform the Train Operator or Access Option Holder that GBR does not propose to implement the proposed variation, giving reasons for its decision and publish the decision on a website or other electronic portal.

H5.4 Variations by agreement

- (a) Subject to the provisions of Condition H5.4(b), if GBR and any relevant Train Operator or Access Option Holder agree a variation to the Railway Operational Code which affects only that Train Operator or Access Option Holder:
 - (i) GBR shall publish a notice of the change on its website (or other accessible electronic portal); and

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- (ii) the variation shall become effective on the date agreed for its implementation (which shall be not less than 7 days from the date of GBR's notice under Condition H5.4(a)(i));
- (b) If GBR and any relevant Train Operator or Access Option Holder agree a variation to the Railway Operational Code which affects only that Train Operator or Access Option Holder and is a variation to Subsidiary Documentation only, the variation shall become effective on the date agreed for its implementation and Condition H5.4(a)(i) and (ii) shall not apply.

H5.5 Variations proposed by GBR

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

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

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

H5.6 Consultation on a ROC Section variation

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

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

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H5.7 Each Train Operator, Access Option Holder or other party consulted under H5.6 shall:

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

H5.8 Following consideration of all representations and any objections received under Condition H5.7, GBR shall consider whether the proposed variation should be implemented and if it concludes that it should, then GBR shall act in accordance with Condition H5.9 and thereby, subject to Condition H4, Establish the variation.

H5.9 Issue of varied ROC Section

GBR shall publish on its website (or other accessible electronic portal) in accordance with Condition H3.2 any variation to a ROC Section, and send a copy of the revised ROC Section to each affected Train Operator and Access Option Holder, and any other person who notified GBR that it wished to be consulted under Condition H5.6(c).

H5.10 Consequential changes to ROC Sections

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

Part J - Changes to Capacity Commitments

J.1 Introduction

J.1.1 Overview

- 1.1.1 Part J provides mechanisms where, if an Access Beneficiary or GBR (where relevant, in its capacity as the provider and operator of railway passenger services and any related train services) is not using Capacity Commitments assigned to it in the Capacity Commitments Register, the unused Capacity Commitments may be removed by unassigning from the relevant Access Beneficiary or GBR, the relevant Capacity Commitment, in whole or in part, assigned to it in the Capacity Commitments Register.

The mechanisms can be instigated by:

- (a) the Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) itself as set out in Condition J2;
- (b) GBR as set out in Condition J4; or
- (c) by another Access Beneficiary who wishes to use the capacity associated with the unused Capacity Commitment as set out in J5.

The mechanism may also be used in respect of other contractual rights for access that use capacity on the Network that may not be included in the Capacity Commitments Register including Ancillary Movements, Stabling.

- 1.1.2 Condition J5 sets out a process where GBR or an Access Beneficiary can apply for Capacity Commitments assigned to another Access Beneficiary, and any associated train paths, where that Access Beneficiary has not used them and the applicant has a commercial need for them.
- 1.1.3 Condition J7 sets out a process whereby a Freight Operator can apply for Capacity Commitments (and associated train paths) to be reassigned to it from another Freight Operator in the Capacity Commitments Register if the applicant Freight Operator wins the freight business in respect of which the Capacity Commitments are assigned to the incumbent Freight Operator of that business. In addition, Condition J7 provides that an Access Option Holder can apply for the Capacity Commitments assigned to a Freight Operator provided those rights are used for the provision of transport services on behalf of that Access Option Holder who wishes to draw down those rights to another Freight Operator of its choice.
- 1.1.4 Condition J9 provides that GBR should hold meetings at least annually with each Access Beneficiary for the purpose of reviewing the Capacity Commitments held by that Access Beneficiary and its use of them.
- 1.1.4 Condition J10 allows GBR to amend Capacity Commitments in order to achieve 'Better Use' subject to certain criteria.
- 1.1.5 Condition J11 obliges GBR to publish templates for any notice required under Part J and a copy or summary of any notice served.

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- 1.1.6 Condition J12 sets out a Dispute Resolution process whereby any dispute arising under Part J is first of all referred to the Dispute Resolution Body in accordance with Part M.

J1.2 Access Option Holders

- 1.2.1 Where there is any reference in this Part J:

- (a) to any Capacity Commitment of an Access Beneficiary (including any reference to any Capacity Commitment of an Incumbent in Condition J5 or J7) which is a Capacity Commitment of an Access Option Holder that has been drawn down by that Access Option Holder into an Access Agreement of an Appointed Operator, then any alteration, adjustment, surrender, agreement, determination or other decision to be made pursuant to this Part J in respect of that Capacity Commitment shall be made with reference to and, where required by this Part J, in consultation with, that Access Option Holder, and not that Appointed Operator; and
- (b) to any notice or other document being served on an Access Beneficiary (including any notice to be served on an Incumbent pursuant to Condition J5 or J7), or an Access Beneficiary being required to serve any notice or other document on any other party, and the notice or other document in question relates to, or otherwise affects, any Capacity Commitment of an Access Option Holder that has been drawn down into an Access Agreement of an Appointed Operator, then (save in respect of Condition J3):
 - (i) any notice or other document to be served on that Access Beneficiary (including any notice to be served on an Incumbent pursuant to Condition J5 or J7) shall be served on that Access Option Holder (with a copy to the Appointed Operator for information purposes only); and
 - (ii) any notice or other document to be served by that Access Beneficiary shall be served by that Access Option Holder (with a copy sent to the Appointed Operator for information purposes only).

- 1.2.2 Non-receipt by an Appointed Operator of a copy notice or document pursuant to Condition J1.2.1(b) shall not affect the validity of a notice or document validly served on GBR or the relevant Access Option Holder (as the case may be).

J.1.3 Response Timescales

- 1.3.1 Unless otherwise stated in this Part J, where one party is required to respond to another, the timescale for such response is 10 Working Days.

J.2 Adjustment of Capacity Commitments

J.2.1 Duty to Surrender Capacity Commitments

- 2.1.1 An Access Beneficiary must promptly surrender any Capacity Commitment, in whole or in part, which it no longer has a current or reasonably foreseeable commercial need to retain. Any such surrender may be for a limited timeframe, or in perpetuity. An Appointed Operator may not surrender a Capacity Commitment on behalf of an Access Option Holder without that Access Option Holder's written consent.

J.2.2 Notice of Proposed Surrender

- 2.2.1 An Access Beneficiary wishing to surrender a Capacity Commitment under Condition J2.1 must notify GBR. Where GBR wishes to surrender a Capacity Commitment, GBR must publish a notice of its proposed surrender. GBR must amend the Capacity Commitments Register within 10 Working Days of receipt or publication of the notice, subject to Condition A3. Any surrender takes effect on the date the Register is updated.

J.2.3 Requests for Information

- 2.3.1 An Access Beneficiary may ask GBR for information about a proposed surrender or adjustment of Capacity Commitments.

The request must specify:

- (a) the Capacity Commitments that may be surrendered or adjusted;
- (b) whether the proposal is a surrender or adjustment;
- (c) the proposed implementation date;
- (d) whether the proposal is temporary; and
- (e) if temporary, the proposed end date, which must not be more than two years after it takes effect and must not form part of a series of consecutive temporary arrangements.

J.2.4 GBR Response

- 2.4.1 Subject to Condition J3, GBR must provide a response within 30 Working Days of receiving a request under Condition J2.3. The response must contain sufficient information to enable the Access Beneficiary to assess the consequences of the proposal, including where relevant:

- (a) costs or savings to GBR;
- (b) timing of financial consequences;
- (c) how those financial consequences may arise;
- (d) likely future use of any released capacity;
- (e) foreseeable financial impacts on GBR;
- (f) any payments proposed by GBR and the reasons for them; and
- (g) any other information reasonably requested by the Access Beneficiary.

J.2.5 Consultation by GBR

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2.5.1 When preparing a response, GBR shall carry out any consultation that it reasonably considers necessary with:

- (a) other Train Operators;
- (b) Access Option Holders;
- (c) prospective operators;
- (d) funders; and
- (e) any other affected persons.

GBR shall carry out consultation to understand the impact of the proposed surrender or adjustment on Network capacity. Nothing in this Condition requires GBR to disclose information contrary to Condition J3 or any pre-existing duty of confidence.

J.2.6 Requests for Information from Access Beneficiaries

2.6.1 An Access Beneficiary must provide such information as GBR may reasonably request in connection with a proposed surrender or adjustment.

2.6.2 Information exchanged under this Condition is Qualifying Information and remains subject to Condition J3.

J.2.7 Cost Estimates

2.7.1 If requested by an Access Beneficiary, GBR must provide:

- (a) an estimate of the cost of preparing its response; and
- (b) an estimate of costs incurred to date.

The Access Beneficiary must notify GBR whether it accepts the estimate. Any time taken to agree an estimate shall be added to the 30 Working Day response period.

2.8 Revised Cost Estimates

2.8.1 GBR must not exceed an agreed estimate without first:

- (a) notifying the Access Beneficiary;
- (b) providing a revised estimate; and
- (c) obtaining the Access Beneficiary's agreement.

If an Access Beneficiary does not accept an estimate or revised estimate, GBR is not required to continue preparing the response.

J.2.9 Payments of costs of Relevant Responses

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2.9.1 The Access Beneficiary shall pay 75% of GBR's reasonable costs above £1,000 (excluding VAT) incurred in preparing a response. Payment must be made within 20 Working Days of the later of:

- (a) provision of the response (or discontinuance of work); and
- (b) receipt of a valid VAT invoice.

GBR's costs may include a reasonable allocation of administrative and overhead costs. The Access Beneficiary may request evidence of those costs from GBR's auditors.

J.2.10 Right to elect to surrender or adjust Capacity Commitments

J2.10.1 Following:

- (a) receipt of a GBR response under Condition J2.4; or
- (b) completion of consultation under Condition J2.5,

the Access Beneficiary or GBR may proceed with the proposed surrender or adjustment. An Access Beneficiary must notify GBR within 15 Working Days of receiving the response. GBR must publish any equivalent notice relating to its own Capacity Commitments within 30 days of completing consultation. The surrender or adjustment takes effect on the date specified in the notice.

J.2.11 Right of Part J Access Beneficiary to have Capacity Commitments adjusted

2.11.1 Where the outcome of any process under Part M, including any subsequent appeal, entitles an Access Beneficiary to implement a surrender or adjustment:

- (a) the Access Beneficiary must notify GBR within 15 Working Days of the conclusion of the process; and
- (b) GBR must amend the Capacity Commitments Register within 10 Working Days of receipt of that notice.

The surrender or adjustment takes effect when the Register is amended.

J.2.12 Quality Adjustment to Capacity Commitments

2.12.1 A Quality Adjustment may be implemented either:

- (a) through the contract change mechanisms in the Access and Use Policy; or
- (b) through this Condition J2.

J.3 Confidentiality

J.3.1 Confidential Information

3.1.1 Where, in preparing a Relevant Response under Condition J2, GBR considers that:

- (a) it is necessary for it to disclose Qualifying Information to an Access Beneficiary; and
- (b) such disclosure may materially and adversely affect the interests of another person (the “Affected Person”),

GBR shall give notice to that effect to the Access Beneficiary accordingly and identify that Qualifying Information is subject to this Condition J3.

J.3.2 Access Beneficiary’s right to elect for Relevant Response without Qualifying Information

3.2.1 Within 10 Working Days of receiving a notice under Condition J3.1, the Access Beneficiary may notify GBR that it wishes:

- (a) to receive the Relevant Response without the Qualifying Information; or
- (b) to seek disclosure of the Qualifying Information in accordance with this Condition J3.

3.2.2 GBR shall not proceed with its preparation of the Relevant Response until the Access Beneficiary has made its election.

3.2.3 Following the election, where GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) is the Affected Person, no notice need be given.

J.3.3 Relevant Response without Qualifying Information

3.3.1 If the Access Beneficiary makes an election under Condition J3.2.1(a):

- (a) GBR shall provide the Relevant Response excluding the Qualifying Information; and
- (b) the Access Beneficiary may subsequently request that GBR consider disclosure of the Qualifying Information under this Condition J3.

3.3.2 If the Access Beneficiary gives notice to GBR pursuant to Condition J3.2.1(b), GBR shall, unless GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) is the Affected Person, 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.

J.3.4 Relevant Response with Qualifying Information

- 3.4.1 If the Access Beneficiary makes an election under Condition J3.2.1(b), GBR shall notify the Affected Person.

The notice shall:

- (a) describe the Qualifying Information proposed to be disclosed; and
- (b) state that the Affected Person has 15 Working Days to object to disclosure.

J.3.5 No Objection

- 3.5.1 if the Affected Person does not object to disclosure of the Qualifying Information within 15 Working Days, GBR may disclose the Qualifying Information as part of the Relevant Response, subject to Condition J2.5 and any Confidentiality Undertaking required under Condition D3.9.

J.3.6 Objection to Disclosure

- 3.6.1 Subject to Condition J2.5, if no Notice of Objection has been given to GBR within the Period for Objections, GBR shall be entitled to include the Qualifying Information in the Relevant Response.
- 3.6.2 Where GBR is the Affected Person unless it decides to proceed otherwise, it shall proceed as though it has received such a Notice of Objection.
- 3.6.3 Where such an Objection is received by GBR under Condition J3.6.1, GBR shall immediately give notice of that fact to the Part J Access Beneficiary and the relevant Dispute Resolution Body including notice of the date on which the referral was made.
- 3.6.4 The notice given to the Part J Access Beneficiary 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 Part J Access Beneficiary to determine its identity.
- 3.6.5 The notice given to the Dispute Resolution Body shall be accompanied by:
- (a) a copy of the Notice of Objection;
 - (b) an explanation by GBR 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.

J.3.7 Dispute Resolution Body Determination

- 3.7.1 Within 20 Working Days of the notice issued pursuant to J3.6.3, or such longer period as the parties may agree, GBR, the Access Beneficiary and the Affected Person may make written representations to the Dispute Resolution Body.

The Dispute Resolution Body may:

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- (a) permit disclosure;
- (b) prohibit disclosure; or
- (c) permit disclosure subject to conditions.

Any directions issued by the Dispute Resolution Body to preserve confidentiality or the position of the parties shall remain in force for no more than 90 days unless renewed.

J.3.8 Grounds for Restricting Disclosure

3.8.1 The Dispute Resolution Body shall only prohibit or restrict disclosure where it determines that:

- (a) disclosure would materially and adversely affect the interests of the Affected Person or an Associated Person; and
- (b) the prejudice outweighs the benefits of disclosure having regard to GBR's statutory duties regulatory obligations and efficient use of capacity.

J.3.9 Confidentiality Undertakings

3.9.1 Before any Qualifying Information is disclosed, GBR may require the Access Beneficiary to provide a Confidentiality Undertaking. A Confidentiality Undertaking shall only have effect if:

- (a) requested by the Affected Person; or
- (b) required by the Dispute Resolution Body; or
- (c) otherwise considered reasonably necessary by GBR.

The Confidentiality Undertaking shall require the Access Beneficiary to:

- (i) keep the Qualifying Information confidential;
- (ii) use it only for the purposes of Part J; and

disclose it only where permitted under its Access Agreement or required by law.

J.3.10 Failure to Provide a Confidentiality Undertaking

3.10.1 If the Access Beneficiary fails to provide a required Confidentiality Undertaking, GBR shall not disclose the Qualifying Information.

3.11 Immunity of the Dispute Resolution Body

3.11.1 The Dispute Resolution Body shall not be liable for any act or omission in relation to any reference to them under this Condition J3. GBR and the Access Beneficiary shall indemnify the Dispute Resolution Body against claims arising from such determinations.

J.4 FAILURE TO USE

J.4.1 Failure to Use

4.1.1 Subject to Conditions J4.1.2 and J4.3, a Failure to Use in relation to a Quantum Capacity Commitment occurs if:

- (a) after the Commencement Date, an Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) fails to secure the quantum of Train Slots which the Quantum Capacity Commitment permits, or any other rights linked to Quantum Capacity Commitment, in a New Working Timetable published by GBR at D-26 or in any subsequent variation of this published in accordance with D2.7.4; or
- (b) the Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) fails to make use of a Train Slot which has been included in the Working Timetable and which relates to that Quantum Capacity Commitment.

4.1.2 Condition J4.1.1(a) shall not apply:

- (a) where the Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) was unable to secure the necessary quantum of Train Slots permitted by the Quantum Capacity Commitment because of Restrictions of Use; or
- (b) to Contingent Capacity Commitments where GBR has been unable to accommodate an Access Beneficiary's or GBR's (acting in its capacity as the provider and operator of railway passenger services and any related train services) Timetable Proposal or Rolled Over Timetable Proposal into the New Working Timetable.

4.1.3 For the purposes of Condition J4.1.1(b), the Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) 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.

4.1.4 For the purposes of Condition J4.1.1(b) and J4.1.3, an Access Option Holder fails to make use of a Train Slot if either:

- (a) it fails to draw down the Capacity Commitments to use such Train Slot into the Access Agreement of an Appointed Operator resulting in such Train Slot not being used by an Appointed Operator; or
- (b) it draws down the Capacity Commitments to use such Train Slot into the Access Agreement of an Appointed Operator and that Appointed Operator fails to make use of that Train Slot within the meaning of Condition J4.1.3.

J.4.2 Use Quota and Use Period

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- 4.2.1 The Use Quota and Use Period shall apply to services for the carriage of goods by railway and passengers.
- 4.2.2 The Use Quota shall be one.
- 4.2.3 The Use Period shall be thirteen consecutive weeks for which a Train Slot is included in the Working Timetable. Where a Train Slot is derived from a Quantum Capacity Commitment which permits a Train Slot to be obtained on more than one day of the week, the use of the Train Slot on each relevant day of the week shall be assessed separately.
- 4.2.4 A train movement shall not count towards the Use Quota if it is made with the primary purpose of achieving the Use Quota for that Train Slot.
- 4.2.5 In determining whether a Failure to Use has occurred, GBR may take account of any Train Slot which was removed from, cancelled within, or otherwise excluded from the Working Timetable at the request of, or with the agreement of, the relevant Access Beneficiary. Such removal, cancellation or exclusion shall not of itself prevent the relevant period of non-use from being taken into account under this Condition J4.

J.4.3 Certain periods to be disregarded

- 4.3.1 Any period of non-use shall be disregarded for the purpose of determining whether a Failure to Use has occurred under Condition J4.1.1(a) or (b) if, and to the extent that, such non- use is:
 - (a) attributable to non-economic reasons beyond the Access Party's control; and
 - (b) is temporary in nature.

J.4.4 Service of Failure to Use Notice

- 4.4.1 If GBR considers there has been a Failure to Use by an Access Beneficiary and that Failure to Use is continuing it may serve a Failure to Use Notice on the Access Beneficiary informing that Access Beneficiary of the Capacity Commitments that will be unassigned from the Access Beneficiary.
- 4.4.2 If GBR considers there has been a Failure to Use by GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) and that Failure to Use is continuing, GBR shall review whether the removal of a related Capacity Commitment would affect its ability to comply with its functions, duties and obligations under the Act, including the Capacity Duty, or its Licence, and if GBR decides that such removal would not affect such ability, GBR shall accordingly update the Capacity Commitments Register unassigning the Capacity Commitments from GBR (in its capacity as the provider and operator of railway passenger services and any related train services) and shall publish a notice of any such removal together with its reasons for that decision.

J.4.5 Cessation of Failure to Use

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4.5.1 Before a Failure to Use Notice has been served in accordance with Condition J4.4, or in the case of GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), before GBR makes a decision in accordance with J4.4.2, there will be a cessation of a Failure to Use if:

- (a) in relation to a Failure to Use under Condition J4.1.1(a), the Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) makes;
 - (i) a Train Slot Variation Request for a Train Slot in respect of the relevant Quantum Capacity Commitment in the Working Timetable; or
 - (ii) a Timetable Proposal for a Train Slot in respect of the relevant Quantum Capacity Commitment in any subsequent New Working Timetable; or
 - (iii) an action to include the Train Slot in the Working Timetable or in any preparation of a New Working Timetable under Part D of the GBR Code; or
- (b) in relation to a Failure to Use under Condition J4.1.1(b), the Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), makes use of a relevant Train Slot such that the Use Quota is met.

J.4.6 Contents of a Failure to Use Notice

4.6.1 A Failure to Use Notice shall specify:

- (a) the Failure to Use which GBR considers has occurred;
- (b) the Commitments Subject to Surrender which GBR requires the Access Beneficiary to surrender; and
- (c) the date on which the Relevant Surrender is intended to take effect.

J.4.7 Acceptance of surrender

4.7.1 If the Part J Access Beneficiary agrees to the surrender specified in the Failure to Use Notice then:

- (a) it shall, within 10 Working Days, notify GBR;
- (b) the Commitments Subject to Surrender shall be surrendered with effect from the date on which notice is given to GBR; and
- (c) GBR shall make the relevant changes to the Capacity Commitment Register no more than 10 Working Days after the date on which the Access Beneficiary agrees to the surrender pursuant to Condition J4.7.1(a).

J.4.8 Part J Counter Notice

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4.8.1 The Access Beneficiary may, within 10 Working Days of receipt of a Failure to Use Notice, serve a Part J Counter Notice on GBR stating that:

- (a) it considers the Failure to Use Notice to be invalid, including because:
 - (ii) a Failure to Use cannot be made out consist with the exceptions set out in J4.1.2, or
 - (iii) a period of non-use is to be disregarded consistent with J4.3, or
- (b) there has been no Failure to Use or there has been a cessation of a Failure to Use in accordance with Condition J4.5 or consistent with J5.2.1; and/or
- (c) any Ancillary Movements and/or Stabling specified in the Failure to Use Notice as being Commitments Subject to Surrender:
 - (i) are not directly associated with the relevant Quantum Capacity Commitment; and/or
 - (ii) would still be required by the Access Beneficiary following the surrender of the relevant Quantum Capacity Commitment; and/or
- (d) there are Grounds for Objection to the proposed surrender within Condition J4.9, detailing the Grounds for Objection on which it relies,

and must provide evidence with the Part J Counter Notice in support of its contentions.

4.8.2 If no Part J Counter Notice is served within 10 Working Days of receipt of a Failure to Use Notice:

- (a) the Access Beneficiary will be deemed to have agreed to the surrender specified in the Failure to Use Notice;
- (b) the Commitments Subject to Surrender shall be surrendered pursuant to Condition J4.8.2(c); and
- (c) GBR shall make the relevant changes to the Capacity Commitment Register no more than 10 Working Days after the date on which the Access Beneficiary is deemed to have agreed to the surrender pursuant to Condition J4.8.2(a).

J.4.9 Grounds for Objection

4.9.1 An Access Beneficiary may object to a surrender specified in a Failure to Use Notice on the grounds that (“Grounds for Objection”):

- (a) the Commitments Subject to Surrender relate to an enhancement of the Network for which the Access Beneficiary is contracted to fund or to pay through access charges; or
- (b) the Commitments Subject to Surrender have been partially used by the Access Beneficiary to the extent that:

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- (i) either the origin has been operated from, or the destination has been operated to, during the Use Period through the partial use of the associated Train Slot in the Working Timetable; and
 - (ii) the partial use is supported by a relevant contract between the Access Beneficiary and an end customer; and
 - (iii) prior to the receipt of the Failure to Use Notice, the Access Beneficiary has advised GBR in writing that it wishes to amend the relevant Quantum Capacity Commitment(s) to reflect the partial use and specifies the particular amendments it is seeking to be made; or
- (c) the Commitments Subject to Surrender are required to be retained by the Access Beneficiary for reasons of national security or for the transit of nuclear materials. In such cases, it will be necessary for the Access Beneficiary to provide with its Part J Counter Notice a written statement from the relevant Government Department supporting the reasons for the retention of the Capacity Commitments Subject to Surrender

J.4.10 GBR agrees with the Part J Access Beneficiary

4.10.1 If GBR agrees with the Access Beneficiary:

- (a) that the matters set out in Condition J4.8.1(a), (b) or (c) have been substantiated, the Failure to Use Notice shall have failed and GBR shall notify the Access Beneficiary in writing that this is the case within 10 Working Days of receipt of the Part J Counter Notice; or
- (b) that the Access Beneficiary's Grounds for Objection have been substantiated in respect of any or all of the Commitments Subject to Surrender (or parts thereof in the case of the Grounds for Objection specified in Condition J4.9.1(b)) then, subject to Condition J4.10.2 below, the Failure to Use Notice shall have failed and GBR shall notify the Access Beneficiary in writing that this is the case within 10 Working Days of receipt of the Part J Counter Notice.

4.10.2 In the case of the Grounds of Objection specified in Condition J4.9.1(b), the Failure to Use Notice shall have failed only in respect of those parts of the Commitments Subject to Surrender that have been partially used.

J.4.11 GBR does not agree with the Part J Access Beneficiary

4.11.1 If GBR considers that:

- (a) the matters set out in Condition J4.8.1(a), (b) or (c) have not been substantiated; and
- (b) the Access Beneficiary's Grounds for Objection have not been substantiated in respect of any or all of the Commitments Subject to Surrender (or parts thereof in the case of the Ground for Objection specified in Condition J4.9.1 (b)),

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then it shall notify the Access Beneficiary in writing that this is the case within 10 Working Days of receipt of the Part J Counter Notice.

J.4.12 Access Beneficiary response to GBR’s notification under Condition J4.11

- 4.12.1 Upon receipt of a notice under Condition J4.11, the Access Beneficiary shall respond to GBR in writing within 10 Working Days stating that it either accepts or disagrees with GBR’s decision.
- 4.12.2 If the Access Beneficiary disagrees with GBR’s decision under Condition J.4.11, then in addition to its response under Condition J4.12.1, it may refer the matter in accordance with Part M to the Dispute Resolution Body or appeal directly to the Office of Rail and Road.
- 4.12.3 If the Access Beneficiary fails to respond to GBR in accordance with Condition J4.12.1 it will be deemed to have accepted GBR’s decision.

J.4.13 Surrender of Capacity Commitments

- 4.13.1 The surrender of the Commitments Subject to Surrender will occur where either the Access Beneficiary accepts GBR’s decision made pursuant to Condition J4.11 or the result of the referral and appeal process in J4.12.2 maintains GBR's decision, on the date on which such notice is given to GBR pursuant to Condition J4.12.2. GBR shall make the relevant modifications to the Capacity Commitments Register no more than 10 Working Days after the date of the acceptance or maintenance of GBR's decision, as the case may be. The surrender takes effect on the date the Register is updated.
- 4.13.2 Where a Capacity Commitment is surrendered or removed under this Part J, GBR may review its Infrastructure Capacity Plan in accordance with the Access and Use Policy.

J.4.14 Timetable Proposals

- 4.14.1 Where any Commitments Subject to Surrender surrendered under this Condition J4 include the surrender of an Timetable Proposal, GBR's obligations under Condition D2.4 shall cease to have effect in respect of that Timetable Proposal as from the date the surrender takes effect in accordance with this Condition J4.

J.5 Failure to Use: third party application

J.5.1 Failure to Use Notices

- 5.1.1 If:
 - (a) GBR receives an application from an Access Beneficiary (the “Applicant”) for a Quantum Capacity Commitment to a Train Slot; and
 - (b) the Train Slot:

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- (i) is one in respect of which the Applicant can demonstrate a reasonable commercial need; and
- (ii) was secured in exercise of a Quantum Capacity Commitment of another Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), as the case may be, (the “Incumbent”); and
- (iii) is one in respect of which there is a Failure to Use by the Incumbent,

then within 10 Working Days following receipt of the Applicant’s application GBR shall serve a Failure to Use Notice under Condition J4.4 on the Incumbent, unless the Incumbent is GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services). If the Applicant’s application does not comply with this Condition J5.1, then within 10 Working Days following receipt of the Applicant’s application GBR shall serve a notice on the Applicant rejecting its application and setting out its reasons for rejecting the application.

J.5.1.2 If the Incumbent is GBR acting in its capacity as a provider and operator of railway passenger services and any related train services, then within 30 Working Days of receipt of a Failure to Use Notice from an Applicant, GBR shall either confirm in writing its relinquishment of the Capacity Commitment Subject to Surrender, or shall serve a Part J Counter Notice on the Applicant stating whether:

- (a) it considers the Failure to Use Notice to be invalid, including because:
 - (i) there has been no failure to use;
 - (ii) a Failure to Use cannot be made out consist with the exceptions set out in J4.1.2, or
 - (iii) a period of non-use is to be disregarded consistent with J4.3, or
 - (iv) of any other relevant reason; and/or
- (b) there has been a cessation of a Failure to Use in accordance with Condition J4.5 or consistent with J5.2.1;
- (c) any Ancillary Movements and/or Stabling specified in the Failure to Use Notice as being Commitments Subject to Surrender:
 - (i) are not directly associated with the relevant Quantum Capacity Commitment; and/or
 - (ii) would still be required by GBR following the surrender of the relevant Quantum Capacity Commitment; and/or
- (d) there are Grounds for Objection to the proposed surrender within Condition J4.9, detailing the Grounds for Objection on which it relies; or
- (e) it accepts there is a valid failure to use by GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) as Incumbent, but GBR nonetheless rejects the Applicant's

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application as GBR considers that acceptance of the application would be inconsistent with GBR's functions, duties and obligations under the Act, including the Infrastructure Capacity Plan or Capacity Duty, or under its Licence,
and must provide evidence with the Part J Counter Notice in support of its contentions.

J.5.2 Cessation of Failure to Use

5.2.1 For the purposes of Condition J5.1.1(b)(iii) or J5.1.2(b), there will have been a cessation of a Failure to Use if the Train Slot has been used in the thirteen consecutive weeks that it has been included in the Working Timetable before the date that the Applicant's Failure to Use Notice was received by GBR.

J.5.3 Application of Conditions

5.3.1 The following Conditions shall apply following service by GBR on the Incumbent of a Failure to Use Notice as they apply to a Failure to Use Notice:

- (a) J4.7 (Acceptance of surrender);
- (b) J4.8 (Part J Counter Notice);
- (c) J4.9 (Grounds for Objection)
- (d) J4.10 (GBR agrees with the Access Beneficiary);
- (e) J4.11 (GBR does not agree with the Access Beneficiary);
- (f) J4.12 (Surrender of Capacity Commitments), where in respect of this Condition J5, any relevant Determination is between GBR and the Incumbent, then the Applicant shall accept that the Determination will also dispose of the matter as between the Applicant and GBR; and
- (g) J4.13 (Timetable Proposals), as if that Condition referred to a surrender under this Condition J5.

J.5.4 Part J Counter Notice

5.4.1 Subject to the redaction of any commercially sensitive information, the Incumbent shall send a copy of any Part J Counter Notice issued under Condition J5.3.1(b) to the Applicant.

J.6 Not Used

J.7 Access transfer mechanism for services relating to carriage of goods by railway

J.7.1 Application of this Condition J7

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7.1.1 This Condition 7 applies only to services for the carriage of goods by railway, and in all cases to an application for a Quantum Capacity Commitment from a Transfer Applicant which is either:

- (a) a Train Operator, who is replacing the Incumbent in the provision of transport services to a third party, where the Quantum Capacity Commitment relates to the provision of those transport services (subject, where applicable, to any competitive tendering process amongst other parties); or
- (b) an Access Option Holder, where the Quantum Capacity Commitment sought is:
 - (i) currently assigned to an Incumbent which is a Train Operator for the provision of transport services to or on behalf of that Access Option Holder; and
 - (ii) one which that Access Option Holder intends (subject, where applicable, to any competitive tendering process amongst other parties, including, if applicable, the Incumbent) to draw down into the Access Agreement of a Train Operator (whether or not the Incumbent) so that such Train Operator can become an Appointed Operator to provide those transport services to or on behalf of the Access Option Holder.

J.7.2 Third Party Notice

7.2.1 Where an Access Beneficiary wants to hold a Quantum Capacity Commitment (“the Transfer Applicant”) that is substantially similar to an existing Quantum Capacity Commitment of another Access Beneficiary (the “Incumbent Provider”) then it shall serve a Third Party Notice on the Incumbent Provider and send a copy of that notice to GBR.

J.7.3 Applicant’s responsibilities

7.3.1 When making an application to the Incumbent Provider of the type described in Condition J7.2, the Transfer Applicant shall specify in the application:

- (a) the Quantum Capacity Commitment sought by the Transfer Applicant;
- (b) the Commitments Subject to Surrender which the Transfer Applicant requires the Incumbent Provider to Surrender in order to accommodate the Transfer Applicant’s request;
- (c) the date on which the Transfer Applicant requests that the Quantum Capacity Commitment takes effect in its Access Agreement;
- (d) that it has suitable access to and from any relevant facility to meet its obligations under clause 6.4 of its Access Agreement; and
- (e) that the Quantum Capacity Commitment sought has the characteristics described in either Condition J7.1.2(a) or Condition J7.1.2(b) (as the case may be). Where Condition J7.1.2(a) is being relied on, the Transfer Applicant must

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attach a letter from the relevant customer or option holder confirming the circumstances which mean Condition J7.1.2(a) applies.

J.7.4 Acceptance of surrender

- 7.4.1 If the Incumbent Provider agrees to the surrender specified in the Third Party Notice, then:
- (a) it shall, within 10 Working Days, give notice to that effect to the Transfer Applicant and copy this to GBR ;
 - (b) the Commitments Subject to Surrender shall be surrendered and GBR shall update the Capacity Commitments Register accordingly, no more than 10 Working Days after the date on which the Incumbent Provider agrees to the surrender pursuant to Condition J7.4.1(a). The surrender takes effect on the date the Register is updated.

J.7.5 Third Party Transfer Counter Notice

- 7.5.1 The Incumbent Provider may, within 10 Working Days of receipt of a Third Party Transfer Notice, serve a Third Party Transfer Counter Notice on GBR specifying that it objects to the surrender because the Incumbent Provider:
- (a) has used the Commitments Subject to Surrender for a Primary Purpose; and
 - (b) requires to continue to use the Commitments Subject to Surrender to convey traffic for the Primary Purpose Customer (“Grounds for Objection”).
- 7.5.2 The Incumbent Provider shall provide evidence in support of its Grounds for Objection. The Incumbent Provider shall send a copy of any Third Party Transfer Counter Notice, subject to the redaction of any commercially sensitive information, to the Transfer Applicant.
- 7.5.3 If the Incumbent Provider disagrees with:
- (a) any Train Slots shown in the Third Party Notice as relating to the Quantum Capacity Commitment; or
 - (b) any Ancillary Movements or Stabling the Transfer Applicant included in the Third Party Transfer Notice as being directly related to the Quantum Capacity Commitment and no longer required by the Incumbent Provider following the surrender of the Quantum Capacity Commitment; or
 - (c) any Timetable Proposal shown in the Third Party Notice as relating to the Quantum Capacity Commitment,

it shall include in the Third Party Transfer Counter Notice details of why it disagrees with the Transfer Applicant.

- 7.5.4 If the Quantum Capacity Commitment sought by the Transfer Applicant is the subject of a competitive tendering process amongst other parties including the Incumbent Provider, then the Incumbent Provider:

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- (a) may notify GBR of this process; and
 - (b) if it has done so, the period of 10 Working Days referred to in Condition J7.5.4 shall be deemed to commence on the date that the third party or Access Option Holder (as the case may be) indicates, at the end of the relevant tendering process, its intention to contract.
- 7.5.5 If no Third Party Transfer Counter Notice is served within 10 Working Days of receipt of a Third Party Transfer Notice:
- (a) the Incumbent Provider will be deemed to have agreed to the surrender of the Commitments Subject to Surrender specified in the Third Party Transfer Notice and the Transfer Applicant will notify GBR, copied to the Incumbent Provider, that this is the case;
 - (b) the Commitments Subject to Surrender shall be surrendered and the Capacity Commitments Register will be updated accordingly no more than 20 Working Days after the date on which the Incumbent Provider is deemed to have agreed the surrender pursuant to Condition J7.5.5(a).

J.7.6 GBR agrees with Incumbent

- 7.6.1 If GBR considers that the Grounds of Objection in the Third Party Transfer Counter Notice have been substantiated then, subject to any appeal under Condition J12, the Transfer Applicant's application will have failed. GBR shall notify the Transfer Applicant in writing that this is the case, copied to the Incumbent Provider, within 5 Working Days of receipt of the Third Party Transfer Counter Notice and shall set out the reasons for such failure.

J.7.7 GBR agrees with Transfer Applicant

- 7.7.1 If GBR considers that the Incumbent Provider's Grounds of Objection in the Third Party Transfer Counter Notice have not been substantiated, then GBR shall notify the Incumbent Provider in writing that this is the case, copied to the Transfer Applicant, within 5 Working Days of receipt of the Third Party Transfer Counter Notice.
- 7.7.2 Where the Incumbent Provider has disagreed with the Transfer Applicant in accordance with Condition J7.5.2, then GBR shall, in the notification referred to in Condition J7.7.1, set out what it determines the Commitments Subject to Surrender to be.

J.7.8 Incumbent Provider response to GBR's notification under Condition J7.7

- 7.8.1 Upon receipt of a notice under Condition J7.7.1, the Incumbent Provider shall respond to GBR in writing within 10 Working Days stating that it either accepts or disagrees with GBR's decision
- 7.8.2 If the Incumbent Provider disagrees with GBR's decision under Condition J7.7, then in addition to its response under Condition J7.8.1, it may refer the matter in accordance with Part M to the Dispute Resolution Body or appeal directly to the ORR.

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- 7.8.3 If the Incumbent Provider fails to both respond to GBR in accordance with Condition J7.8.1 or refer the matter to the Dispute Resolution Body or appeal to the ORR, it will be deemed to have accepted GBR's decision and GBR shall update the Commitments Register accordingly. The surrender takes effect on the date the Register is updated.

J.7.9 Surrender of Capacity Commitments

- 7.9.1 The surrender of the Commitments Subject to Surrender will be deemed to have occurred:
- (a) where either the Incumbent Provider accepts GBR's decision made pursuant to Condition J7.7 or if there is a Dispute, on the date on which the outcome of any referral pursuant to Condition J7.8.2 is available in relation to GBR's decision; or
 - (b) on a date specified in any relevant decision by the Dispute Resolution Body or in the ORR's appeal decision, if applicable.
- 7.9.2 In the event of the Incumbent Provider accepting GBR's decision or there is a relevant supporting decision by the Dispute Resolution Body or outcome from any Facilitative Process which is accepted by the parties, or supporting ORR appeal decision, GBR shall update the Capacity Commitments Register accordingly no more than 10 Working Days after the date of the Incumbent Provider's acceptance or of GBR's acceptance of the determination or ORR's decision, as applicable.
- 7.9.3 If the Incumbent Provider fails to both respond to GBR in accordance with Condition J7.8.1 or refer the matter for to a Dispute Resolution Body or appeal to the ORR, it will be deemed to have accepted GBR's decision and GBR shall update the Commitments Register accordingly.

J.7.10 Grant to Transfer Applicant

- 7.10.1 GBR shall, through the issue of a notice to both the Transfer Applicant and the Incumbent Provider, grant to the Transfer Applicant the Capacity Commitments surrendered by the Incumbent Provider under this Condition J7. Such Capacity Commitments shall be granted to the Transfer Applicant:
- (a) at the same time that the Capacity Commitments Register is being updated pursuant to this Condition J7.
 - (b) modified to include, where applicable, any relevant Restrictive Provisions associated with such rights contained in the Incumbent Provider's Access Agreement
 - (b) with Service Characteristics in substantially the same form as the Commitments Subject to Surrender; and
 - (c) for a period of time:
 - (i) equal to that which the Incumbent Provider would have enjoyed had the rights remained with the Incumbent Provider; or

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(ii) until expiry of the Transfer Applicant's Access Agreement,
whichever is the shorter.

J.7.11 Timetable Proposals

7.11.1 Where any Commitments Subject to Surrender surrendered under this Condition J7 include the surrender of a Timetable Proposal, GBR's obligations under Condition D2.4 shall, in respect of that Timetable Proposal:

- (a) cease to have effect in relation to the Incumbent Provider 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 Transfer Applicant as from the date the Timetable Proposal is granted to the Transfer Applicant in accordance with Condition J7.10.

J.8 Not Used

J.9 Capacity Commitments Review Meetings

J.9.1 The Capacity Commitments Review Meeting

- 9.1.1 GBR shall hold Capacity Commitments Review Meetings with Access Beneficiaries as frequently as it considers necessary, and no less than annually, in order for it to ensure that capacity on the Network is shared in the most efficient and economical manner in the overall interest of users, providers, potential providers and funders of railway services and in furtherance of its functions, duties and obligations under the Act, including the Infrastructure Capacity Plan and Capacity Duty, and obligations under its Licence.
- 9.1.2 GBR shall give an Access Beneficiary at least 10 Working Days written notice of a Capacity Commitments Review Meeting ("Capacity Review Notice"). GBR shall, in the Capacity Review Notice, list any Quantum Capacity Commitments, related Train Slots or associated Ancillary Movements, Stabling or Y-Paths which are going to be the subject matter of the meeting ("Commitments under Review"), or otherwise indicate that the review is a general review of all Capacity Commitments.
- 9.1.3 Where an Access Beneficiary has received a Capacity Review Notice in accordance with Condition J9.1.2, it shall attend the meeting and participate in it in a collaborative manner in order to assist GBR to meet its objectives set out in Condition J9.1.4 below.
- 9.1.4 In holding a Capacity Commitments Review Meeting, GBR's objectives shall include:
- (a) establishing why any Commitments under Review are not being used;
 - (b) assessing whether it is appropriate for GBR to commence the Failure to Use procedure under Condition J4 in relation to any of the Commitments under Review;

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- (c) assessing whether it is appropriate for any Relevant Adjustment to be made to the Access Beneficiary's Capacity Commitments; and
 - (d) considering whether it is appropriate to agree any amendments or additions to the Access Beneficiary's Capacity Commitments.
- 9.1.5 Further to a Capacity Commitments Review Meeting, GBR shall, where it considers it appropriate, commence and pursue the Failure to Use procedure under Condition J4 to remove any of the Commitments under Review from the Access Beneficiary.

J.9.2 Not used.

J.9.3 Surrender or adjustment in the Capacity meeting.

- 9.3.1 If before, during or after the Capacity Commitments Review Meeting, the Access Beneficiary or agrees a Relevant Surrender or Relevant Adjustment of any of the Commitments under Review, then, the parties shall confirm the surrender in an agreed note of the meeting within 5 Working Days and within 10 Working Days, GBR shall amend the Capacity Commitments Register accordingly. The surrender takes effect on the date the Register is updated.

J.10 RIGHT OF GBR TO MAKE A CAPACITY COMMITMENT CHANGE

J.10.1 Obligation to facilitate a proposed Capacity Commitment Change

- 10.1.1 GBR shall take all reasonable steps to facilitate the development of a proposed Capacity Commitment Change, except where;
- (a) the proposed Capacity Commitment Change has been submitted by a Third Party who:
 - (i) has not set out, in as much detail as reasonably possible, the reasons why it believes that:
 - (A) the proposed Capacity Commitment Change will achieve Better Use ;
 - (B) Better Use cannot reasonably be achieved using:
 - (1) Parts D, G or Conditions J2.1 – 9.3 of Part J of the GBR Code;
 - (2) Relevant provisions of the Act; or
 - (3) Increased investment in the Network; or
 - (ii) has not provided a Relevant Undertaking
 - (b) GBR considers that the proposed Capacity Commitment Change is inconsistent with its functions, duties and obligations under the Act, including the Infrastructure Capacity Plan and Capacity Duty, its Licence and the Access and Use Policy.

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10.1.2 Where applicable, the obligation of GBR under Condition J10.1.1 includes but is not limited to:

- (a) evaluation of a submission for a proposed Capacity Commitment Change proposal submitted to GBR by a Third Party;
- (b) consultation as may reasonably be expected to enable any Access Beneficiary who holds a Firm Capacity Commitments subject to the proposed Capacity Commitment Change (the “Incumbent”) to make representations, before notice of a proposed Capacity Commitment Change is given;
- (c) consultation before a notice of a proposed Capacity Commitment Change is given with relevant parties including any relevant funder; and
- (d) the preparation of a notice given under Condition J10.2.1;

J.10.2 Notice by GBR of a proposed Capacity Commitment Change

10.2.1 GBR shall give notice of a proposed Capacity Commitment Change:

- (a) submitted to GBR by a Third Party; or
- (b) identified by GBR on its own initiative

if it considers that the criteria in Condition J10.2.2 have been satisfied.

10.2.2 GBR must believe that:

- (a) the proposed Capacity Commitment Change will achieve Better Use;
- (b) the proposed Capacity Commitment Change is not inconsistent with its functions, duties and obligations under the Act, including the Infrastructure Capacity Plan and Capacity Duty, its Licence and the Access and Use Policy,
- (c) Better Use cannot reasonably be achieved using:
 - (i) Parts D, G or Conditions J2.1 – 9.3 of Part J of this GBR Code;
 - (ii) Relevant provisions of the Act; or
 - (iii) Increased investment in the Network.

10.2.3 GBR shall give notice of a proposed Capacity Commitment Change to:

- (a) any Incumbent; and

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(b) any relevant funder.

10.2.4 GBR shall give notice of a proposed Capacity Commitment Change no less than 18 months before the commencement of the relevant Working Timetable during which the Capacity Commitment Change is proposed to take effect.

10.2.5 Where GBR, acting in its capacity as a provider and operator of railway passenger services and any related train services, is the Incumbent in respect of a Capacity Commitment Change, no notice needs to be given by GBR and the Capacity Commitments Register will be updated no later than the first commencement of a relevant timetable after 18 months has elapsed.

J.10.3 Content of notice of a proposed Capacity Commitment Change

10.3.1 Notice of a proposed Capacity Commitment Change given by GBR under Condition J10.2.1 shall:

- (a) identify the Firm Capacity Commitment of any Incumbent which is subject to the Capacity Commitment Change;
- (b) set out the Capacity Commitment Change;
- (c) explain, referencing evidence where possible, why GBR believes that each of the criteria in Condition J10.2.2 is met;
- (d) state the date on which the Capacity Commitment Change will take effect, that date falling no later than the Priority Date for the relevant Working Timetable during which the Capacity Commitment Change is proposed to take effect;
- (e) request from the Incumbent an estimate of compensation with evidence where possible, payable under Condition J10.7 and, subject to Condition J10.5.3, to be provided to GBR within 60 Working Days of the date on which notice is given by GBR under Condition J10.2.1;
- (f) request from the Incumbent an estimate of the Incumbent's reasonable costs of providing an estimate of compensation, to be provided within 10 Working Days of the date on which notice is given by GBR under Condition J10.2.1; and
- (g) where the proposed Capacity Commitment Change was submitted to GBR by a Third Party, contain a Relevant Undertaking.

J.10.4 Negotiation following notice of a proposed Capacity Commitment Change

10.4.1 GBR shall use reasonable endeavours to negotiate with an Incumbent Access Beneficiary so as to agree:

- (a) after giving notice under Condition J10.2, the proposed Capacity Commitment Change, if applicable;

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- (b) after receiving an estimate of reasonable costs under Condition J10.5.2, the reasonable costs payable in advance under Condition J10.10.2; or
- (c) after receiving an estimate of compensation under Condition J10.5.1, the compensation payable under Condition J10.7.

- 10.4.2 In any negotiation carried out under Condition J10.4.1, the Incumbent Access Beneficiary shall use reasonable endeavours to negotiate with GBR so as to agree the matters set out at Condition J10.4.1(a)-(c).
- 10.4.3 If the proposed Capacity Commitment Change was submitted to GBR by a Third Party, GBR shall carry out a Relevant Consultation as appropriate during the negotiation.
- 10.4.4 Subject to Condition J10.4.5 and J10.4.6, GBR and the Incumbent Access Beneficiary may agree a proposed Capacity Commitment Change at any time during this process.
- 10.4.5 If the proposed Capacity Commitment Change was submitted to GBR by a Third Party, GBR and the Incumbent Access Beneficiary may not agree a proposed Capacity Commitment Change until GBR has obtained the agreement of the Third Party.
- 10.4.6 If the proposed Capacity Commitment Change relates to GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) as the Incumbent, GBR may not agree a proposed Capacity Commitment Change unless it is satisfied that agreement would be consistent with GBR's functions, duties and obligations under the Act, including the Infrastructure Capacity Plan and Capacity Duty, its Licence and the Access and Use Policy.
- 10.4.7 If an agreement is reached under Condition J10.4.4, GBR shall update the Capacity Commitments Register accordingly once compensation, if due, has been paid.

J.10.5 Response of Incumbent to notice of a proposed Capacity Commitment Change

- 10.5.1 The Incumbent Access Beneficiary shall provide an estimate of compensation in accordance with Condition J10.3.1(e).
- 10.5.2 The Incumbent Access Beneficiary shall provide to GBR an estimate of the reasonable costs of providing an estimate of compensation in accordance with Condition J10.3.1(f).
- 10.5.3 An Incumbent Access Beneficiary who provides an estimate of reasonable costs in accordance with Condition J10.3.1(f) has 40 Working Days from receipt of payment of the agreed reasonable costs to provide the estimate of compensation.
- 10.5.4 The Incumbent Access Beneficiary shall give notice to GBR if it:
- (a) agrees to the proposed Capacity Commitment Change;

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- (b) considers that one or more of the criteria in Condition J10.2.2 is not met; or
 - (c) considers that any other aspect of the notice was deficient.
- 10.5.5 If the Incumbent Access Beneficiary gives notice under Condition J10.5.2 (b) or (c), it shall provide reasons, referencing evidence where possible,
- 10.5.6 Notice shall be provided to GBR under this Condition J10.5 within 60 Working Days of the date on which notice is given by GBR under Condition J10.2.
- 10.5.7 A failure by an Incumbent Access Beneficiary to give notice under Condition J10.5.4 shall constitute agreement to the proposed Capacity Commitment Change, as if notice had been given under Condition J10.5.4(a).
- 10.5.8 Where GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) is the Incumbent it shall calculate the compensation that it would be entitled to as though it were an Incumbent Access Beneficiary under this Condition J10.

J.10.6 Offer of compensation

- 10.6.1 Subject to Conditions J10.4.1 and J10.6.3, GBR shall, no later than 30 Working Days after receiving an estimate of compensation provided by the Incumbent Access Beneficiary pursuant to Condition J10.3.1(e), make a written offer of compensation in confidence to the Incumbent Access Beneficiary.
- 10.6.2 Subject to Condition J10.6.3, if an Incumbent Access Beneficiary fails to provide an estimate of compensation pursuant to Condition J10.3.1(e), GBR shall, no later than 90 Working Days after the date on which notice is given by GBR under Condition J10.2.1, make a written offer of compensation in confidence to the Incumbent Access Beneficiary.
- 10.6.3 If the proposed Capacity Commitment Change was submitted to GBR by a Third Party, GBR shall not make a written offer of compensation under Conditions J10.6.1 or J10.6.2, or proceed with a Capacity Commitment Change relating to GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), until it has carried out a Relevant Consultation and obtained agreement of the Third Party to fund the compensation to GBR or any offer of compensation to an Incumbent Access Beneficiary.

J.10.7 Amount of compensation

- 10.7.1 Subject to Condition J10.9.2, GBR shall, unless it is the Incumbent, pay compensation to the Incumbent Access Beneficiary in respect of a Capacity Commitment Change. Where GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) is the Incumbent, compensation shall be paid directly to it by the relevant Access Beneficiary or Third Party, as the case may be.

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- 10.7.2 The amount of compensation referred to in Condition J10.7.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the Incumbent Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) as a consequence of the implementation of the proposed change.
- (a) There shall be taken into account in determining the amount of compensation:
- (i) the benefit (if any) to be obtained or likely in the future to be obtained by the Incumbent Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) as a consequence of the Capacity Commitment Change; and
 - (ii) the ability or likely future ability of the Incumbent Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) to recoup any costs, losses and expenses from third parties including passengers and customers or to otherwise mitigate the costs, direct losses and expenses (including loss of revenue).

J.10.8 Acceptance of offer of compensation

- 10.8.1 If the Incumbent Access Beneficiary wishes to accept the compensation offered under Condition J10.6, it shall, within 30 Working Days of receiving the offer, indicate its acceptance in writing.
- 10.8.2 A failure to indicate acceptance in writing in accordance with Condition J10.8.1 or to refer the matter to the Dispute Resolution Body in accordance with Condition J10.14, shall constitute acceptance of the offer.

J.10.9 Payment of compensation

- 10.9.1 Subject to Condition J10.9.2, the compensation payable under Condition J10.7 shall be paid to the Incumbent Access Beneficiary by GBR, or by the relevant Access Beneficiary or Third Party to GBR, on or before the date on which the proposed Capacity Commitment Change is due to take effect.
- 10.9.2 If the proposed Capacity Commitment Change was submitted to GBR by a Third Party, the Third Party shall pay GBR an amount equal to the compensation payable under Condition J10.7 on a date agreed with GBR but no later than-
- (a) the Working Day before the date on which the Capacity Commitment Change is due to take effect, or

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- (b) where a matter has been referred to the Dispute Resolution Body under Condition J10.14.1 and the date on which the Capacity Commitment Change is due to take effect has been missed or is likely to be missed, a revised date notified, as appropriate, to the Incumbent Access Beneficiary and/or the Third Party by GBR, or
- 10.9.3 GBR shall not pay compensation to the Incumbent Access Beneficiary until an amount equal to the compensation owed has been received by GBR from the Third Party.
- 10.9.4 The Capacity Commitment Change shall not take effect until the compensation payable under Condition J10.7 has been received by the Incumbent.
- 10.9.5 Compensation is not payable under this Condition if it has already been paid pursuant to a Relevant Undertaking because the Third Party has requested that GBR withdraw the notice of a proposed Capacity Commitment Change.

J.10.10 Reimbursement of assessment costs

- 10.10.1 Subject to Condition J10.10.2, the Incumbent Access Beneficiary shall be entitled to reimbursement by GBR of all reasonable costs incurred by the Incumbent Access Beneficiary in assessing any Capacity Commitment Change.
- 10.10.2 If the proposed Capacity Commitment change was submitted to GBR by a Third Party, that Third Party shall reimburse GBR for:
 - (a) the reasonable costs incurred by GBR in giving notice of a proposed Capacity Commitment Change;
 - (b) the Incumbent Access Beneficiary's reasonable costs of providing an estimate of compensation, to be paid by the Third Party in advance of these costs being incurred; and
 - (c) the reasonable costs incurred by an Incumbent Access Beneficiary and reimbursed by GBR pursuant to Condition J10.10.1.

J.10.11 Obligation to incur no further costs

- J10.11.1 The Incumbent Access Beneficiary shall, if requested by GBR at any time, incur no further costs (except any costs which cannot reasonably be avoided) in respect of any Capacity Commitment Change.

J.10.12 Confidentiality of the Incumbent Access Beneficiary and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services)

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J10.12.1 If GBR has reasonable grounds for believing that, in order to carry out a Relevant Consultation:

- (a) it is necessary for it to disclose to the Third Party any Qualifying Information; and
- (b) such disclosure would or might, in GBR's reasonable opinion, seriously and prejudicially affect the interests of the Incumbent Access Beneficiary or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services),

GBR shall give notice to that effect to the Third Party and such Qualifying Information shall not be disclosed.

J.10.13 Application of Part J confidentiality mechanism

10.13.1 The provisions of Conditions J3.2 to J3.15 apply to the conduct of a Relevant Consultation as if:

- (a) Notice served under Condition J10.12.1 was served under Condition J3.1;
- (b) "Relevant Response" means "Relevant Consultation";
- (c) "Access Beneficiary" means "Third Party"; and
- (d) "Affected Person" means "Incumbent".

J.10.14 Right of dispute

- (a) If the Incumbent Access Beneficiary is dissatisfied as to the compensation offered under Condition J10.7, it may, within 30 Working Days of receiving the offer, refer the matter for determination by the Dispute Resolution Body in accordance with Part M or shall be entitled to appeal GBR's decision to the Office of Rail and Road pursuant to the exercise by the Office of Rail and Road of its statutory functions under the Act.
- (b) If the Incumbent Access Beneficiary or Third Party is dissatisfied as to any matter concerning the reimbursement of costs, it may refer the matter for determination by the Dispute Resolution Body in accordance with Part M or shall be entitled to appeal GBR's decision to the Office of Rail and Road pursuant to the exercise by the Office of Rail and Road of its statutory functions under the Act.

J.10.15 Right to withdraw

10.15.1 GBR may withdraw the notice of a proposed Capacity Commitment Change identified by GBR on its own initiative if it believes that the criteria in Condition J10.2.2 are no longer met.

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- 10.15.2 Subject to Condition J10.15.3, GBR shall withdraw the notice of a proposed Capacity Commitment Change as soon as possible if it is requested to do so by the Third Party.
- 10.15.3 If GBR receives a request to withdraw the notice of a proposed Capacity Commitment Change and wishes to pursue the proposed Capacity Commitment Change on its own initiative, it may do so without serving another notice under Condition J10.23 but must notify the Incumbent of its decision as soon as reasonably possible.
- 10.15.4 If GBR withdraws the notice of a proposed Capacity Commitment Change identified by GBR on its own initiative, Condition J10.10 applies to costs incurred up to and including the date on which notice is withdrawn.
- 10.15.5 Where GBR withdraws the notice of a proposed Capacity Commitment Change under Condition J10.15.1 or Condition J10.15.2, Condition J10.7 applies to costs, direct losses and expenses (including loss of revenue) accrued by the Incumbent as a consequence of the proposed Capacity Commitment Change.
- 10.15.6 If the Third-Party requests GBR to withdraw the notice of a proposed Capacity Commitment Change, Condition J10.10 applies to costs incurred up to and including:
- (a) the date on which notice is withdrawn; or
 - (b) the date on which GBR notifies the Incumbent under Condition J10.15.3 as applicable.
- 10.15.7 Where GBR withdraws the notice of a proposed Capacity Commitment Change under Condition J10.15.1 or Condition J10.15.2:
- (a) the Incumbent Access Beneficiary shall provide to GBR an estimate of compensation within 40 Working Days of notification of that withdrawal;
 - (b) negotiation in accordance with Conditions J10.4.1(b), J10.4.2 and J10.4.3 shall take place;
 - (c) Condition J10.6 shall apply; and
 - (d) Condition J10.14 shall apply.

J.10.17 Exclusion

- 10.17.1 Conditions J10.1 – J10.15 have no application to an Access Agreement that already contains provision for compensating an amendment or limitation of Firm Capacity Commitments, other than a provision contained in this GBR Code.

J.11 Obligation of GBR to publish documentation

J.11.1 Template Notices

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11.1.1 GBR shall publish promptly templates, and any revision to them, for any notices required under this Part J.

11.1.2 Before publishing templates or any revisions to them in accordance with Condition J11.1.1, GBR shall consult Access Beneficiaries.

J.11.2 Publication of Other Documentation

11.2.1 Subject to Condition A3, GBR shall publish promptly an accurate and up-to-date copy or statement summarising every notice or notification given or received pursuant to this Part J.

J.11.3 Not used.

J.12 Disputes

J.12.1 Disputes in accordance with Part M

12.1.1 Except in relation to Conditions J10.1 – J10.17, any dispute arising under this Part J may be referred by any Access Beneficiary to the Dispute Resolution Body in accordance with Part M or directly to the Office of Rail and Road. GBR may refer any dispute under this Part J to the Dispute Resolution Body.

12.1.2 A reference to the Dispute Resolution Body brought under Condition J12.1.1 must be made:

- (a) within 5 Working Days of receipt of the decision to which objection is made; or
- (b) where the period referred to in Condition J12.1.2(a) includes Christmas Day, within 10 Working Days of such receipt.

Part K - Information

K.1 INFORMATION

K.1.1 Requested Information

Requested Information means:

- (a) in relation to information to be provided by GBR, such information as an Access Beneficiary may reasonably request from time to time in order to plan its business with a reasonable degree of assurance, including information on relevant assets; and
- (b) in relation to information to be provided by an Access Beneficiary, such information as GBR may reasonably request from time to time in order to plan its business with a reasonable degree of assurance,

in each case

- (i) subject to the request for the information concerned being made in writing and identifying expressly that it is a request made under this Part K.

K.2 PROVISION OF INFORMATION

K.2.1 Provision of Information by GBR

GBR shall, subject to Condition K3.3, make available to each Access Beneficiary Requested Information, in accordance with this Part K.

K.2.2 Provision of Information by each Access Beneficiary

Each Access Beneficiary shall make available to GBR Requested Information in accordance with this Part K.

K.2.3 Limitation on use of Information by GBR

Any Information provided to GBR under this Part K may only be used by GBR subject to the limitations in its Licence or in furtherance of its functions, duties and obligations under the Act, to comply with a Direction or in accordance with this GBR Code.

K.2.4 Form of Information

Any Information made available under this Part K shall be in such form and level of detail as is reasonably necessary to enable:

- (a) GBR to assess the effect of the matters disclosed in the Information provided to it on its provision of network services and fulfilment of its functions, duties and obligations under the Act and obligations under the Licence; and
- (b) the relevant Access Beneficiary to assess the effect of the matters disclosed in the Information provided to it on its Services.

K.2.5 Quality of information

Subject to Condition K6, Information provided by any party under this Part K shall, to the greatest extent reasonably practicable, be complete and accurate in all material respects.

K.3 NOT USED

CONDITION K4 - TIMING OF PROVISION OF INFORMATION

K.4.1 Provision of Information by GBR

GBR shall provide to each Access Beneficiary, Requested Information in a timely manner after such information is requested, subject to Condition K4.4.

K.4.2 Updating Information by GBR

Insofar as any Information provided by GBR relates to any of GBR's future plans, and at any time during the Relevant Year (in which the enquiry was made) such plans alter to the extent that such alterations are likely to have a material adverse effect on achievability of GBR's current Infrastructure Capacity Plan, then GBR shall promptly notify the relevant Access Beneficiary of any necessary changes to that Information.

K.4.3 Provision of Information by Access Beneficiary

Each Access Beneficiary shall provide to GBR Requested Information in a timely manner after such information is requested, subject to Condition K4.4.

K.4.4 Provision of Requested Information

A party receiving a request for Requested Information shall within 15 Working Days of receipt of that request either (i) fulfil the request or (ii) notify the requesting party of the likely timescales and extent to which it reasonably expects to be able to fulfil the request and/or (iii) identify to the requesting party any element of the request which it considers it will not be able to fulfil or is not obliged to provide.

K.5 APPEAL PROCEDURE

K.5.1 Right of appeal to senior officers or in accordance with Part M

If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure set out in this Part K;
- (b) any refusal by an Access Party to provide Requested Information;
- (c) the interpretation by an Access Party of the provisions of this Part K in relation to whether or not any information requested is Requested Information; or

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- (d) the adequacy of information provided or the time taken to provide that information, in each case in response to a Request for Requested Information, the matter shall be referred by that Access Beneficiary for review by the Access Beneficiary concerned, with the review process to involve a senior manager of each of those Access Beneficiaries. If those Access Parties fail to reach a resolution within 28 days of the referral, either party may refer the matter to the Dispute Resolution Body in accordance with Part M.

K.6 APPLICATION OF PART K

K.6.1 Extent and timing of information obligations

This Part K shall have effect to the extent, including as to:

- (a) the types or classes of information to be provided;
- (b) the times within which information must be provided;
- (c) the categories of persons to whom information of different types or classes is to be provided; and
- (d) the quality of information and the level of detail with which it must be provided (including the extent to which it must be complete and accurate),

as may be specified in a notice or notices consulted on and published by GBR from time to time.

K.6.2 Asset information

No request for information under this Condition K may have effect to the extent that it requires GBR to provide asset information:

- (a) of a type or class;
- (b) to a quality or level of detail; or
- (c) within a time,

which is more onerous than it is required to do under its Licence or obligations under the Act. In this Condition K6.2, “asset information” is information which GBR is required to maintain on relevant assets under that condition of its Licence.

K.6.3 Consultation

No notice may be given by GBR under Condition K6.1 unless it has first:

- (a) published the notice it intends to give and its reasons for that intention; and
- (b) considered any representations which it has received in relation to the proposed notice and reasons.

K.7 OTHER OBLIGATIONS TO CONTINUE

This Part K is:

- (a) without prejudice to any other obligation of any Access Beneficiary to provide information under any other provision of this GBR Code or the relevant Access Agreement; and
- (b) subject to the confidentiality provisions of this code and the relevant Access Agreement.

L. Performance

L.1 APPLICATION

L.1.1 This Condition L applies to Train Operators providing passenger railway services and GBR railway passenger services and any related train services.

L.1.1.1 A freight operator may elect to participate in Condition L by agreement with GBR. Following such agreement, this Condition L shall apply to that freight operator.

L.2 OBJECTIVES

L.2.1 The objectives of this Condition L are to:

- (b) provide for the improvement, on a continuous basis, of performance both as between Train Operators and GBR, and across the rail industry as a whole, through a process of liaison and cooperation in performance improvement, and
- (c) provide a process for reporting to the appropriate Public Passenger Specifier on the performance of trains and the Network on a cooperative and consistent basis as between different Train Operators (and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services)) and GBR, but having regard to the differing nature of their respective operations.

L.2.2 Achievement of Performance Objectives

L.2.2.1 Each Train Operator and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) shall participate in the performance reporting, planning, monitoring and reviewing procedures set out in this Condition L in order to achieve the Performance Objectives.

L.2.3 Limits

L.2.3.1 This Condition L is not intended to create any liability for, or cause of action in relation to, any failure by a Train Operator or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) to agree, or to achieve, any performance targets or levels or improvement plans.

L.3 INDIVIDUAL JOINT PERFORMANCE PROCESS

L.3.1 Process for Liaison and Cooperation

Each Train Operator and GBR (including acting in its capacity as the provider and operator of railway passenger services and any related train services) shall establish a JPS and JPIP for regular liaison and cooperation with a view to fulfilling the Performance Objectives of those train services. The individual JPIP shall be consistent with the ability to enable performance reporting at network wide level and to compare performance as

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between different Train Operators, while facilitating the parties' ability to accommodate needs at local level.

L.3.2 Frequency of Meeting

L3.2.1 The JPS shall include at least a Joint Performance Review between the Train Operators and GBR each quarter. It may also provide for more frequent review meetings and less frequent planning or strategic meetings. Notwithstanding this process, any Train Operator or GBR (including when acting in its capacity as the provider and operator of railway passenger services and any related train services) may require a Joint Performance Review to be held at any time by giving at least 14 days' written notice with a proposed agenda of items to be considered.

L.3.3 Attendance at Meetings

The JPS shall provide for meetings to involve suitably senior representatives attending on a consistent basis so far as reasonably practicable, so as to facilitate meaningful participation with a view to achieving the Performance Objectives in an efficient and effective manner.

L.3.4 Frequency of Joint Performance Reviews

The individual JPIP shall provide for the Joint Performance Review held each quarter to address at least:

- (a) presentation of historic performance data covering recent trends and priorities relevant to the Train Operators and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services);
- (b) an analysis of that performance data;
- (c) a review of delivery against the JPIP, including an assessment of reasons for any shortfalls or improved achievement in comparison with any relevant performance targets and any relevant JPIP action plans;
- (d) consideration of actions which may be planned, tested, implemented or revised, taking into account past and current performance, the performance experience of Train Operators and GBR (including acting in its capacity as the provider and operator of railway passenger services and any related train services) and any future circumstances reasonably anticipated. Actions may be planned to be taken individually, jointly, or jointly with other third parties.

L.3.5 Joint Meetings

L3.5.1 The individual JPP may provide for JPRs to be held either in whole or in part between GBR and two or more Train Operators including GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) where those

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Train Operators are all reasonably likely to be materially affected by the matters to be addressed.

L.3.6 Documentation of the Process and Amendments

L3.6.1 The individual JPP between the relevant Train Operators and GBR (and where relevant other access beneficiaries and/or GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services)) shall be agreed by the latest of three months after the date of the relevant Access Agreement between the Train Operator and GBR and shall be documented in writing signed by the Train Operator and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services). Once agreed, the relevant Train Operator(s and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), as the case may be), may at any time propose amendments to the process which are consistent with the requirements of this Condition L and the relevant Train Operator(s and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services)) shall then discuss the proposed amendments with a view to agreeing whether and, if so, what amendments should be made.

L.3.7 Notice to GBR

3.7.1 If the individual JPS and JPIP is not agreed by the time specified in Condition L3.6.1 or if any proposed amendment to the process is not resolved within three months of its first being raised in writing, the relevant Train Operator may give notice to GBR requesting a meeting at which a suitably senior representative is present.

L.4 JOINT PERFORMANCE STRATEGY AND JOINT PERFORMANCE IMPROVEMENT PLAN

L.4.1 Parties to a JPS and JPIP

L4.1.1 Except to the extent that it is agreed otherwise under Condition L7.1, GBR and each Train Operator shall agree a JPIP which covers all the parts of the Network over which that Train Operator has rights of access. This does not preclude a JPIP being agreed between GBR and more than one Train Operator.

L.4.2 Period

L4.2.1 Each JPIP shall specify the period to which it relates. It is anticipated that elements of a JPIP may relate to differing periods, reflecting the short, medium or long term nature of the plans concerned. The JPS, however, should consider a rolling 5 year time horizon.

L.4.3 Contents of a JPIP

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L4.3.1 A JPIP shall contain such matters as are agreed between the JPIP Parties as being designed to achieve the Performance Objectives for the period covered by that JPIP, including:

- (a) performance metrics to be used for local reporting on performance, the information to be provided by each party to the other for the purpose of such reporting, the format for regular reporting of performance and any more detailed process required to support the compilation, review and agreement of such reports;
- (b) performance targets in respect of the JPIP Party or Parties, which may include,
 - (i) stretch targets,
 - (ii) performance levels at which a Remedial Plan will be established;
 - (iii) where the relevant JPIP Party operates rail passenger services pursuant to a concession, the performance levels at which a shortfall in performance shall be notified to the appropriate concession letting authority, including Transport for London, Passenger Transport Executives, the Scottish Ministers, and the Welsh Government; and
- (c) specific actions planned to be taken by one or both of the JPIP Parties (either together or separately and whether or not involving third parties) which are designed to help improve performance generally or to help achieve any stretch performance targets in the JPS or (where these targets have been met) to maintain performance at least at these levels and to achieve further performance improvements which are reasonably practicable.

L.4.4 Review of JPIP

L4.4.1 The JPIP Parties shall maintain the JPS and JPIP under regular ongoing review and shall make such amendments as are agreed as being designed to maintain or improve the achievement of the Performance Objectives.

L.4.5 Compatibility of JPIPs

Without prejudice to the Performance Objectives in relation to improvement of the rail industry as a whole, each JPIP Party shall endeavour to ensure, so far as is reasonable, that:

- (a) no JPIP contains actions, targets or performance levels that are incompatible with actions, targets or performance levels included in other JPIPs, or which are known, or could reasonably be expected to be known, by it to conflict with any other obligations of that JPIP Party; and
- (b) a JPIP shall not be inconsistent with the continued development of performance arrangements where the JPIP spans, or ends upon, the end of an access contract

L.5 REMEDIAL PLANS AND FAILURE TO AGREE

L.5.1 Remedial Plan

If at any time:

- (a) one or more of the performance targets (other than any which is described as a stretch performance target) contained in a JPIP is not achieved; or
- (b) in the opinion of either JPIP Party, any performance target (other than any which is described as a stretch performance target) contained in a JPIP will not be achieved within the time periods set out in that JPIP; or
- (c) if the JPIP specifies that a Remedial Plan is required at a particular level of performance and that level has been reached,

then the JPIP Parties shall use all reasonable endeavours to agree specific actions for inclusion in the JPIP which are designed to restore the level of performance as soon as reasonably practicable (with the timescales for the restoration being specified) to at least the level of that performance target or Remedial Plan trigger point as specified to be achieved by that time (a “Remedial Plan”).

L.5.2 Escalation

L.5.2.1 If:

- (a) the JPIP Parties are unable to agree a JPIP or any amendment to a JPIP proposed by either of them; or
- (b) the JPIP Parties are unable to agree regarding the reasons for any particular shortfall in performance or the actions which either or both should be taking to address that shortfall in performance; or
- (c) the JPIP Parties are unable to agree a Remedial Plan where one is required by this Condition; or
- (d) a Remedial Plan is considered by either JPIP Party to be unlikely to be effective, or has not proved to be effective in each case in achieving the required level of performance and the JPIP Parties have been unable to agree further amendments to the Remedial Plan to take account of that actual or anticipated failure; or
- (e) where the JPIP Plan sets levels at which a shortfall in performance is to be notified to GBR and/or the appropriate option holder, and those levels have been reached,

then either JPIP Party may give notice to each other setting out the circumstances that have led to the relevant shortfall in performance or lack of agreement, as the case may be. The relevant parties shall, within 14 days of that notification (or within such other period as may be agreed) consider those concerns at a JPR or other meeting at which each will ensure that a suitably senior representative is present.

The JPIP Parties may, in considering those concerns, agree means of resolution, but are not bound to do so.

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- L.5.2.2 Should there be a continuing failure to agree a remedial plan or amendment to a plan in line with L5.2.1 then either part may after a further period of 28 days after the end period of any plans or actions (including mediation) resulting from the JPR meeting pursuant to L5.2.1, either access party may give notice of its concerns to;
- a) any option holder whose rights are drawn down into any relevant contract,
 - b) any relevant concession awarding body, or
 - c) any train operation or infrastructure management licensing body,
- accompanied by such supporting evidence as the JPIP Party giving the notice considers appropriate. Any such notice shall be copied at the same time together with the accompanying supporting information by the party serving that notice to the other JPIP Party.

L.6 PERFORMANCE REPORTING

- L.6.1 Each Train Operator and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) shall provide to the other, information in its possession or under its control reasonably required by the other for the purposes of any Joint Performance Review or the agreement of any JPIP to which that Train Operator is a party.
- L.6.2 JPIP Parties shall keep under regular review the terms of the JPIP relating to the regular reporting and review of performance, recognising that there are efficiencies and other benefits to be secured through the adoption of common formats and processes of such reporting across the Network and that these are expected to evolve over time. Accordingly, and without prejudice to any arrangements in a JPIP which are specific to monitoring initiatives or aspects of performance particular to that JPIP, a JPIP Party shall not unreasonably withhold its consent to proposals for change to the JPIP insofar as they relate to changes to such common formats and processes of reporting in circumstances where such changes have been agreed between GBR and a majority of other Train Operators.

L.7 APPLICATION

- L.7.1 Limited Application
- L.7.1.1 Where the nature of the Capacity Commitments enjoyed by a Train Operator is such that the Performance Objectives would not be usefully served by the full application of this Condition L, GBR and that Train Operator may agree the extent to which this Condition L shall be applied as regards that Train Operator.
- L.7.2 Revision of Limited Application
- L.7.2.1 If either party is subsequently of the opinion that the circumstances have become such that the Performance Objectives would be usefully served by the full application, or a different application, of Condition L, then that party may by notice to the other require the review of that agreement or revoke it.

Part M - Disputes

M.1 Disputes

1.1 Overview

- 1.1.1 Part M sets out the arrangements in relation to Disputes under the GBR Code.
- 1.1.2 Disputes may relate to both contractual access and commercial matters where the relevant Access Agreement and this GBR Code allow.
- 1.1.3 Nothing in this Part M or any action of a Dispute Resolution Body shall limit or restrict the exercise of any statutory or contractual right of appeal to the ORR at any time insofar as the relevant party has such a right.
- 1.1.4 GBR may from time to time designate (appoint and/or remove) a Dispute Resolution Body or Bodies for the purpose of this GBR Code. GBR shall publish notice of any designation made pursuant to this Part M.
- 1.1.5 Disputes may be managed through a binding Determinative Process only as set out in both this Part M and where the parties have contracted to do so.
- 1.1.6 Where a Determinative Process is followed, the Dispute Resolution Body shall make a separate appeals stage available to the parties as part of its rules. This stage may include a choice of appeal routes for mutual agreement including but not limited to Mediation, Arbitration or Expert Determination.
- 1.1.7 Disputes on matters within the statutory scope of appeal to the ORR under the Act may be managed only through a Facilitative Process under this Part M. Other matters may be subject to a Facilitative Process under this this Part M where the parties have contracted to do so.
- 1.1.8 Where a Facilitative Process is followed, the Dispute Resolution Body shall offer a choice of facilitative processes to be selected by mutual agreement between the dispute parties including but not limited to mediation, non-binding arbitration, or expert determination.
- 1.1.9 Where either party wishes to expedite a matter subject to appeal to the ORR under the Act they may terminate a Facilitative Process without prejudice.
- 1.1.10 The creation of a Dispute under this Part M shall not automatically set aside any decision of GBR which is the subject of that dispute process.

M.2 Processing of Disputes

- 2.1 Disputes may be raised by any Access Beneficiary in accordance with the relevant Access Agreement and this GBR Code.

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- 2.2 The Dispute Resolution Body shall receive and manage all Disputes in accordance with the GBR Code, any relevant provisions in the relevant Access Agreement or Access Option and its Rules of Procedure.
- 2.3 Where, at any point, the terms of this GBR Code and the rules or processes of the Dispute Resolution Body conflict, this GBR Code shall prevail.
- 2.4 Disputes shall be appropriately routed with the assistance of the Dispute Resolution Body to either a Determinative Process or a Facilitative Process in accordance with the relevant Access Agreement or Access Option and this GBR Code. Under exceptional circumstances the Dispute Resolution Body may decline the handling of a Dispute where it believes the matter would be more appropriately heard immediately by the ORR, or where the matter is subject to court or comparable proceedings where such proceedings are permitted in the relevant Access Agreement, Access Option or GBR Code.
- 2.5 The Dispute Resolution Body shall have due regard to the Act when considering the appropriate routing of a dispute and shall where necessary consult the ORR and share such information as may be necessary to seek the ORR's advice on whether a matter is within the ORR's jurisdiction for appeal.
- 2.6 Matters outside the scope of the Dispute Resolution Body's jurisdiction include:
- a) those matters that may be appealed to the ORR under sections 59(6), 60(6), 64(8), and 65(7) of the Act - including schemes, policies, documents and decisions established under GBRs Access and Use Policy, Infrastructure Capacity Plans, Engineering Access Statements and Timetable Planning Rules, and provisions contained in a Performance or Changing Scheme; and
 - b) anything not specifically set out in an Access Agreement, Access Option or this GBR Code as being subject to consideration by the Dispute Resolution Body.
- 2.7 If any party to a Dispute believes that the Dispute has been incorrectly deemed to be a matter falling outside the scope of appeal to the ORR under the Act (and has therefore been wrongly allocated to a Determinative Process) they may terminate the Determinative Process without prejudice. Any decision by GBR to terminate the Determinative Process may be appealed to the ORR where such appeal lies pursuant to section 67 of the Act.

M.3 Determinative Dispute Procedure

- 3.1 Determinative Process procedures may be used for matters outside of the ORR's appeals jurisdiction under the Act. Such Disputes need not be subject to a Facilitative Process in advance of being heard by a panel or other process established for timetabling disputes.

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- 3.2 If the Dispute Resolution Body finds in favour of the disputing party under this Part M3 it may quash all or part of a decision appealed against. If the Dispute Resolution Body quashes all or part of a decision it may, in addition, remit all or part of the decision to GBR for reconsideration or substitute its own decision for the decision in question, but only if the quashing is on the ground that there has been an error of law and, without the error, there would have been only one decision which GBR could have reached.
- 3.2 Determinative Process procedures may be used as set out in Access Agreements or Access Option for commercial matters that fall outside of the ORR's appeals jurisdiction under the Act. These may include:
- a) disputes as set out in the Access Agreements, Access Option and this GBR Code on specified matters of debts, compensation, damages, and claims arising from the Access Agreement, Access Option or GBR Code;
 - b) agreeing the extent of Qualified Information under the GBR Code;
 - c) any other commercial matters identified in a relevant Access Agreement or Access Option.
- 3.3 A Dispute on matters related to Condition M3.2 may first be subject to a Facilitative Process selected by agreement between the Dispute parties including mediation, non-binding arbitration or expert determination.
- 3.4 Where any Determinative Process is followed, the Dispute Resolution Body shall make a separate appeals stage available where either GBR or another party to the Dispute does not accept the outcome.
- 3.5 An appeal against a Determinative Process outcome may be subject to a choice of appeal routes for agreement between the parties, including mediation, arbitration or expert determination. Where the parties cannot agree an appeals process under M3.5 in a reasonable period of time the Dispute Resolution Body shall determine the most appropriate process.
- 3.7 Where the parties accept a Determination pursuant to M3.1 or M3.3, or where any appeals made pursuant to M3.4 - 3.6 have been finally concluded, including an associated review of such appeal outcome, GBR and all affected parties shall comply with the accepted Determination or final conclusion of the appeal process, as the case may be.

M.4 Facilitative Dispute Procedure

- 4.1 Notwithstanding M2.4, Disputes within the scope of appeal to the ORR under the Act may only be managed through a Facilitative Process under this Part M.
- 4.2 The Facilitative Process may be used for:

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- a) any action or specific decision by GBR appealable to the ORR pursuant to sections 61, 62, or 67 in so far as it applies to ((59(2)c) of the Act, or
 - b) provision contained in a Charging Scheme or Performance Scheme, or
 - c) any other matters specifically identified as subject to a Facilitative Process in the relevant Access Agreement or the GBR Code.
- 4.2 Other contractual matters may be subject to a Facilitative Process under this Part M at any point where the parties agree.
- 4.3 Where a Facilitative Process is to be followed, the Dispute Resolution Body shall offer a choice of Facilitative Processes to be selected by agreement between the Dispute parties including mediation, non-binding arbitration or expert determination. Where no agreement can be reached in a reasonable period of time the Dispute Resolution Body shall determine the most appropriate process.
- 4.4 The outcome of a Facilitative Process shall not automatically amend, replace or set aside any decision of GBR which is the subject of that Facilitative Process.
- 4.5 Upon receipt of the outcome, decision or recommendation of a Facilitative Process;
- a) the disputing Access Beneficiary shall:
 - i) consider the outcome, decision or recommendation and
 - ii) within 10 Working Days of receipt of the outcome, decision or recommendation, notify the relevant parties in writing of whether it accepts or rejects, in whole or in part, the outcome, decision or recommendation, together with its reasons for that decision;
 - b) GBR shall:
 - i) consider the outcome, decision or recommendation and
 - ii) within 10 Working Days of receipt of the outcome, decision or recommendation, notify the relevant parties in writing of whether it accepts or rejects, in whole or in part, the outcome, decision or recommendation, together with its reasons for that decision.
- 4.6 The outcomes, decisions, or recommendations of a Facilitative Process shall be non-binding on all parties save to the extent that GBR accepts, in whole or in part, the relevant outcome, decision or recommendation in accordance with M4.5(b) or in accordance with M4.7.
- 4.7 Where the parties to the Dispute agree to the same outcome, decision or determination in full, or agree the same part only, then GBR shall be entitled to take the relevant steps to implement the outcome, decision or recommendation, or part thereof.

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- 4.9 Where any party to the Dispute wishes to expedite a matter falling within the scope of appeal to the ORR under the Act they may terminate a Facilitative Process without prejudice.
- 4.10 In addition to any underlying decision that may be appealable to the ORR, a decision by GBR not to accept the outcome, decision or recommendation of a Facilitative Process, in so far as it relates to access to or the use of GBR infrastructure for the operation of trains or a Charging Scheme or Performance Scheme, may be appealed to the ORR where such appeal lies pursuant to section 67 of the Act.
- 4.11 A party may elect to appeal directly to the Office of Rail and Road the subject matter of a Facilitative Process insofar as the relevant party has such a right.

M.5 Status of decisions pending appeals

- 5.1 Matters that are within the statutory scope of appeal to the ORR under the Act shall only have been managed through a Facilitative Process under this Part M.
- 5.2 Pending the final resolution of any appeal made:
- a) to an appeals process managed by the Dispute Resolution Body pursuant to M3.4-3.6; or
 - b) to the ORR during or after a Facilitative Process pursuant to M4.9-4.11; or
 - c) at any point insofar as the relevant party has such a right,
- then the most recent decision formally notified by GBR shall continue to apply unless:
- a) otherwise agreed by the affected parties;
 - b) otherwise required by the GBR Code; or
 - c) otherwise directed or determined by an arbitrator or equivalent arbiter or ORR on an interim basis.

M.6 Operational Continuity

- 6.1 The existence of a Facilitative Process or an appeal to the ORR pursuant to M4 shall not, of itself, automatically suspend the operation of a decision of GBR.

M.7 Appeals Against Facilitative Process outcomes, decisions or recommendations

- 7.1 For the avoidance of doubt, appeals to the ORR shall follow the procedures established for such appeals, including by the ORR.
- 7.2 Any person who is entitled to do so may;
- a) commence further dispute resolution in accordance with the relevant Access Agreement or Access Option; or
 - b) exercise any right of appeal, review or reference available under applicable legislation.

M.8 No Restriction on ORR Jurisdiction

- 8.1 Nothing in this Part M shall limit or affect the jurisdiction, function or statutory powers of the ORR.
- 8.2 Nothing in this Part M shall impose any obligation on the ORR.