



# Heathrow Airport Ltd – Rail Network Code

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# Preface

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## Preface

The HAL Network Code is a set of rules which is incorporated by reference into, and therefore forms part of, each bilateral access contract between HAL and a holder of access rights. It does not create any contractual relationship between operators of trains.

The purpose of the HAL Network Code is;

- 1) To regulate change, including change to the working timetable, change to railway vehicles specified in an access contract, change to the network and change to the HAL Network Code itself;
- 2) To establish a performance monitoring system; and
- 3) To establish procedures in the event of operational disruption.

The HAL network code and other access documentation can be found at:

<http://www.heathrow.com/company/company-news-and-information/rail-regulation>

This Preface does not form part of the HAL Network Code.

# Part A: General Provisions

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## Explanatory Note

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

## Condition A1: General

### 1.1 General interpretation

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

In this code, unless the context otherwise requires:

- This code  
References to this code means this code as modified from time to time.
- Parts, Conditions and paragraphs  
References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of this code.
- Definitions in the Act  
Terms and expressions defined in the Act shall, unless the contrary intention appears, have the same meaning in this code.
- Statutory provisions  
References to statutory provisions shall be construed as references to those provisions as amended or re enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re enactments (whether with or without modification).
- Interpretation Act  
Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this code and the rules of interpretation contained in that Act shall apply to the interpretation of this code.
- Include  
The words “include” and “including” are to be construed without limitation.
- Other documents  
Any agreement, instrument, licence, standard, timetable, code or other document referred to in this code or entered into, approved, authorised, accepted or issued by a person pursuant to this code shall be construed, at the particular time, as a reference to that agreement, instrument, licence, standard, timetable, code or other document, as it may then have been amended, varied, supplemented or novated.
- Conflict  
In the event of any conflict of interpretation between this code and an Access Agreement (not including this code) the following order of precedence shall apply:
  - this code; and
  - the Access Agreement.
- Time limits  
Where in this code any obligation of an Access Party is required to be performed within a specified time limit that obligation shall continue after that time limit if the Access Party fails to comply with that obligation within the time limit.
- Headings  
The headings and references to headings shall be disregarded in construing this code.
- Ruling language  
All notices served under this code shall be in the English language.

# Part A: General Provisions

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## 1.2 Definitions

In this code, unless the context otherwise requires:

- **“Act”**  
means the Railways Act 1993 as amended;
- **“Access Agreement”**  
means any particular access contract, whether or not entered into pursuant to any directions of the ORR under the Act, incorporating this code;
- **“Access Beneficiary”**  
means, in respect of an Access Agreement, the Train Operator or Access Option Holder who is party to that Access Agreement;
- **“Access Dispute Resolution Rules” or “ADRR”**  
means the set of rules regulating the resolution of disputes, entitled “Access Dispute Resolution Rules” and annexed to this code at;
- **“access option”**  
has the meaning ascribed to it in section 17(6) of the Act;
- **“Access Option Holder”**  
means any person who may exercise an access option in respect of a railway facility:
  - (a) that is not a station and
  - (b) in respect of which the facility owner is HAL;
- **“Access Parties”**  
means, in respect of an Access Agreement, HAL and the Access Beneficiary who are party to that Access Agreement;
- **“Affiliate”**  
means, in relation to any company:
  - (a) a company which is either a holding company or a subsidiary of such company; or
  - (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,and for these purposes, “holding company” and “subsidiary” have the meanings ascribed to them in section 736 of the Companies Act 1985;
- **“Change of Law”**  
means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to:
  - (a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or
  - (b) value added tax;
  - **“Competent Authority”**  
means any local, national or supra national agency, authority, department, inspectorate, minister,

# Part A: General Provisions

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ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the ORR) whether of the United Kingdom or of the European Union, which has, in respect of an Access Agreement, jurisdiction over either or both of the Access Parties to, or the subject matter of, that agreement provided that “Competent Authority” shall not include Her Majesty’s Government (or any department, minister, official or nominee of it) where acting as shareholder of the Access Party in question or other than pursuant to the Crown prerogative or a statutory function or power;

- **“Direction”**  
means, in respect of an Access Agreement, any direction, requirement, instruction or rule binding on either or both of the Access Parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force;
- **“hard copy information”**  
means any relevant item which it is not reasonably practicable for HAL to publish on its website, having regard, in particular, to whether such relevant item is, or is likely to be:
  - (a) Unavailable in electronic form; or
  - (b) Incapable of being downloaded and/or printed by any class of persons accessing HAL’s website; or
  - (c) Exceptionally costly to publish on its website;
- **“Legal Requirement”**  
means (for the purpose of the definition of Change of Law), in relation to any person, any of the following:
  - (a) Any enactment to the extent that it applies to that person;
  - (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that person or a decision taken by the said Commission which is binding on that person to the extent that it is so binding; and
  - (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;
- **“HAL infrastructure”**  
means the infrastructure in respect of which HAL is the facility owner and which is situated in England;
- **“HAL Network Change”**  
has the meaning ascribed to it in Part G of this code;
- **“HAL Network Code”**  
means the document entitled “HAL Network Code”;
- **“HAL Network Statement”**  
means the document entitled the “Heathrow Network Statement”;
- **“HAL”**  
means Heathrow Airport Limited, incorporated in England and Wales (under registered number; 01991017)
- **“non-sensitive version”**  
means a version of a relevant item:

# Part A: General Provisions

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- (a) from which sensitive information has been excised; and/or
- (b) in which sensitive information has been replaced by a summary containing no sensitive information;
- “Network Rail Network Code”**
- means the document published by Network Rail which applies in relation to the operation of railway vehicles on the Wider UK Rail Network;
- “ORR”**
- means the Office of Rail and Road;
- “Potential Access Party”**
- means any person who proposes in good faith to enter into an Access Agreement or become an Access Option Holder provided that such person has first undertaken to HAL to be bound by the relevant provisions of the HAL Network Code and the ADRR;
- “publish on a website”**
- means, in relation to any specified information to be published on a website, placing such specified information on the relevant website in a prominent position and with links which enable visitors to that site to locate it quickly and without difficulty;
- “Regulations”**
- the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as may be amended from time to time;
- “relevant ADRR Panel”**
- means the Panel established under Part E of the Access Dispute Resolution Rules which is to determine a relevant dispute in accordance with the principles and procedures set out in Part A of the Access Dispute Resolution Rules;
- “relevant item”**
- means, in respect of any specified information, the whole or part of any information, statement, proposal, draft, instrument or other document which constitutes or forms part of that specified information;
- “Routes”**
- means, in respect of an Access Agreement, those parts of the HAL infrastructure which a Train Operator has permission to use pursuant to that agreement;
- “Secretary”**
- has that meaning given to it in the ADRR;
- “secure information”**
- means a relevant item, the publication of which may, in the reasonable opinion of HAL, create any risk to the safety or security of the HAL infrastructure;
- “sensitive information”**
- means a relevant item, the publication of which by HAL:
- (a) is likely materially to compromise or otherwise prejudice the commercial interests of any Access Party or any of its Affiliates; or

# Part A: General Provisions

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(b) may reasonably be expected seriously and prejudicially to affect the interests of any person;

- **“Services”**  
means, in respect of an Access Agreement:
  - (a) the services for the carriage of passengers by railway;
  - (b) the services for the carriage of goods by railway; and
  - (c) any other train movement for the purpose of testing the physical or operational characteristics or capabilities of any railway asset,in each case as provided for in that agreement;
- **“specified information”**  
means any information, statement, proposal, draft, instrument or other document;
- **“Track Access Contract Parties” or “TAC Parties”**  
means, in respect of any Access Agreement other than an access option, HAL and the Train Operator who are party to that Access Agreement;
- **“Train Crew”**  
means those persons on a train responsible for the operation of that train;
- **“Train Operator”**  
means (without prejudice to Condition A1.3), in respect of an Access Agreement, a person (whether or not an operator of trains) who has permission to use track pursuant to that agreement;
- **“Wider UK Rail Network”**  
means the network owned and operated by Network Rail to which the HAL infrastructure abuts;
- **“Working Day”**  
means each of Monday to Friday (inclusive) excluding common law and statutory public holidays; and
- **“Working Timetable”**  
means as set out in Condition D2.1 and 2.1.6.

## 1.3 References to Train Operator

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

## 1.4 Notices

1.4.1 Any notice, consent or approval to be given under this 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

# Part A: General Provisions

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- (b) e-mail to the e-mail address of the intended recipient most recently provided by the intended recipient to the sender.
- 1.4.2 Where any notice, consent or approval is given by e-mail in accordance with Condition A1.4.1 (b), 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.
- 1.4.3 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.

## 1.5 **Good faith**

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

## Condition A2: Standards Of Documentation

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

## Condition A3: Publications

### 3.1 General Obligation

- 3.1.1 Where in this code HAL is required to publish any specified information, that obligation is an obligation to ensure that the specified information:
  - (a) is, subject to Condition A3.1.3, brought to the notice of every Train Operator, every Access Option Holder, Transport for London and the ORR and the Secretary of State.
  - (b) is published on its website.
- 3.1.2 The obligation of HAL under Condition A3.1.1 shall have full effect on and from the date on which Condition A3 comes into effect unless the ORR has given a notice stating:
  - (a) a later date on which Condition A3.1.1 shall have effect; and
  - (b) its reasons,in which event Condition A3.1.1 shall have effect on and from the date stated in the notice.

#### 3.1.3

- (a) Any person to whom HAL owes an obligation under Condition A3.1.1(a) may give notice to HAL at any time stating that it does not wish to have information of any type or class brought to its notice under Condition A3.1.1(a).
- (b) If a person gives notice under Condition A3.1.3(a) HAL's obligation under Condition A3.1.1(a) to such person shall not apply to the extent stated in the notice.
- (c) A person who has given notice under Condition A3.1.3(a) may revoke or modify its notice at any time by further notice to HAL.

# Part A: General Provisions

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## 3.2 Sensitive information

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

## 3.3 Secure Information

Where in this code HAL 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 HAL owes an obligation under Condition A3.1.1(a), subject to Condition A3.1.3, with a paper copy of the relevant item; and

(b) complies with requests of the kind specified in Condition A3.3(a)(ii).

## 3.4 Hard copy information

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

(a) indicates on its website:

- (i) the nature of the relevant item; and
- (ii) that it will comply with all reasonable requests to supply any person with a paper copy of the relevant item; and

(b) complies with requests of the kind specified in Condition A3.4(a)(ii).

## 3.5 Hard copy sensitive information

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

(a) indicates on its website:

- (i) the nature of the relevant item; and
- (ii) that it will comply with all reasonable requests to supply any person with a paper copy of the non-sensitive version of the relevant item; and

(b) complies with requests of the kind specified in Condition A3.5(a)(ii).

## 3.6 Determination

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

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

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

## 3.7 Non-sensitive versions

# Part A: General Provisions

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- 3.7.1 Any person who is obliged to submit specified information to HAL may submit a non-sensitive version of particular relevant items, provided that he also submits such relevant items in their entirety and HAL shall publish the non-sensitive version of those relevant items.
- 3.7.2 If no non-sensitive version of a particular relevant item is submitted to HAL, HAL shall be entitled to assume that the relevant item does not contain any sensitive information and shall publish that relevant item in its entirety.

**3.8 Appeals**

- 3.8.1 If any Access Party is dissatisfied with a determination made by:
  - (a) HAL under Condition A3.6.1(b) or A3.6.2; or
  - (b) any other person under Condition A3.6.1(a),it may refer the matter for determination in accordance with the ADRR.
- 3.8.2 If any Access Party or Potential Access Party is dissatisfied with any decision of the relevant ADRR Panel in relation to any matter referred to it under Condition A3.8.1, that Access Party may refer the matter to the ORR for determination under Part M.

## Condition A4: Notice By The ORR

### 4.1 Giving of Notice

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

- (a) may be given from time to time; and
- (b) shall only have effect if it has been:
  - (i) given to every Access Party, the Secretary of State, and every other person who has notified the ORR that it wishes to receive any such notice; and
  - (ii) published on its website and placed on the register maintained under section 72 of the Act (as a document issued or made by it under an access agreement).

### 4.2 Deemed Receipt

A notice given under this 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.

### 4.3 Reasons for decisions

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

## Condition A5: Limitation On Liability

### 5.1 General

# Part A: General Provisions

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

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

## 5.2 Saving

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

## Condition A6: Contracts (Rights Of Third Parties) Act 1999

### 6.1 Application to third parties

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

### 6.2 Application to HAL Network Code

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

## Condition A7: Consultation

### 7.1 Consultation by a meeting

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

# Part B: Performance Monitoring

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## Explanatory Note

- A. Part B provides for the establishment by HAL of a Performance Monitoring System, designed to record whether trains pass specified monitoring points, the times at which they do so and the difference between those times and the corresponding scheduled times. The system is also designed to enable HAL to determine and record the cause of any delay or cancellation. Provision is made for HAL to notify and seek agreement from Affected Train Operators as to the cause of any such delay or cancellation, and there are procedures specified for resolving cases where HAL and a Train Operator disagrees as to cause.
- B. Allows for all aspects of monitoring of performance on the HAL infrastructure to be undertaken on HAL's behalf by a suitably competent and resourced third party.
- C. Establishes that the monitoring of performance on the HAL infrastructure will be overseen by the Delay Attribution Board which oversees the monitoring of performance on the Wider UK Rail Network. It also establishes that the Delay Attribution Guide which applies to the Wider UK Rail Network will be used as the basis for the attribution of performance incidents on the HAL infrastructure.
- D. Train Operators are given the right to notify HAL if the Performance Monitoring System is not fit for purpose and require HAL to investigate the grounds for such notification and report on its findings.
- E. HAL and Affected Train Operators are given the right to audit and inspect the records and monitoring equipment of the relevant Performance Monitoring System and to require tests of the Performance Monitoring System to be carried out in the presence of an independent expert.
- F. Part B also incorporates the Performance Data Accuracy Code, which applies to the Wider UK Rail Network, and which encompasses defined standards of accuracy of performance data.
- G. This Explanatory Note does not form part of the HAL Network Code.

# Part B: Performance Monitoring

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## DEFINITIONS

In this Part B, unless the context otherwise requires:

**“Affected Train Operator”**

means a train operator who holds an Access Agreement entitling it to operate on the HAL infrastructure

**“Board”**

means the Delay Attribution Board which has been established in accordance with Condition B6.2 of the Network Rail Network Code for the Wider UK Rail Network;

**“Board Secretary”**

means the secretary of the Board;

**“Class”**

has the meaning given to it in Part C of the Network Rail Network Code for the Wider UK Rail Network;

**“Delay Attribution Principles and Rules”**

means, subject to Condition A1.1(g), the document which provides guidance on the attribution of delay across the Wider UK Rail Network , entitled “Delay Attribution Principles and Rules” as issued by the Board;

**“Delay Code”**

has the same meaning as referred to in the Delay Attribution Principles and Rules;

**“Member”**

means a means a member of the Board and “Board Member” shall be construed accordingly;

**“Performance Data Accuracy Code”**

means the code relating to the standards of performance data accuracy entitled “Performance Data Accuracy Code” as issued by the Board;

**“Performance Monitoring System”**

means the system for monitoring train performance described in Condition B1;

**“Proposal for Amendment”**

means any proposal to amend the Delay Attribution Principles and Rules or the Performance Data Accuracy Code; and

**“Responsible Manager Code”**

has the same meaning as referred to in the Delay Attribution Principles and Rules.

## 1 CONDITION B1 - PROCEDURES FOR MONITORING PERFORMANCE

### 1.1 Performance Monitoring System

1.1.1 HAL shall operate, or shall procure the operation of, a non-discriminatory system for monitoring train performance which accurately records:

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

1.1.2 HAL is permitted to sub-contract the undertaking of all activities relating to the monitoring of performance

# Part B: Performance Monitoring

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to a suitably competent and resourced organisation. References to HAL in this Part B can be construed as including such suitably competent and resourced organisation.

1.1.3 No later than 3 months prior to the commencement of any Railway reporting year HAL will advise all Affected Train Operators whether it intends to sub-contract the undertaking of all activities relating to the monitoring of performance for that Railway reporting year and in which case will provide details of the organisation to whom those activities will be sub-contracted including all relevant contact details.

**1.2 The Performance Data Accuracy Code**

1.2.1 Incorporation

The Performance Data Accuracy Code which applies to the Wider UK Rail Network will be adopted in its entirety for the HAL infrastructure and is incorporated into and shall form part of this code.

1.2.2 Obligations and Rights

Each Affected Train Operator shall observe and perform its obligations, and shall have the benefit of its rights, under the Performance Data Accuracy Code. For the purpose of Condition B1.1 "accurately" shall be construed in accordance with the Performance Data Accuracy Code.

**1.3 The Delay Attribution Principle and Rules**

The Delay Attribution Principles and Rules which apply to the Wider UK Rail Network will be adopted in their entirety for the HAL infrastructure and are incorporated into and shall form a part of this code.

## CONDITION B2 - DIAGNOSIS OF DELAYS OR CANCELLATIONS

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

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

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

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

- information from any computerised or other recording system which HAL may, for the time being, be permitted to use for the purposes of a particular Access Agreement;
- information supplied by Network Rail including information supplied by signallers employed by Network Rail and other persons duly authorised to participate in the signalling of trains;
- information supplied by any operator of trains, whether such information is within its knowledge or based on information supplied by other operators of railway assets;
- information supplied by HAL, whether such information is within HAL'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, HAL or other operators of railway assets; and
- information and guidance set out in the Delay Attribution Principles and Rules.

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

2.3.1 Notification of delays or cancellations

HAL shall, as soon as reasonably practicable following the occurrence of any train delay or cancellation affecting an Affected 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 HAL to that operator via the TRUST System as used by the Wider UK Rail Network. Any such notice shall be sent to such persons as that Affected Train Operator shall have nominated for the purposes of this Condition B2.3.1.

2.3.2 Consideration by an Affected Train Operator

# Part B: Performance Monitoring

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An Affected Train Operator shall consider each delay or cancellation attributed to it by HAL and, if that Affected Train Operator wishes to refer the attribute on for further investigation, it shall notify HAL within two clear Working Days of the relevant notice pursuant to Condition B2.3.1, and at the same time provide to HAL, its reasons for doing so. Any notification of such referral shall be sent to such persons as HAL shall have nominated for the purposes of this Condition B2.3.2, and whom may be employed by the organisation sub-contracted by HAL to undertake the monitoring of performance.

## 2.3.3 Agreement of delay attribution

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

## 2.4 Matters referred for further investigation

### 2.4.1 Procedure for conducting further investigation

The representatives nominated by HAL and the Affected Train Operator pursuant to Condition B2.3, shall attempt to resolve any matter referred for further investigation by that Affected Train Operator pursuant to Condition B2.3.2 within the next two clear Working Days after receipt by HAL of notification for referral (or such longer period as that Affected Train Operator and HAL agree in order to conclude their investigation). Such further investigation shall take into account all relevant circumstances of the case and the guidance set out in the Delay Attribution Principles and Rules.

### 2.4.2 Referral for senior manager review

If agreement has not been reached within the two clear Working Days referred to in, or such longer period as agreed pursuant to, Condition B2.4.1, then, the designated senior manager appointed by the Affected Train Operator and the designated senior manager appointed by HAL, in each case for the purposes of this Condition B2.4.2, shall review the matter for no more than 20 Working Days, unless HAL and that Affected Train Operator agree within those 20 Working Days to a longer period of review.

### 2.4.3 Referral to the Board for guidance

(a) If HAL and the Affected Train Operator are unable to agree on the attribution within the 20 Working Day (or agreed longer) review period by the designated senior managers in accordance with Condition B2.4.2, then the parties involved in the dispute shall notify the Board Secretary (by any electronic communication method made available by the Board Secretary for such purposes) of their wish to seek guidance from the Board on the appropriate application of the Delay Attribution Principles and Rules (provided that either party may proceed to notify alone where the other does not do so) in the following regards:

- i. the interpretation of the Delay Attribution Principles and Rules and associated guidance documents;
- ii. the attribution of delay principles that are not explicitly documented by the Delay Attribution Principles and Rules or associated guidance documents; and
- iii. the correct Delay Code and/or Responsible Manager Code to be used in respect of any incident referred to it,

provided further that in offering such guidance, the Board will not carry out any investigations into the facts surrounding the incident which is the subject of the referral, or, where the incident which is the subject of the referral concerns a fleet or infrastructure asset failure, provide

# Part B: Performance Monitoring

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technical insight into the causes of any such failure.

(b) In notifying the Board of its wish to seek guidance pursuant to Condition B2.4.3(a), the Affected Train Operator, HAL or both (as the case may be) shall provide the Board Secretary with the following information as a minimum:

- i. the incident number under dispute; and
- ii. the contact details of the designated senior managers appointed pursuant to Condition B2.4.2,

and if the notification is not made on a joint basis, the referring party shall ensure that the other party to the dispute has been notified of the referral.

## 2.4.4 If referred to the Board for guidance

- (a) No more than 56 days after the date of the Board Secretary's acknowledgement of a notice requesting guidance from the Board pursuant to Condition B2.4.3, both HAL and the Affected Train Operator or, in the case of a single party making a request for guidance from the Board pursuant to Condition B2.4.3, the party making such request, shall provide to the Board Secretary, copy(ies) of the completed request for guidance forms in connection with the dispute.
- (b) Following receipt by the Board Secretary of a completed request for guidance form by an Affected Train Operator and/or HAL pursuant to Condition B2.4.4(a):
  - i. the Board shall convene a Board meeting no less than 35 days after receipt in order to consider potential guidance and provide prompt notice thereof to the Affected Train Operator and HAL, inviting them to attend; and
  - ii. where the meeting has been convened and notified in accordance with Condition B2.4.4(b)(i), the Affected Train Operator and HAL shall each make reasonable efforts to attend, or be represented at, the meeting.

## 2.4.5 No guidance from the Board

Where the Board does not provide guidance on a matter referred to it, the Board shall provide HAL and the Affected Train Operator with reasons for not doing so by way of a written explanation.

## 2.4.6 Referral for guidance from the Board does not resolve dispute

If, within 10 Working Days of receiving guidance from the Board, or, as the case may be, a written explanation pursuant to Condition B2.4.5, HAL and the Affected Train Operator are still unable to agree on the attribution of delay in relation to the relevant incident, HAL and/or the Affected Train Operator shall refer the matter for determination in accordance with the ADRR process as described in Annex 1.

## 2.4.7 Precedence

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

## 2.5 Amendments to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code

2.5.1 The Delay Attribution Principles and Rules and Performance Data Accuracy Code are documents adopted by HAL for application on the HAL infrastructure and where a Train Operator wishes to vary the Delay Attribution Principles and Rules or the Performance Data Accuracy Code, a request should be submitted to HAL to propose that variation to Network Rail for consideration under the procedures set out in the Network Rail Network Code.

2.5.2 Notice of Proposal for Amendment

# Part B: Performance Monitoring

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Proposals for Amendment made by HAL and Affected Train Operators shall be subject to the process described from Condition B2.5.3 through to Condition B2.7.4 (inclusive) and the parties will have no right to appeal amendments to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code that result from the application of that process.

2.5.3 **Process administered by Network Rail for dealing with a Proposal for Amendment made by HAL or an Affected Train Operator**

The Board Secretary shall within 7 days following circulation or receipt of a Proposal for Amendment or within 7 days following receipt of any clarification that the Board may reasonably request from the sponsor of that proposal, or within 7 days of receipt of a Proposal for Amendment pursuant to Condition B6.1.2;

- a) give notice of that proposal (including any associated impact assessment and proposed solution provided in accordance with Condition B6.1.2 to each; and
- b) invite the submission to the Board of written representations in respect of that proposal within such period as is reasonable in all the circumstances (the "Consultation Period"), being a period of not less than 30 days from the date of notification under paragraph (a) above. In making representations, an Affected Train Operator should:
  - i. specify whether or not it accepts the proposed change and provide an explanation for its position;
  - ii. indicate any wider impact (including commercial impact) that the proposed change is likely to have on its business; and
  - iii. confirm whether it is content with any solution proposed by the sponsor; or
  - iv. provide details of any alternative solution it considers appropriate to address the wider impact (including commercial impact); and
  - v. indicate whether such an alternative has been discussed and agreed with HAL and/or Affected Train Operators.

2.5.4 ***Calling of Board Meeting to consider a Proposal for Amendment***

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

- a) call a Board Meeting; and
- b) supply the Proposal for Amendment to each Member together with:
  - i. copies of all representations received pursuant to Condition B6.1.2; and
  - ii. if the sponsor of the proposal consents, any modification to that proposal.

2.5.5 ***Material modification of Proposal for Amendment***

If at any time a Proposal for Amendment is (with the consent of its sponsor) modified in a material way, the Board shall treat the proposal as a new Proposal for Amendment and the provisions of Conditions B2.5.3 and B2.5.4 shall apply thereto.

2.5.6 ***Clarification***

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

**2.6 *Consideration by the Board***

2.6.1 ***Voting pass-mark***

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

2.6.2 ***Rights of attendance***

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

# Part B: Performance Monitoring

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

### 2.7.1 *Decision to Approve*

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

- a) explaining in reasonable detail the reasons for the proposed amendment, why the Board considers that the proposed changes are necessary, and how they will improve the industry delay attribution process;
- b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition B6.1.2);
- c) detailing what, if any, changes were made to the original Proposal for Amendment in the light of representations received, and why these changes have been accepted;
- d) stating the reasons behind the rejection of any representations in respect of the Proposal for Amendment;
- e) providing details of where a number of Proposals for Amendment put forward to the Board have been merged; and
- f) stating the reasons for any dissent from the Board's decision by any Board Member.

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

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

### 2.7.3 *Notification of approval*

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

- a) notify details of the approved amendment and when it will take effect to all Access Parties;
- b) arrange for the approved amendment to be incorporated into a revised version of the Delay Attribution Principles and Rules or Performance Data Accuracy Code; and
- c) publish and circulate the revised version of the Delay Attribution Principles and Rules or Performance Data Accuracy Code to all Access Parties and to the ORR.

### 2.7.4 *Decision to Reject*

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

## CONDITION B3 - SYSTEM INVESTIGATION

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

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

### 3.2 **Investigation of system**

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

- a) details of all relevant tests and checks carried out by HAL;

# Part B: Performance Monitoring

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

## 3.3 Adjustment to prior results

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

# CONDITION B4 - RECORDS, AUDIT AND TESTING

## 4.1 Obligation to keep information

HAL and the Affected Train Operators shall, for a period of not less than six years, keep summaries of all material information relating to the monitoring of train performance.

## 4.2 Right to audit and inspect

An Affected Train Operator may, without prejudice to Condition B3.2 and on giving at least seven working days' prior notice to HAL:

- 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 Affected 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 Affected Train Operator's Services; and
- c) require HAL to carry out analysis, investigations and tests of the Performance Monitoring System including the processes, systems and equipment used in connection with the Performance Monitoring System in the presence of an independent expert nominated by the Affected Train Operator, such tests to be as reasonably required by the Affected Train Operator to determine its accuracy and suitability to monitor train performance in respect of the Affected Train Operator's Services.

## 4.3 Costs to be borne by investigating party

Subject to Condition B4.4, any audit, inspection, analysis, investigation or testing carried out in accordance with Condition B4.2 shall be at the requesting Affected Train Operator's own cost.

## 4.4 Costs to be borne by HAL

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 HAL, HAL shall bear the reasonable cost of that audit, inspection, analysis, investigation or testing.

# Part B: Performance Monitoring

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## CONDITION B5 - CO-OPERATION

### 5.1 **Review of operations**

HAL and the Affected Train Operators shall, not less than once every six months, meet, review performance and discuss alterations to their operations which will improve train performance and reduce train delays and cancellations.

### 5.2 **Implementation of alterations**

HAL and the Affected Train Operators agree to use all reasonable endeavours to implement any alterations agreed under Condition B5.1.

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

Nothing in this Part B shall restrict HAL and the Affected Train Operators agreeing, in an Access Agreement, obligations in relation to performance monitoring which are more onerous than those contained in this Part B.

## CONDITION B6 - BOARD

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

#### 6.1.1 Delay Attribution Principles and Rules and Performance Data Accuracy Code

HAL and Affected Train Operators agree that monitoring of performance on the HAL infrastructure will be overseen by the Board, which has been established through the Network Rail Network Code for the Wider UK Rail Network, the purpose of which is to lead, monitor and advise on the effectiveness and accuracy of the delay attribution process and use of the Delay Attribution Principles and Rules and the Performance Data Accuracy Code.

#### 6.1.2 Proposal for Amendment

The Board may receive, or sponsor, Proposals for Amendment, pursuant to Condition B2.5.1, and has responsibility for considering whether or not the Delay Attribution Principles and Rules or the Performance Data Accuracy Code as appropriate should be amended in accordance with any such proposal, after taking account of information supplied by the Board Secretary pursuant to Condition B2.5.4(b).

#### 6.1.3 Guidance

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

#### 6.1.4 Payments by HAL and Affected Train Operators

HAL and each Affected Train Operator shall, within 30 days of being requested to do so by the Board Secretary, pay to the Board Secretary an amount representing an equal share of the fair and reasonable costs and expenses of the Board in overseeing the monitoring of performance on the HAL infrastructure, the administration of Proposals For Amendment and for providing guidance on issues relating to delay attribution on the HAL infrastructure.

# Part C: Modifications to the HAL Network Code

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## Explanatory Notes

- A. Part C provides for a process by which the HAL Network Code and certain other arrangements (ADRR) may be changed. The process set out in Part C is, in certain circumstances, also used in relation to changes to aspects of Access Agreements into which this code is incorporated.
- B. A Proposal for Change may be initiated by the ORR, a Train Operator, Access Option Holder or HAL and is subject to a consultation process.
- C. Part C also establishes the principle that the parties agree to become users of the “Code of Practice for the management and Development of Railway Code Systems” which applies to Wider UK Rail Network. A party intending to propose a change to either of these documents shall notify HAL and each Train Operator or Access Option Holder of their intention to do so.
- D. This Explanatory Note does not form part of the HAL Network Code.

# Part C: Modifications to the HAL Network Code

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## DEFINITIONS

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

**"Access Option Holder"**

means in respect of an Access Option, a person who holds future rights to use track pursuant to that option

**"Consultation Period"**

means the period for consultation described in Condition C2.2;

**"Proposal for Change"**

means any proposal to change the HAL Network Code (including this Part C) together with any modification of that proposal;

**"Relevant Person"**

means HAL, a Train Operator, Access Option Holder and any other person who, in the opinion of the ORR, shall be likely to be affected by its decision whether to approve or reject a Proposal for Change; and

**"Sponsor"**

means the person who proposes a Proposal for Change.

**"Train Operator"**

means in respect of an Access Agreement, a person who has permission to use track pursuant to that agreement.

## CONDITION C1 – ADMINISTRATION OF THE CHANGE PROCEDURE

- 1.1 HAL shall provide all administrative services reasonably necessary for the receipt, notification, consultation, response and effect of Part C.
- 1.2 In its capacity of administrator, HAL will establish, maintain and update as necessary on its web-site the current version of each of the HAL Network Code and the ADRR, and all documents or other instruments which the HAL Network Code expressly states are incorporated into it.
- 1.3 HAL shall provide copies of the whole or any part of any documents contained on the web-site to any person upon request and HAL shall be entitled to charge its reasonable costs incurred for the provision of such copies.
- 1.4 HAL shall be entitled to recover the costs of administering the procedures referred to in Part C.

## CONDITION C2 - RECEIPT AND NOTIFICATION OF PROPOSALS FOR CHANGE SPONSORED BY HAL, A TRAIN OPERATOR OR ACCESS OPTION HOLDER

**2.1 Entitlement to make Proposal for Change**

HAL and each Train Operator or Access Option Holder shall be entitled to make a Proposal for Change for consideration. Any such Proposal for Change shall be sent by the Sponsor to all other persons entitled to make a Proposal for Change and the ORR and shall:

- a. be in writing;
- b. specify the wording of the change proposed;
- c. specify the date or series of dates on which it is proposed that the change come into effect, if other than 14 days after any approval notified by the ORR pursuant to Condition C2.3; and
- d. be supported by an explanation in reasonable detail of the reasons for the proposed change.

# Part C: Modifications to the HAL Network Code

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## 2.2 Notice of Proposal for Change

HAL shall, within 7 days following circulation or receipt of a Proposal for Change or, where HAL is not the Sponsor of that proposal, within 7 days following receipt of any clarification that HAL may reasonably request from the Sponsor in respect of a Proposal for Change:

- a. give notice to each Train Operator, Access Option Holder and to the ORR of its provisional timescale for consulting on and considering that Proposal for Change; and
- b. invite the submission to HAL of written representations in respect of that Proposal for Change within such period as is reasonable in all the circumstances, being a period of not less than 30 days from the date of notification under Condition C2.1 above.

## 2.4 Modification of Proposal for Change

2.4.1 A modification to a Proposal for Change may be proposed by HAL, the ORR, a Train Operator or Access Option Holder at any time during the Consultation Period and shall be copied to all other persons entitled to make such a modification to a Proposal for Change.

2.4.2 HAL and the Sponsor of the Proposal for Change (where that Sponsor is not HAL) shall consider any modifications which are proposed to a Proposal for Change and:

- a. where the proposed modification is a material modification then HAL shall treat the proposal as a new Proposal for Change; and
- b. where the proposed modification is not a material modification then HAL shall consider the Proposal for Change, as modified, but shall not treat the proposal as a new Proposal for Change;

provided that, where HAL and the Sponsor of the Proposal for Change (where that Sponsor is not HAL) cannot agree promptly whether or not a proposed modification is material or not then, for the purposes of this Condition C2.4, the modification will be treated as though it is a material modification.

## 2.5 Clarification

The Sponsor of a Proposal for Change shall promptly comply with all reasonable written requests of HAL, the ORR, a Train Operator or Access Option Holder for further clarification of the Proposal for Change.

## 2.6 Meeting to discuss a Proposal for Change

Within 7 days following the end of the Consultation Period, HAL shall give notice to each Train Operator, Access Option Holder and the ORR calling a meeting to discuss the Proposal for Change and any written representations it has received in respect of that Proposal for Change. HAL shall inform each Train Operator, Access Option Holder and the ORR of the date, venue and time of such meeting (having first made reasonable efforts to consult with each Train Operator, Access Option Holder and the ORR as to such date, venue and time), such meeting to be held no later than 21 days following the end of the Consultation Period.

## 2.7 Further consultation

HAL shall, as soon as reasonably practicable following a request at any meeting convened pursuant to Condition 2.6 to carry out further consultation in respect of any Proposal for Change, carry out that further consultation.

# CONDITION C3 - CONSIDERATION OF PROPOSAL FOR CHANGE SPONSORED BY HAL, A TRAIN OPERATOR OR ACCESS OPTION HOLDER

## 3.1 Submission of Proposal for Change to ORR

Following the conclusion of the Consultation Period and, where applicable, following the conclusion of any meeting called by HAL pursuant to Condition C2.6 and any further consultation conducted pursuant to Condition C2.7, HAL shall submit the Proposal for Change to the ORR, together with a written memorandum:

# Part C: Modifications to the HAL Network Code

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- a. explaining the reasons for the Proposal for Change;
- b. containing details of the results of the consultation process including, where relevant, any further consultation process (in each case including copies of any representations made during such consultation process);
- c. confirming whether or not HAL supports the Proposal for Change (including its reasons);
- d. confirming whether or not each Train Operator and Access Option Holder supports the Proposal for Change (including their reasons (to the extent that they are known to HAL, having made reasonable enquiry)); and
- e. stating the date or series of dates upon which it is considered that the proposal should take effect should the ORR approve the Proposal for Change pursuant to Condition C3.3, such date being no earlier than 14 days after the date on which the ORR gives notice of any such approval.

## 3.2 Request for further information from the Sponsor of a Proposal for Change

The Sponsor of the Proposal for Change, including where such Sponsor is HAL, shall use its reasonable endeavours to provide any further information required in relation to the consideration of a Proposal for Change by the ORR.

## 3.3 Notification of approval or rejection of a Proposal for Change

- 3.3.1 The ORR may notify HAL as soon as reasonably practicable of its approval or rejection of a Proposal for Change sponsored by HAL, a Train Operator or Access Option Holder submitted to it pursuant to Condition C3.1 and, where relevant, any further information submitted to it pursuant to Condition C3.2, provided that the ORR may make any minor clarificatory modifications before approving any such Proposal for Change.
- 3.3.2 No Proposal for Change sponsored by HAL, a Train Operator or Access Option Holder shall have effect unless the ORR gives notice to HAL in writing that it approves the proposal pursuant to Condition C3.3.1 and only if the following conditions have been satisfied (and the ORR has given its reasons in the notice as to why it considers such conditions have been satisfied):

- a. the Proposal for Change in question promotes or achieves the objectives specified in section 4 of the Act; and
- b. the interests of any Relevant Person or persons would not be unfairly prejudiced if the Proposal for Change were made, unless such unfair prejudice is outweighed by or is likely to be outweighed by any prejudice which will or is likely to be sustained by any other Relevant Person or persons if the Proposal for Change is not made, having due regard to the need to enable Relevant Persons to plan the future of their businesses with a reasonable degree of assurance;

provided that, in all cases, the Proposal for Change in question shall not prejudice the ability of HAL to perform its contractual obligations or otherwise unduly harm the financial position of HAL.

## 3.4 Notification to parties

Where the ORR gives notice to HAL pursuant to C3.3.2, HAL shall ensure that all Train Operators and Access Option Holder shall be notified of the change and its effective date.

## 3.5 Effective date of change

Any notice given under C3.4 shall specify the effective date(s) of the proposed change which shall be unless otherwise determined 14 days from the date of notification made pursuant to Condition C3.4.

# CONDITION C4 – PROPOSAL FOR CHANGE SPONSORED BY ORR

- 4.1 The HAL Network Code shall have effect with the modifications specified in any notice given by the ORR for the purposes of this Condition C4, provided that the ORR shall be satisfied as to the need for the modification as provided for in Condition C4.2, the procedural requirements of Condition C4.2 shall have been satisfied and the modification shall not have effect until the date provided for in Condition C4.3.

## 4.2 Conditions to be satisfied in respect of Proposal for Change sponsored by ORR

# Part C: Modifications to the HAL Network Code

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4.2.1 Any notice given by the ORR pursuant to Condition C4.1 in respect of a Proposal for Change sponsored by the ORR shall have effect only if the following conditions have been satisfied (and the ORR has given its reasons in the notice as to why it considers such conditions have been satisfied):

- a. the modification in question promotes or achieves the objectives specified in section 4 of the Act; and
- b. the interests of any Relevant Person or persons would be unfairly prejudiced if the modification were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other Relevant Person or persons if the modification is made, having due regard to the need to enable Relevant Persons to plan the future of their businesses with a reasonable degree of assurance;

provided that, in all cases, the modification in question shall not prejudice the ability of HAL to perform its obligations under the Access Agreement or otherwise unduly harm the financial position of HAL.

4.2.2 The procedural requirements which require to have been followed for the purposes of Condition C4.1 are:

- a. the ORR shall have sent a copy of its proposal to HAL, each Train Operator and Access Option Holder which shall:
  - i. be in writing;
  - ii. specify the wording of the modification proposed;
  - iii. specify the date or series of dates on which it is proposed that the modification come into effect; and
  - iv. be supported by an explanation in reasonable detail of the reason for the proposed modification, which must include the reasons why it considers the conditions in C4.2 would be satisfied;
- b. the ORR shall have invited the submission of written representations on the documentation provided pursuant to (a) above from HAL, each Train Operator and Access Option Holder within such period as is reasonable in all circumstances;
- c. the ORR shall have taken such representations into account (other than those which are frivolous or trivial) in making its decision on the modification to be made; and
- d. the ORR shall have notified HAL, each Train Operator and Access Option Holder as to its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions, which may be provided at the same time as the notice under Condition C4.1.

## 4.3 Effect

A notice under Condition C4.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice.

## CONDITION C5 – PROVISION OF REVISED TEXTS

5.1 A notice under Part C shall not have effect in relation to any Proposal for Change which relates to Condition C3.3.2 or proposed modification which relates to Condition C4.

5.2 HAL shall, as soon as reasonably practicable following issue of a notice pursuant to Condition C4.1 or following approval of a Proposal for Change by the ORR pursuant to Condition C3.3, supply to all Train Operators, Access Option Holder and the ORR a revised version of the amended documentation incorporating the change and shall publish a revised copy of such documentation on its website.

## CONDITION C6 – ADOPTION OF OTHER OPERATIONAL ARRANGEMENTS

6.1 HAL and each Train Operator or Access Option Holder will apply to become users of the “Code of Practice for the management and Development of Railway Code Systems” which applies to the Wider UK Rail Network.

6.2 Where a party wishes to propose an amendment to the “Code of Practice for the management and

## Part C: Modifications to the HAL Network Code

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Development of Railway Code Systems" they will apply the relevant processes applicable to that document. Prior to doing so, the party wishing to propose an amendment will notify HAL and each Train Operator or Access Option Holder of their intention to do so.

# Part D: Timetable

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## **Part D – Timetable Change**

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# Part D: Timetable

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## CONDITION D1 - INTRODUCTION

### 1.1 Overview

1.1.1 It is the responsibility of HAL to allocate capacity on the HAL infrastructure and to establish, or to procure the establishment of a timetable for the HAL infrastructure, referred to as the "Working Timetable".

(a) HAL is permitted to sub-contract the undertaking of all activities relating to the establishment of the Working Timetable to a suitably competent and resourced organisation. All references to HAL in this Part D shall be construed as including such suitably competent and resourced organisation.

(b) Where HAL has sub-contracted the establishment of the Working Timetable to Network Rail, except where this Part D states otherwise, the activities relating to the establishment of the Working Timetable will be fully integrated into Network Rail's activities relating to the establishment of the Working Timetable in respect of the Wider UK Rail Network.

(c) Where HAL has sub-contracted the establishment of the Working Timetable to Network Rail, a Timetable Participant may:

(i) incorporate its submission of Access Proposal as described in Condition D2.4 and Condition D3.4.9 into its submission of Access Proposal relating to the Wider UK Rail Network;

(ii) incorporate its Train Operator Variation Request as described in Condition D3.3 into its Train Operator Variation Request relating to the Wider UK Rail Network.

1.1.2 Those entitled to participate in the processes set out in this Part D are defined as "Timetable Participants".

1.1.3 The Working Timetable is re-issued in revised form twice a year. The process for producing the bi-annual revision of the Working Timetable is described in Condition D2.

1.1.4 In the period between bi-annual revisions of the Working Timetable, either HAL 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. HAL shall operate the processes described in Condition D3 to facilitate variations to a Working Timetable in appropriate circumstances.

1.1.5 In conducting the processes set out in this Part, decisions must be made by HAL in accordance with the principles set out in Condition D4.

1.1.6 Condition D5 describes the processes by which a Timetable Participant, dissatisfied with a decision of HAL made in respect of this Part D, may in specified circumstances appeal against that decision.

1.1.7 HAL requires access to the HAL infrastructure in order to fulfil its obligations in relation to the HAL infrastructure. The processes by which:

(a) the Working Timetable is updated on a bi-annual basis (as described in Condition D2); and

(b) variations to the Working Timetable outside that bi-annual process are facilitated (as described in Condition D3); include arrangements to procure access to the HAL infrastructure required by HAL. Where such access is required over a period greater than that covered by one revision of the Working Timetable, HAL may wish to conduct an extraordinary process of consultation with parties affected by those works. A process for such consultation is described in Condition D6.

1.1.8 It is the responsibility of HAL and all Timetable Participants to collaborate with each other so that the implementation of the procedures in this Part D is carried out with optimal efficiency. HAL 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.

# Part D: Timetable

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1.1.9 In addition to compliance with the processes described in this Part D, Timetable Participants may be separately required to consult with the Secretary of State, Transport for London, other infrastructure managers and any other parties with the right to be so consulted, regarding proposals for the development of Services.

1.1.10 In this Part D:

- (a) the singular shall include the plural and vice-versa;
- (b) the headings are for convenience only and shall not affect interpretation.

1.1.11 In this Part D, capitalised words have the meanings shown below:

**Access Proposal** shall have the meaning shown in Condition D2.4.1;

**Ancillary Movement** 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;

**Calendar of Events** is a calendar, produced by Network Rail for the Wider UK Rail Network, going forward for a period of at least 4 years showing events which are likely to require significant changes to the Working Timetable in a future bi-annual timetable revision process carried out in accordance with Condition D2;

**D-X** shall have the meaning shown in Condition D2.1.5;

**Decision Criteria** shall have the meaning shown in Condition D4.6;

**Draft Calendar of Events** a draft Calendar of Events;

**Draft HAL Advanced Register of Possessions** shall have the meaning shown in Condition D2.2.10;

**Draft HAL Engineering Access Statement** shall have the meaning shown in Condition D2.2.3;

**Draft HAL Timetable Planning Rules** shall have the meaning shown in Condition D2.2.16;

**Event** is an event, or grouping of events shown in the Calendar of Events;

**Event Steering Group** is a group set up and chaired by Network Rail and comprises representatives from Network Rail, relevant funders and any Timetable Participants that:

- (a) are likely to be affected by the Event; and
- (b) who agree to be on the group.

Where an Event Steering Group is covering a HAL Event, HAL will be represented on that Event Steering Group.

**Exercised** shall mean as a consequence of:

- (a) submitting an Access Proposal to Network Rail by the Priority Date in accordance with Conditions D2.4 and D2.5; or
- (b) a Rolled Over Access Proposal;

**F-X** shall have the meaning shown in Condition D2.1.8;

**Financial Half Year** for the purposes of this Part D, the Financial Year is split into two halves producing two Financial Half Year dates. The first half shall run from the first Sunday of April of the relevant year for 26 calendar weeks. The second half shall start on the 27<sup>th</sup> Sunday of the 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 first Sunday in April of the relevant year and ending the day before the first Sunday of April in the following year;

**Firm Right** a right:

## Part D: Timetable

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- (a) of a Timetable Participant under an Access Agreement in respect of the quantum, timing or any other characteristic of a train movement; or
- (b) of HAL under the Rules; and which in either such case is not expressed to be subject to any contingency outside the control of the right holder (save that in the case of (a), the right may be subject to the Rules);

**Flexing Right** a right, exercisable by HAL in allocating a Train Slot in the New Working Timetable, to vary a Train Slot:

- (a) sought in an Access Proposal ; or
- (b) arising from a Rolled Over Access Proposal; or
- (c) sought in a Train Operator Variation Request, in any way within and consistent with the Exercised Firm Rights of the relevant Timetable Participant or, where the Train Slot which is being varied is a Strategic Train Slot, in any way without limitation;

**HAL Advanced Register of Possessions** a document which forms part of the HAL Engineering Access Statement which addresses strategic maintenance and the register of disruptive possessions in the relevant period to which that HAL Engineering Access Statement relates;

**HAL Engineering Access Statement** a publication consisting of two documents:

- (a) Standard Possession Opportunities; and
- (b) HAL Advanced Register of Possessions,

issued at separate timescales and setting out, for any part of the HAL infrastructure, each of the following matters, among other things:

- (i) the location, number, timing and duration of any HAL Restrictions of Use; and
- (ii) any alternative train routes or stopping patterns which may apply during any HAL Restriction of Use referred to in paragraph (a) above;

**HAL Event** an event, or grouping of events, that HAL has required Network Rail to include in the Calendar of Events;

**HAL Restriction of Use** a Restriction of Use that occurs wholly or mainly on the HAL infrastructure;

**HAL Timetable Planning Rules** a document, or relevant sections of the Network Rail Timetable Planning Rules, regulating, for any part of the HAL infrastructure, 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 part of the HAL infrastructure, being rules which specify (amongst other matters) any required;

**HAL Variation** shall have the meaning shown in Condition D3.1.2;

**HAL Variation Request** a request made by HAL for a HAL Variation;

**Initial Consultation Period** shall have the meaning shown in Condition D2.3.3;

**Network Rail Restriction of Use** a Restriction of Use that occurs wholly or mainly on the Network Rail Network that will affect, or may potentially affect, the operation of a Timetable Participant's services on the HAL infrastructure;

**Network Services** shall have the meaning given to it in section 82(2) of the Railways Act 1993;

**New Working Timetable** shall have the meaning shown in Condition D2.1.6;

**Possessions Strategy Notice** shall have the meaning set out in Condition D6.3.1;

**Possessions Strategy Participants** shall have the meaning set out in Condition D6.1.1;

**Possessions Strategy Proposal** shall have the meaning set out in Condition D.6.1.2;

**Principal Change Date** shall have the meaning set out in Condition D2.1.3;

**Prior Working Timetable** shall have the meaning set out in Condition D2.1.6;

**Priority Date** shall have the meaning set out in Condition D2.4.4;

**Railway Operational Code** shall have the meaning shown in Part H of this code;

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**Rolled Over Access Proposal** where an Access Proposal was submitted in a previous revision of the Working Timetable resulting in Train Slots being included in the Prior Working Timetable which the relevant Timetable Participant does not seek to vary in the New Working Timetable in accordance with this Part D;

**Rules** the HAL Timetable Planning Rules and the HAL Engineering Access Statement;

**Short Term Plan** shall have the meaning shown in Condition D3.7.1;

**Standard Possession Opportunities** a document which forms part of the HAL Engineering Access Statement which addresses standard possession opportunities in the relevant period to which that HAL Engineering Access Statement relates;

**Subsidiary Change Date** shall have the meaning shown in Condition D2.1.3;

**Timetable Change Date** shall have the meaning shown in Condition D2.1.3;

**Timetable Participant**

- (a) an Access Beneficiary; or
- (b) a Potential Access Party;

**Timetable Period** shall have the meaning shown in Condition D2.1.6;

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

**Timetable Preparation Period** shall have the meaning shown in Condition D2.6.1;

**Timetable Variation** shall have the meaning shown in Condition D3.1.3;

**Timetable Variation by Consent** shall have the meaning shown in Condition D3.6.1;

**Timetable Week** shall have the meaning shown in Condition D3.2.1;

**Timetabling Panel** shall have the meaning shown in the ADRR;

**Timing Load** in relation to a Service, the timing reference code which details the maximum speed and particular combination of traction type and trailing weight, together with whether any vehicles may be conveyed to which local speed restrictions will apply;

**Train Operator Variation** shall have the meaning shown in Condition D3.1.1;

**Train Operator Variation Request** shall have the meaning shown in Condition D3.3.1;

**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;

**TW-X** shall have the meaning shown in Condition D3.2.1;

**Working Hours** any hour during the period 09:00 to 17:00 on a Working Day; and

**Works** any inspection, maintenance, renewal, repair, replacement, improvement, enhancement or development of, or any other work in relation to, any part of the HAL infrastructure.

# Part D: Timetable

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## CONDITION D2 - BI-ANNUAL TIMETABLE REVISION PROCESS

### 2.1 Preliminary

2.1.1 The Working Timetable shall show every train movement on the HAL infrastructure, including:

- (a) every Service;
- (b) every Ancillary Movement;
- (c) the times of:
  - (i) departure from origin and arrival at destination;
  - (ii) the time of passing the point that the HAL infrastructure connects to the Network Rail Network
  - (iii) arrival at and departure from every intermediate stopping point;
  - (iv) such passing points, in accordance with the HAL Timetable Planning Rules, as HAL (acting reasonably) considers appropriate; and
  - (v) all relevant timing allowances.

The Working Timetable shall also include documents detailing platform arrangements.

2.1.2 HAL shall re-issue the Working Timetable in revised form on two occasions in each year, after a consultation and revision process conducted by HAL in accordance with this Condition D2

2.1.3 The implementation dates for the two annual revisions of the Working Timetable will conform with Schedule 4 of the Regulations. In particular, in accordance with Schedule 4, paragraph 2(1) of the Regulations, timetable decisions will not be made until the end of the consultation period outlined in paragraph 4.4.1 of the Network Statement. To the extent permitted by the Regulations, following consultation with other infrastructure managers, HAL may vary the change implementation dates from time to time, provided that all Timetable Participants have been informed of and not objected to the change. The Timetable Participants shall have no right to object if HAL varies the change implementation date in order for it to remain consistent with the change date that applies to the Wider UK Rail Network. Each change implementation date is referred to as a "Timetable Change Date". The first and main change implementation date, occurring in the winter of a calendar year, is referred to as the "Principal Change Date". The second change implementation date, occurring in the summer after the Principal Change Date, is referred to as the "Subsidiary Change Date".

2.1.4 This Condition D2 describes the process by which HAL will revise the Working Timetable on each of the Timetable Change Dates. Unless stated otherwise in this Part D, this process will be followed regardless of whether the change is to be implemented on a Principal Change Date or on a Subsidiary Change Date.

2.1.5 For the purposes of this Part D, a Timetable Change Date shall be designated by the letter "D". The sequence of events culminating in the adoption of a revised Working Timetable is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to date "D". Each week commences at 02:00 on a Sunday and expires at 01:59 on the following Sunday. So, for example, "D minus 26" (or "D-26") refers to the 26th week prior to date "D". 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 "D-26" must occur no later than:

- (a) 5pm on Friday;
- (b) in the week commencing on the Sunday which occurs 27 weeks prior to a Timetable Change Date.

## Part D: Timetable

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2.1.6 To produce the timetable to take effect on a Timetable Change Date, HAL will use as the starting point the timetable published at D-26 in the process related to the immediately preceding Timetable Change Date but 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 necessary access rights at the time of the intended operation of the Train Slots ("the Prior Working Timetable"). If any subsequent variations are made to the Prior Working Timetable as a result of the appeal process, then they shall also be incorporated into it. The Prior Working Timetable is then subject to a process of amendment under Condition D2 and during this period shall be referred to as the "New Working Timetable". The timetable which the New Working Timetable becomes on a Timetable Change Date is the Working Timetable. The period between Timetable Change Dates is referred to as the "Timetable Period".

2.1.7 Not later than D-73 in relation to the Principal Change Date only, HAL 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 Principal Change Date and the Subsidiary Change Date
- notify all Timetable Participants of the organisation to whom HAL's responsibilities in respect of the establishment of the Working Timetable has been sub-contracted. Included within this notification will be all relevant contact details.

2.1.8 For the purposes of this Part D, a Financial Half Year shall be designated with the letter "F". The sequence of events culminating in the publication of the HAL Advanced Register of Possessions is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to date "F". Each week commences at 02:00 on a Sunday and expires at 01:59 on the following Sunday. So, for example, "F minus 46" (or F-46) refers to the 46<sup>th</sup> week prior to date "F". 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 "F-46" must occur no later than:

- 5pm on Friday; and
- in the week commencing on the Sunday which occurs 47 weeks prior to the start of a Financial Half Year.

2.2 **Revision of HAL Timetable Planning Rules and HAL Engineering Access Statement – D-64 to D-44 and F-64 to F-46**

2.2.1 Both the HAL Timetable Planning Rules and the HAL Engineering Access Statement (together referred to as "the Rules") are revised on a bi-annual basis, with each revised version (excluding the HAL Advanced Register of Possessions part of the HAL Engineering Access Statement) being operative for the same Timetable Period as the Working Timetable to which they pertain. The 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 except in relation to the HAL Advanced Register of Possessions, which is revised and updated for the purposes of the Working Timetables which fall within the Financial Half Year to which that HAL Advanced Register of Possessions pertains.

2.2.2 Between D-64 and D-60, HAL shall consult with Timetable Participants in respect of any proposed changes to the HAL Engineering Access Statement (excluding the HAL Advanced Register of Possessions).

2.2.3 Following consultation in accordance with Condition D2.2.2, and not later than D-59, HAL shall provide to all Timetable Participants a draft of the revised HAL Engineering Access Statement (excluding the HAL Advanced Register of Possessions) (the "Draft HAL Engineering Access Statement").

2.2.4 Following distribution of the Draft HAL Engineering Access Statement and by D-54 Timetable Participants may make representations to HAL in respect of any changes they propose or objections they may have to the Draft HAL Engineering Access Statement provided to them in accordance with Condition D2.2.3.

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2.2.5 Following D-54 and by D-44, HAL shall consider the representations and objections made to it by Timetable Participants pursuant to Condition D2.2.4 and may amend the Draft HAL Engineering Access Statement. Not later than D- 44, HAL shall issue the final revised HAL Engineering Access Statement (excluding the HAL Advanced Register of Possessions) to all Timetable Participants.

2.2.6 In preparing a revised HAL Engineering Access Statement, HAL shall be required to act in accordance with the duties and powers referred to in Condition D4.1 and shall provide to Timetable Participants its reasons for making the revisions to the HAL Engineering Access Statement.

2.2.7 Between D-44 and publication of the New Working Timetable at D-26, HAL may further revise the HAL Engineering Access Statement (excluding the HAL 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 HAL Engineering Access Statement, HAL must first consult with all Timetable Participants who may be affected by the proposed changes. HAL 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 D2.2.7 is without prejudice to the amending power referred to in Condition D3.4.

2.2.8 The HAL Advanced Register of Possessions is revised on a bi-annual basis, each revised version being operative for those parts of the relevant Working Timetables which fall within the Financial Half Year to which that version pertains. The HAL Advanced Register of Possessions must be revised and updated in accordance with this Condition D2.2.

2.2.9 By F-60 HAL shall consult with Timetable Participants in respect of proposed changes to the HAL Advanced Register of Possessions and its anticipated Restrictions of Use, provided that the first such consultation period shall be between F-62 and F-61.

2.2.10 Following consultation in accordance with Condition D2.2.9 and not later than F-59, HAL shall provide to all Timetable Participants a draft of the revised HAL Advanced Register of Possessions (the "Draft HAL Advanced Register of Possessions").

2.2.11 Following provision of the Draft HAL Advanced Register of Possessions in accordance with Condition D2.2.10, and by F-54, Timetable Participants may make representations to HAL in respect of any changes they propose or objections they may have to the draft.

2.2.12 Following F-54 and by F-46 HAL shall consider representations and objections made to it by Timetable Participants pursuant to Condition D2.2.11 and may amend the Draft HAL Advanced Register of Possessions. Not later than F-46, HAL shall issue the final revised HAL Advanced Register of Possessions to all Timetable Participants.

2.2.13 In preparing the HAL Advanced Register of Possessions, HAL shall be required to act in accordance with the duties, and shall be entitled to exercise the powers, in each case, as referred to in Condition D4.1 and shall provide to Timetable Participants its reasons for making the revisions to the HAL Advanced Register of Possessions.

2.2.14 Between F-46 and publication of the New Working Timetable at D-26, HAL may further revise the Advance Register of Possessions where it considers, acting reasonably, such revision necessary or desirable. Before making any such further revisions to the HAL Advanced Register of Possessions, HAL must first consult with all Timetable Participants who maybe affected by the proposed changes. HAL 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 D.2.2.14 is without prejudice to the amending power referred to in Condition D3.4.

2.2.15 Between D-64 and D-54, Network Rail shall consult with Timetable Participants in respect of any proposed changes to the HAL Timetable Planning Rules.

2.2.16 Following consultation in accordance with Condition D2.2.15 and not later than D-53, Network Rail shall provide to all Timetable Participants a draft of the revised HAL Timetable Planning Rules (the "Draft HAL Timetable Planning Rules").

2.2.17 Following distribution of the Draft HAL Timetable Planning Rules and by D-49, Timetable Participants may make representations to Network Rail in respect of any changes they propose or objections they may have to the Draft HAL Timetable Planning Rules provided to them in accordance with D2.2.16.

2.2.18 Following D-49 and by D-46, Network Rail shall consider the representations and objections made to it by Timetable Participants pursuant to Condition D2.2.17 and any changes to International Freight Train Slots reflected in the applicable International Freight Capacity Notice and may amend the Draft HAL Timetable Planning Rules. Not later than D-46, Network Rail shall issue the final revised HAL Timetable Planning Rules to all Timetable Participants.

2.2.19 In preparing revised HAL Timetable Planning Rules, Network Rail shall be required to act in

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accordance with the duties and powers referred to in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the HAL Timetable Planning Rules.

2.2.20 Between D-46 and publication of the New Working Timetable at D-26, Network Rail may further revise the HAL 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 HAL Timetable Planning Rules, Network Rail must first consult with all Timetable Participants who may be affected by the proposed changes. Network Rail 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 D2.2.20 is without prejudice to the amending power referred to in Condition D3.4.

2.2.21 Subject to Condition D2.2.22, any Timetable Participant dissatisfied with any decision of HAL in respect of the Rules (including any decision to revise the Rules pursuant to Condition D2.2.7 or D2.2.14 or D2.2.20) is entitled to appeal against any part of it. Any such appeal shall be conducted in accordance with Condition D5 and must be made by a Timetable Participant:

- (a) in respect of any decision to revise the Rules pursuant to Condition D2.2.7 or D2.2.14 or D2.2.20, within five Working Days of receipt of HAL's decision; and
- (b) otherwise within fifteen Working Days of receipt of HAL's decision.

2.2.22 No appeal may be brought pursuant to Condition D2.2.21 in respect of any part of the Rules which conforms with any Possessions Strategy Notice which:

- (a) has not been appealed in the timeframe for appeal set out in Condition D6.4.1; and
- (b) has been appealed but has been finally determined by a Timetabling Panel or the ORR.

2.3 **Timetable consultation – D-55 to D-40**

2.3.1 Any Timetable Participant wishing to introduce significant new Services or make significant changes to its Services shall notify HAL at the earliest opportunity and, where possible, before D-55. If HAL considers that the introduction of such new or changed Services may necessitate substantial timetable changes, it may commence the Initial Consultation Period, referred to in Condition D2.3.2 below, before D-55. In any event, HAL shall consult with Timetable Participants who may be affected by the proposed new or changed Services and shall provide them with all available relevant information in respect of those proposals.

2.3.2 During the period from D-55 to D-40 (or such extended period referred to in Condition D2.3.1):

- (a) Timetable Participants shall indicate the changes (if any) that they propose should be made in preparing the New Working Timetable;
- (b) HAL shall consult with Timetable Participants in respect of the New Working Timetable. The period of consultation required by this Condition is referred to as the "Initial Consultation Period".

2.3.3 During the Initial Consultation Period, HAL shall:

- (a) use its reasonable endeavours to answer enquiries made by Timetable Participants in connection with matters that may affect or relate to the New Working Timetable;
- (b) participate in dialogue with Network Rail and all Timetable Participants in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections, complementary services patterns and efficiency of operation.

2.3.4 Not later than D-45 HAL shall provide to the Timetable Participants a copy of the Prior Working Timetable. If any changes are made to the Prior Working Timetable as a result of the appeal process under Condition D2.7, then HAL shall notify these changes to Timetable Participants as soon as reasonably practicable.

2.4 **Submission of Access Proposals by Timetable Participants – before and after the Priority Date at D-40**

2.4.1 A Timetable Participant shall set out its requirements in respect of the New Working Timetable in a written proposal, to be referred to as an "Access Proposal" where:

- (a) it wishes to exercise any Firm Rights and/or Contingent Rights and/or any expectation of rights to obtain Train Slots in respect of the relevant Timetable Period, where those rights were not exercised to obtain Train Slots in the Prior Working Timetable;

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- (b) it wishes to make changes to any Train Slot in the Prior Working Timetable; and/or
- (c) it wishes to set out its requirements in response to a notification by HAL under Condition D2.4.6.

2.4.2 Where a Timetable Participant does not intend using a Train Slot, which is included in the Prior Working Timetable, in the relevant Timetable Period, it shall notify this fact to HAL in writing by D-40 or as soon as practicable thereafter.

2.4.3 Access Proposals may be submitted to HAL during the period up to D-26. However, Timetable Participants shall submit their Access Proposals (and any revised Access Proposals) as early as reasonably practicable prior to D-1826 in order to facilitate optimal planning of the New Working Timetable by HAL and to ensure optimal consultation between HAL, Network Rail and all Timetable Participants.

2.4.4 Access Proposals submitted by D-40 ("the Priority Date") are given priority in the compilation of the New Working Timetable in certain circumstances set out in Condition D4.2. Access Proposals submitted after the Priority Date but by D-26 will be incorporated by HAL into the New Working Timetable as far as reasonably practicable, taking into account the complexity of the Access Proposal including any reasonable foreseeable consequential impact on the New Working Timetable and the time available before the end of the Timetable Preparation Period, and in accordance with the principles set out in Condition D4.2.

2.4.5 Any subsequent or revised Access Proposal submitted by a Timetable Participant shall amend an Access Proposal submitted earlier where it sets out different requirements to the earlier submitted Access Proposal regarding the manner in which a right is to be exercised. In such case the date on which the subsequent or revised Access Proposal is submitted will be treated, for the purposes of Condition D4.2.2, as the date of notification of the relevant right.

2.4.6 Where a Timetable Participant has:

- (a) submitted an Access Proposal which cannot be accommodated in the New Working Timetable; or
- (b) a Train Slot in the Prior Working Timetable which cannot be accommodated in the New Working Timetable; or
- (c) submitted a proposal purporting to be an Access Proposal but which is defective or incomplete,

2.4.7 HAL 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 Access Proposal under Condition D2.4.1(c).

2.5 **Content of an Access Proposal**

2.5.1 Each Access Proposal shall comply with the requirements of paragraph 4.1 of the Network Statement and shall include as a minimum in respect of each Train Slot, save to the extent that HAL expressly agrees in writing to the contrary:

- (a) the dates on which Train Slots are intended to be used;
- (b) the start and end points of the train movement;
- (c) the intermediate calling points;
- (d) the times of arrival and departure from any point specified under paragraphs (b) and (c) above;
- (e) the railway vehicles or Timing Load to be used;
- (f) any required train connections with other railway passenger services;
- (g) the proposed route;
- (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

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- (I) the proposed previous and next working service of the railway vehicles of the proposed Train Slot, provided the vehicles have not left the network.

2.5.2 Where an Access Proposal has been submitted by a Timetable Participant, HAL shall be entitled to require any further information in respect of that Access Proposal that it reasonably considers to be necessary or beneficial to the preparation of the New Working Timetable.

2.6 **Timetable Preparation – D-40 to D-26**

2.6.1 During the Timetable Preparation Period (D-40 to D-26) ("Timetable Preparation Period"), HAL shall compile the proposed New Working Timetable.

2.6.2 Between D-40 and D-26:

- (a) all Timetable Participants shall have access to the evolving draft of the New Working Timetable either:
  - (i) by way of "read-only" remote computer access or such other electronic means reasonably requested by a Timetable Participant; or
  - (ii) 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 a location where such access is available as specified by HAL;
- (b) HAL shall consult further with Timetable Participants in respect of their Access Proposals and the evolving draft of the New Working Timetable, and shall continue to answer enquiries and facilitate and co-ordinate dialogue as stated in Condition D2.3.3.

2.6.3 In compiling the New Working Timetable, HAL shall be required and entitled to act in accordance with the duties and powers set out in Condition D4.2.

2.7 **New Working Timetable Publication – D-26**

2.7.1 The New Working Timetable shall be published by HAL at D-26, subject only to variations made in the course of Condition D2.7 and Condition D3.

2.7.2 Not later than D-24, any Timetable Participant affected by the publication of the New Working timetable shall be entitled to respond to HAL stating it accepts, disputes, seeks an alternative proposal, has enquiries or requires further information regarding the published New Working Timetable.

2.7.3 Where a Timetable Participant has responded to HAL by D-24, not later than D-22, HAL shall respond fully and promptly and where possible, taking into account the nature of the enquiry or information requested, provide that Timetable Participant with any further information and any following revision of the New Working Timetable by D-22.

2.7.4 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. All such appeals shall be conducted in accordance with Condition D5.

2.7.5 HAL 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.

## CONDITION D3 – VARIATIONS TO THE WORKING TIMETABLE

3.1 **Overview**

3.1.1 From D-26 and during the relevant Timetable Period, Timetable Participants 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 Operator Variation". The process to be followed where a Timetable Participant seeks a Train Operator Variation is set out in Condition D3.3.

3.1.2 From D-26 and during the relevant Timetable Period, HAL may wish to vary either the New Working

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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;

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

3.1.3 Train Operator Variations and HAL Variations are collectively referred to as “Timetable Variations”.

3.1.4 In considering or making any Timetable Variation, HAL 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 HAL Timetable Variations are planned by HAL 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 24:00 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) 5pm 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, HAL 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 Operator Variations after D-26

3.3.1 Where a Timetable Participant seeks a Train Operator Variation, it shall submit to HAL a written request, referred to as a “Train Operator Variation Request”.

3.3.2 A Train Operator Variation Request 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 an Access Proposal (save that where a proposed Train Slot amendment does not involve revision of any information previously supplied to HAL in an Access Proposal for that Train Slot, the Train Operator Variation Request need not repeat that information).

3.3.3 From D-26 and during the relevant Timetable Period, a Timetable Participant is entitled to make a Train Operator Variation Request and HAL shall have the power to accept, reject or modify it, subject to the timeframes set out in Condition D3.3.6 and acting in accordance with Condition D4.3.

3.3.4 Where a Train Operator Variation Request 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 HAL’s response time to a Train Operator Variation Request set out in Condition D3.3.6, the day of HAL’s receipt of a Train Operator Variation Request 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.

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3.3.6 HAL shall notify its acceptance, rejection or modification of a Train Operator Variation Request, 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;
- (g) where (a), (b), (c), (d), (e) or (f) do not apply, within five Working Days of receipt of the request.

3.3.7 Where HAL fails to notify its response to a Train Operator Variation Request 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.

3.3.8 Where a Timetable Participant is dissatisfied with any final decision of HAL in response to a Train Operator Variation Request, it may appeal against that decision in accordance with Condition D5, provided that it submits its appeal as soon as reasonably practicable and, in any event, no later than five Working Days after it is notified of the relevant decision by HAL.

3.3.9 Where HAL rejects or modifies any Train Operator Variation Request it must provide written reasons for its decision.

**3.4 HAL 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 all HAL Restrictions of Use and Network Rail Restrictions of Use at least 12 weeks prior to the start of each Timetable Week.

3.4.2 HAL shall be entitled to make a variation to the Working Timetable provided that:

- (a) the HAL Variation is made for the purpose of taking HAL Restrictions of Use which are consistent with the Rules, as published following the process set out in Condition D2.2 or as amended in accordance with the procedure established pursuant to Condition D3.4.3; or
- (b) the HAL Variation is made for the purpose of facilitating an agreed Network Rail Restriction of Use; and
- (c) HAL complies with the procedure set out in this Condition D3.4.

3.4.3 HAL shall include in the Rules a procedure to enable amendment of the Rules, following their finalisation in accordance with, in the case of the HAL Engineering Access Statement (excluding the HAL Advanced Register of Possessions), Condition D2.2.5, in the case of the HAL Advanced Register of Possessions, Condition D2.2.12, and in the case of the HAL Timetable Planning Rules, Condition D2.2.18, as applicable. This amending power is without prejudice to the amending power referred to, in the case of the HAL Engineering Access Statement (excluding the HAL Advanced Register of Possessions), Condition D2.2.7, in the case of the HAL Advanced Register of Possessions, Condition D2.2.14, and in the case of the HAL Timetable Planning Rules, Condition D2.2.20 and is to be utilised in order to facilitate changes which HAL considers necessary to take HAL Restrictions of Use or to facilitate Network Rail 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 HAL has consulted with all Timetable Participants likely to be affected by the amendment;
- (b) must require that all decisions of HAL be made by application of the Decision Criteria in

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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 be subject to the appeal procedures in Condition D5 as if they were made pursuant to a procedure set out in this Part D.
- 3.4.6 Notwithstanding anything stated elsewhere in this Part D, where any amendment is made to the procedure referred to in Condition D3.4.3 by use of that procedure, the amendment shall not take effect until the determination of any appeal against the same.
- 3.4.7 Where HAL proposes to make any variation to the Working Timetable consequent upon an amendment to the Rules made in accordance with this Condition D3.4, HAL shall provide to each Timetable Participant, by TW-30, its proposals for HAL Restrictions of Use in respect of the corresponding Timetable Week. All such proposals may be amended or supplemented by HAL 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, HAL shall consult with each Timetable Participant affected (directly or indirectly) by the HAL Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all HAL Variations to be made.
- 3.4.9 To facilitate the planning of any HAL Variation, HAL may require that any Timetable Participant shall submit a revised Access Proposal in respect of any Train Slot.
- 3.4.10 Where HAL requires a revised Access Proposal:
  - (a) the requirement must be notified to the affected Timetable Participant no later than TW-22;
  - (b) HAL shall specify the aspects of the Access Proposal which need to be revised and its reasons for this;
  - (c) HAL shall specify a reasonable period in which the revised Access Proposal must be provided, and in any event the revised Access Proposal shall be submitted no later than TW-16.
- 3.4.11 HAL may modify, accept or reject a revised Access Proposal and where it modifies or rejects any revised Access Proposal, it must provide written reasons for its decision.
- 3.4.12 Where a revised Access Proposal has not been submitted by a Timetable Participant as required by HAL, HAL shall be entitled to make a HAL Variation of any Train Slot in respect of which the revised Access Proposal was required and no appeal may be made in respect of HAL's decision.
- 3.4.13 Not later than TW-14, HAL shall notify all Timetable Participants of its decision in respect of HAL 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 HAL's decision notified pursuant to Condition D3.4.13 shall inform HAL whether it accepts or disputes that decision.
- 3.4.15 At TW-12, HAL shall record and provide to all Timetable Participants, in accordance with Condition D3.7.1, the HAL 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 HAL in respect of a HAL Variation may appeal against it in accordance with Condition D5.

### 3.5 HAL Variations with less than 12 Weeks Notice

- 3.5.1 It may be necessary for HAL Restrictions of Use to be arranged by HAL, or Network Rail Restrictions of Use to be arranged by Network Rail, 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 HAL 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, HAL 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, HAL 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. HAL 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 “HAL Variation” for the purposes of this Part D.

- 3.5.3 Any Timetable Participant which is dissatisfied with any final decision of HAL in respect of a HAL Variation made pursuant to Condition D3.5.2 may appeal in accordance with Condition D5.
- 3.5.4 A Timetable Participant may not appeal against a decision by HAL where it has been taken to facilitate an agreed Network Rail Restriction of Use.

### 3.6 **Timetable Variations by consent**

- 3.6.1 Notwithstanding anything stated in this Condition D3, where HAL 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”.

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## 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 HAL 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 D2.6.1(a)) as soon as reasonably practicable after the relevant variation has been approved by HAL, 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.

## 3.9 Summary

3.9.1 A timeline, showing a summary of the process for variations to the Working Timetable, is attached at Annex 2 of Condition D of the Network Rail Network Code. This timeline (as modified in accordance with the Network Rail Network Code) will apply to all variations to the Working Timetable under this Code. Where there is any conflict between the timeline and the wording of Conditions D1-7, the wording of Conditions D1-7 shall prevail.

# CONDITION D4 – DECISIONS BY HAL

## 4.1 Decisions concerning the Rules

4.1.1 In conducting the processes set out in Condition D2.2 by which the Rules are revised on a bi-annual basis (including the amendment process described in Conditions D2.2.7, D2.2.14, and D2.2.20), HAL shall make all decisions by application of the Decision Criteria in the manner set out in Condition D4.6.

## 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 D2.6, HAL shall apply the Decision Criteria in accordance with Condition D4.6 and conduct itself as set out in this Condition D4.2.

4.2.2 HAL shall endeavour wherever possible to comply with all Access Proposals submitted to it in accordance with Conditions D2.4 and D2.5 and accommodate all Rolled Over Access Proposals, subject to the following principles:

- (a) a New Working Timetable shall conform with the Rules applicable to the corresponding Timetable Period;
- (b) each New Working Timetable shall be consistent with the Exercised Firm Rights of each Timetable Participant;
- (c) in compiling a New Working Timetable, HAL is entitled to exercise its Flexing Right;
- (d) where the principles in paragraphs (a), (b) and (c) above have been applied but HAL is unable to include all requested Train Slots in the New Working Timetable, the Train Slots shall be allocated in the following order of priority:
  - (i) first to:
    - (A) the Firm Rights of any Timetable Participant that will subsist during the whole of the Timetable Period and which have been Exercised; and
    - (B) any rights HAL has for Network Services included in the Rules;
  - (ii) second to Firm Rights of any Timetable Participant, that were in force at the Priority Date but will expire prior to or during the Timetable Period and which have been Exercised, provided that HAL considers (acting reasonably) that new Firm Rights,

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substantially the same as the expiring rights, will be in force during the Timetable Period;

- (iii) third to Contingent Rights or any expectation of rights of any Timetable Participant which have been Exercised, provided HAL considers (acting reasonably) they will be Firm or Contingent Rights in force during the Timetable Period;
- (iv) fourth to any rights or expectation of any rights of any Timetable Participant notified in an Access Proposal submitted after the Priority Date but before D-26 in accordance with D2.4 and D2.5. Where more than one set of rights or expectation of rights are so notified, capacity is to be allocated in the order in which Access Proposals containing details of the rights (or expectations thereof) are submitted to HAL.

## 4.3 Decisions concerning Train Operator Variations

4.3.1 In responding to a Train Operator Variation Request, HAL 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 HAL shall apply the Decision Criteria in accordance with Condition D4.6 except that it shall not accept a Train Operator Variation Request 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 the relevant Working Timetable; or
  - (ii) 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.

4.3.2 Where a Train Operator Variation Request:

- (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; and
- (c) would in the absence of such conflict be accepted (or accepted on varied terms) by HAL,

HAL 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 HAL infrastructure on the days and times in question.

4.3.3 Where any Timetable Participant consulted by HAL 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;

HAL 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, HAL is required by the terms of an Access Agreement to pay any compensation to the affected Timetable Participant, the Timetable Participant which made the relevant Train Operator Variation Request shall reimburse the amount of that payment to HAL.

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

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

unless there has been a material change in circumstances which would affect HAL's application of the Decision Criteria in Condition D4.6 when deciding whether or not to accept the Train Operator Variation Request.

## 4.4 Decisions concerning HAL Variations

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

- (a) is entitled to exercise its Flexing Right when responding to an Access Proposal submitted under Condition D3.4.10;
- (b) may not affect any HAL Variation to the extent that the variation is inconsistent with the Rules;
- (c) shall, subject to the over-riding principles set out in sub-paragraphs (a) and (b) above, apply the Decision Criteria in accordance with Condition D4.6.

## 4.5 Decisions concerning Possessions Strategy Notices

4.5.1 In making any decision concerning the content of a Possessions Strategy Notice, HAL shall apply the Decision Criteria in accordance with Condition D4.6.

## 4.6 The Decision Criteria

4.6.1 Where HAL is required to decide any matter in this Part D its objective shall be to share capacity on the HAL infrastructure for the safe carriage of passengers in a non-discriminatory, efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective").

4.6.2 In achieving the Objective, HAL shall apply any or all of the considerations in paragraphs (a)-(h) below ("the Considerations") in accordance with Condition D4.6.3 below:

- (a) maintaining, developing and improving the capability of the HAL infrastructure;
- (b) that the spread of services reflects demand;
- (c) maintaining and improving train service performance;
- (d) that journey times are as short as reasonably possible;
- (e) maintaining and improving an integrated system of transport for passengers;
- (f) the commercial interests of HAL (apart from the terms of any maintenance contract entered into or proposed by HAL) or any Timetable Participant of which HAL is aware;
- (g) mitigating the effect on the environment; and
- (h) enabling operators of trains to utilise their assets efficiently.

4.6.3 When applying the Considerations, HAL 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 HAL. Where, in light of the particular circumstances, HAL considers that application of two or more of the relevant Considerations will lead to a conflicting result

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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.

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

## 4.7 **Finality of decisions**

4.7.1 Save where expressly otherwise stated in this Part D, where HAL 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 HAL save to the extent that:
  - (i) HAL 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.

## CONDITION D5 - APPEALS

### 5.1 **Appeal in accordance with the ADRR**

5.1.1 Where an appeal is expressly authorised by this Part D, a Timetable Participant may refer a decision for determination by a Timetabling Panel in accordance with the ADRR.

5.1.2 Where a deadline for bringing an appeal is expressly stated in this Part D, an appeal in respect of such a decision must be made by the stated deadline. Otherwise, an appeal brought pursuant to this Part D 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 an appeal is made against a New Working Timetable as envisaged by Condition D2.7.2 the appeal shall be determined by the Timetabling Panel within ten Working Days of final submission to it of all relevant information.

### 5.2 **Appeal to ORR**

5.2.1 Where either HAL or a Timetable Participant is dissatisfied with the decision of a Timetabling Panel under Condition D5.1, it may refer the matter to the ORR for determination under Part M, provided that any such referral must be made:

- (a) within five Working Days of receipt of the Timetabling Panel's written reasoned determination to which objection is made; or
- (b) where the period referred to in (a) above includes Christmas Day, within ten Working Days of receipt of such receipt.

### 5.3 **Powers of dispute resolution bodies**

5.3.1 In determining any appeal pursuant to this Part D, any Timetabling Panel or the ORR (as the case may be) may exercise one or more of the following powers:

- (a) it may give general directions to HAL specifying the result to be achieved but not the means by which it shall be achieved;
- (b) it may direct that a challenged decision of HAL shall stand;
- (c) it may substitute an alternative decision in place of a challenged decision of HAL;

provided that the power described in (c) above shall only be exercised in exceptional circumstances.

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5.3.2 Where general directions have been given in accordance with Condition D5.3.1, the relevant appeal body may, on the application of HAL brought in accordance with Condition D5.3.3, make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

5.3.3 Any application made by HAL pursuant to Condition D5.3.2 must be made within:

- (a) five Working Days of the relevant decision; or
- (b) where the said period of five Working Days would include Christmas Day, ten Working Days.

## 5.4 Status of Decisions

5.4.1 Save where expressly stated otherwise in this Part D, where an appeal to a Timetabling Panel pertaining to this Part D is pending, the relevant decision of HAL shall remain binding until such time as the Timetabling Panel determines otherwise.

5.4.2 Save where expressly stated otherwise in this Part D, where an appeal to the ORR pertaining to Part D is pending, the relevant decision of the Timetabling Panel shall remain binding until such time as the ORR determines or orders otherwise.

## 5.5 Binding effect of appeal rulings

5.5.1 Where an appeal is brought pursuant to this Part D, the parties to the appeal shall be bound by:

- (a) the ruling of the Timetabling Panel, unless or until ordered or determined otherwise by the ORR;
- (b) the ruling of the ORR.

## 5.6 Implementing an appeal ruling

5.6.1 HAL shall be bound and empowered to take such steps as may be necessary to implement all rulings made by a Timetabling Panel or the ORR pursuant to this Condition D5. All such steps shall be taken promptly.

## 5.7 Liability of HAL

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

# CONDITION D6 - POSSESSION STRATEGY NOTICES

## 6.1 Possessions Strategy Proposal

6.1.1 Where HAL proposes implementing any Works which require a programme of HAL Restrictions of Use extending over:

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

it may at its discretion elect to implement the procedure set out in this Condition D6. Where it so elects, the procedure must be implemented by HAL issuing a Possession Strategy Proposal not later than D-90 and shall be concluded by HAL issuing a Possession Strategy Notice not later than D-64. References in this Condition D6 to "D-x" refer to x number of weeks before the Timetable Change Date on which the Working Timetable containing the first proposed HAL Restriction of Use will come into effect. The parties entitled to participate in that procedure shall be all Timetable Participants who may be affected by the proposed Restrictions of Use (who shall be referred to as "Possessions Strategy Participants").

6.1.2 Where HAL elects to implement the procedure set out in this Condition D6, it shall do so by serving written notice on all Possessions Strategy Participants, a "Possessions Strategy Proposal", not later than D-90, which shall:

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- (a) provide sufficient particulars of:
  - (i) the proposed Works; and
  - (ii) the proposed strategy for HAL Restrictions of Use pertaining to the Works;as will enable each recipient to understand the likely effect of the proposed Works on its Services; and
- (b) provide an explanation of HAL's reasons for the proposed HAL Restrictions of Use strategy.

## 6.2 **Consultation**

6.2.1 Following service of a Possessions Strategy Proposal, HAL shall consult with all parties on whom it has been served. Each recipient shall be afforded a reasonable period (to be specified by HAL, having regard to the likely effect of the Possessions Strategy Proposal on each recipient's Services) in which to make submissions and counter-proposals to HAL in respect of the proposed strategy for Restrictions of Use pertaining to the Works.

## 6.3 **Finalisation of Possessions Strategy – Possessions Strategy Notice**

6.3.1 Following the consultation process described in Condition D6.2, HAL shall make its final decision concerning the strategy for HAL Restrictions of Use that will be adopted in order to effect the Works, and will notify its decision to all Possessions Strategy Participants not later than D-64, by means of a formal notice detailing the strategy (to be referred to as a "Possessions Strategy Notice").

6.3.2 Where, in finalising a Possessions Strategy Notice, HAL has rejected counter-proposals put to it by a Possessions Strategy Participant, it shall give to that party written reasons for that rejection when it serves its Possession Strategy Notice.

## 6.4 **Appeal**

6.4.1 Where any Possessions Strategy Participant is dissatisfied with any aspect of any Possessions Strategy Notice, it may appeal in accordance with Condition D5. Any such appeal must be made within twenty Working Days of the Possessions Strategy Notice being served on it.

## 6.5 **Relationship with the Rules**

6.5.1 The fact that the process under this Condition D6 has been followed and a Possession Strategy Notice issued does not in any way affect the applicability of the process set out in Condition D2.2 which, in those circumstances, still must be followed. However, where any part of the Rules conform with a Possession Strategy Notice then a decision of HAL regarding that part of the Rules cannot be appealed in the circumstances set out in Condition D2.2.21.

6.5.2 In the event of any inconsistency between any Possessions Strategy Notice and the Rules, once they have been finalised in accordance with the process set out in Condition D2.2, the Rules shall prevail.

## 6.6 **Relationship with Part G**

6.6.1 This Condition D6 is without prejudice to Part G.

## 6.7 **Amendment of Possessions Strategy Notice**

6.7.1 HAL shall include within the HAL Timetable Planning Rules a procedure to enable amendment or withdrawal of a Possessions Strategy Notice. That procedure shall provide that:

- (a) no such change shall be made unless HAL has consulted, to the extent reasonably practicable, with any Possessions Strategy Participant likely to be affected by that change;
- (b) that all decisions of HAL made pursuant to that procedure shall be made by application of the Decision Criteria in accordance with Condition D4.6.

6.7.2 All amendments to a Possessions Strategy Notice made pursuant to the procedure referred to in Condition D6.7.1 shall be subject to the appeal procedures in Condition D5.

## CONDITION D7 – CALENDAR OF EVENTS AND EVENT STEERING GROUP

### 7.1 **Calendar of Events**

7.1.1 Prior to D-64, HAL shall provide Network Rail with relevant details of any events (“HAL Events”) that HAL wish to be included in Network Rail’s Draft Calendar of Events. These will be incorporated into the Draft Calendar of Events and published by Network Rail to all Timetable Participants

7.1.2 Timetable Participants and funders may make representations to HAL in respect of any changes they propose to the HAL Events within the Draft Calendar of Events no later than D-59.

7.1.3 Following D-59 and by D-54, HAL shall consider the representations made to it by Timetable Participants and funders pursuant to Condition D7.1.2 and may require that Network Rail amend the Draft Calendar of Events.

### 7.2 **Event Steering Group**

7.2.1 HAL shall ensure that each HAL Event is included on the agenda of an appropriate Event Steering Group.

7.2.2 The objectives of an Event Steering Group in respect of HAL Events shall be to:

- (a) agree a project plan to achieve a smooth transition for the necessary timetable changes, arising from the HAL Event, through Condition D2 by way of timely industry input into the process (“the Project”);
- (b) oversee and facilitate delivery of the Project;
- (c) carry out appropriate consultation with Passenger Focus and London TravelWatch, during the course of the Project.

## CONDITION D8 - MISCELLANEOUS

### 8.1 **Directions issued by the ORR**

8.1.1 Notwithstanding anything else stated in this Part D, HAL 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 ORR 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 Rights of another.

### 8.2 **Confidentiality**

8.2.1 HAL shall not be required to keep confidential the identity of, or any information provided to it by, any Timetable Participant.

### 8.3 **Removal of Train Slots from Working Timetable where no Access Rights exist**

8.3.1 Any movements of trains operated by any person must be made pursuant to permission to use the track for the purpose of or in connection with the operation of those trains under an Access Agreement (“Access Rights”). If, by 22:00 hours on the day before a Timetable Change Date and after consultation with the person proposing to move the trains, HAL reasonably considers that the person proposing to move the trains will not have the necessary Access Rights 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 due to commence the following day.

8.4 **Consultation**

8.4.1 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.

**Annex 1 – Timeline for the timetable development process**

<b>Milestone</b>	<b>What happens</b>
D-73	HAL issues the timetable process dates for both the Principal Change Date and the Subsidiary Change Date 73 weeks before the Principal Change Date
D-70	N/A
D-70-D-65	N/A
<b>Revision of the HAL Engineering Access Statement (collectively known with the HAL Timetable Planning Rules as the Rules). This process does not apply to the Advanced Register of Possessions which is detailed separately below.</b>	
D-90	If HAL wants to rely on a Possessions Strategy Notice it must issue a Possessions Strategy Proposal to all Possessions Strategy Participants for consultation
D-64	HAL issues its decision in a Possessions Strategy Notice which Possessions Strategy Participants may appeal within 20 Working Days of receipt
D-64 to D-60	HAL consults Timetable Participants on its proposed changes to the HAL Engineering Access Statement (excluding the HAL Advanced Register of Possessions)
D-59	HAL issues the Draft HAL Engineering Access Statement for consultation
D-59-D-54	Timetable Participants may make representations or objections to the Draft HAL Engineering Access Statement
D-54 to D-44	HAL considers all representations or objections, makes amendments, and prepares final revised HAL Engineering Access Statement
D-44	HAL issues final revised HAL Engineering Access Statement (excluding the HAL Advanced Register of Possessions) which Timetable Participants may appeal within 15 Working Days of receipt
D-44-D-26	After consultation with any affected Timetable Participants, HAL may make minor revisions to the HAL Engineering Access Statement (excluding the HAL Advanced Register of Possessions) in order to optimise the New Working Timetable. Timetable Participants may appeal these revisions within 5 Working Days of receipt
<b>Revision of the HAL Timetable Planning Rules (collectively known with the HAL Engineering Access Statement as the Rules).</b>	
D-64 to D-54	HAL consults Timetable Participants on its proposed changes to the HAL Timetable Planning Rules and its anticipated Restrictions of Use
D-53	HAL issues the Draft HAL Timetable Planning Rules for consultation
D-53 to D-49	Timetable Participants may make representations or objections to the Draft HAL Timetable Planning Rules
D-49 to D-46	HAL considers all representations or objections, makes amendments, and prepares final revised HAL Timetable Planning Rules
D-46	HAL issues final revised HAL Timetable Planning Rules which Timetable Participants may appeal within 15 Working Days of receipt
D-46 to D-26	After consultation with any affected Timetable Participants, HAL may make minor revisions to the HAL Timetable Planning Rules in order to optimise

Milestone	What happens
	the New Working Timetable. Timetable Participants may appeal these revisions within 5 Working Days of receipt
<b>Revision of the HAL Advanced Register of Possessions</b>	
F-64 to F-60	HAL consults Timetable Participants on its proposed changes to the HAL Advanced Register of Possessions and its anticipated Restrictions of Use
F-59	HAL issues the Draft HAL Advanced Register of Possessions for consultation
F-59 to F-54	Timetable Participants may make representations or objections to the Draft HAL Advanced Register of Possessions
F-54 to F-46	HAL considers all representations or objections, makes amendments, and prepares final revised HAL Advanced Register of Possessions
F-46	HAL issues final revised HAL Advanced Register of Possessions which Timetable Participants may appeal within 15 Working Days of receipt
F-46 to D-26	After consultation with any affected Timetable Participants, HAL may make minor revisions to the HAL Advanced Register of Possessions where it considers, acting reasonably, such revision necessary or desirable. Timetable Participants may appeal these revisions within 5 Working Days of receipt
<b>Timetable consultation, preparation and publication</b>	
Up to D-64	Timetable Participants and funders inform HAL of any events they think should be included in the Draft Calendar of Events
D-64	HAL issues Draft Calendar of Events
D-64-D-59	Timetable Participants and funders make any representations or objections to the Draft Calendar of Events
D-59 to D-54	HAL considers representations made by Timetable Participants and funders to make changes to Draft Calendar of Events
D-55	Timetable Participants planning significant new services or significant amendments to their services must notify HAL as soon as possible and before D-55 if possible
D-54	HAL issues Calendar of Events
D-55 to D-40	Initial Consultation Period. Timetable Participants discuss their proposals with HAL which carries out a consultation and facilitation process with other Timetable Participants
D-48	N/A
D-45	HAL issues the Prior Working Timetable which will be the starting point for the New Working Timetable
D-40	Priority Date
D-40 to D-26	Timetable Preparation Period  Throughout this period a draft of the emerging New Working Timetable is available online  Timetable Participants may submit Access Proposals at any time and HAL will, as far as reasonably practical, incorporate these in the New Working Timetable

<b>Milestone</b>	<b>What happens</b>
D-26	New Working Timetable is published (subject to the result of any appeals which must be made with 20 Working Days of its publication)

**Annex 2 – Timeline for Timetable Variations under Conditions D3**

<b>Train Operator Variations</b>	
<b>Milestone</b>	<b>What happens</b>
N/A	A Timetable Participant can request variations to its Train Slots at any time between D-26 and the end of the relevant Timetable Period
N/A	If the request is to vary a Train Slot which is due to operate within 7 days, HAL must respond within the timescales set out in D3.3.6 which increase incrementally with the number of days' notice given by the Timetable Participant. If the request is to vary a Train Slot with more than 7 days' notice, HAL must respond to the request within 5 Working Days
N/A	If HAL fails to notify its response within the specified time and the requested variation, if accepted, would not conflict with the Rules or any Train Slots already scheduled in the timetable, HAL will be deemed to have accepted the request

<b>HAL Variations with at least 12 weeks' notice</b>	
<b>Milestone</b>	<b>What happens</b>
TW-30	HAL provides to Timetable Participants its proposals for HAL Restrictions of Use in respect of the corresponding week
TW-30 to TW-26	HAL consults with each Timetable Participant likely to be affected and seeks to agree all HAL Variations. During this time, HAL may amend or supplement its proposals as long as they are provided to Timetable Participants by TW-26
TW-22	HAL may require a Timetable Participant to submit a revised Access Proposal in respect of any Train Slot within a reasonable timeframe and by no later than TW-16
TW-16	The latest date by which a Timetable Participant can be required to submit a revised Access Proposal. If a Timetable Participant does not submit one in the required timeframe, HAL may vary the Train Slot and the Timetable Participant may not appeal
TW-14	HAL notifies Timetable Participants of its decision
TW-13	Timetable Participant to notify HAL whether it accepts or disputes the decision
TW-12	HAL records the Timetable Variation in the Short Term Plan

<b>HAL Variations with less than 12 weeks' notice</b>	
<b>Milestone</b>	<b>What happens</b>
N/A	In such cases, HAL must follow the procedure in Condition D3.4 but with timescales for each step as are reasonable in the circumstances
N/A	Timetable Participants may appeal in accordance with D5

<b>Timetable Variations by Consent</b>	
<b>Milestone</b>	<b>What happens</b>
N/A	With the written consent of HAL and all affected Timetable Participants, a Timetable Variation may be made without having to comply with Condition D3

# Part E: Environmental Protection

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## Explanatory Note

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

# Part E: Environmental Protection

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## DEFINITIONS

In this Part E, unless the context otherwise requires:

"Environmental Condition"	means:
	Any Environmental Damage; or
(a)	Any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage  Which (in either case) in HAL's reasonable opinion could result in HAL incurring any material liability or being subject to the Direction of any Competent Authority;
"Environmental Damage"	means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;
"Environment & Energy Policy"	means HAL's written environmental protection policy, operational objectives and management arrangements (as amended from time to time to the standard to be reasonably expected of a reasonable, prudent and competent manager of railway infrastructure);
"relevant liability"	means the obligation of any person to make any payment or to take or secure the taking of any action in relation to an Environmental Condition or the Direction of a Competent Authority of the kind referred to in Condition E2.1.1(b); and
"relevant steps"	in relation to a Train Operator, means the steps of the kind referred to in Condition E2.1.3(e)(i).

# Part E: Environmental Protection

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## CONDITION E1 – ENVIRONMENTAL INFORMATION REQUIREMENTS

### 1.1 Train Operator's licence compliance

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

### 1.2 HAL's compliance

HAL shall provide each Access Beneficiary with a copy of the Environment & Energy Policy for Heathrow Airport Limited.

### 1.3 Information as to materials to be transported

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

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

### 1.4 General information - Train Operator

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

### 1.5 General information - HAL

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

# Part E: Environmental Protection

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## CONDITION E2 – REMEDIAL ACTION

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

#### 2.1.1 HAL's assessment

Where:

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

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

#### 2.1.2 Relevant criteria

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

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

#### 2.1.3 Notice of HAL's assessment

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

- (a) the Environmental Condition or Direction of Competent Authority in question;
- (b) the assessment;
- (c) its reasons for reaching the assessment;
- (d) the availability for inspection by the Train Operator of such information as HAL shall have used in making the assessment; and
- (e) the steps which HAL 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

# Part E: Environmental Protection

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- (ii) which should be taken by the Train Operator in question.

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

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

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

If an affected Train Operator shall be dissatisfied with HAL's assessment or with any other statement or information provided by HAL pursuant to Condition E2.1.3, it shall be entitled to refer the matter for resolution in accordance with the ADRR. It shall lose that entitlement if it fails to make the reference within 120 days of the later of:

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

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

### 2.2.1 **Obligation**

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

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

### 2.2.2 **HAL assistance and supervision**

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

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

If:

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

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

# Part E: Environmental Protection

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## 2.4 Liability of HAL

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

## 2.5 Access to land

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

## 2.6 General right to restrict access to Network

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

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

## 2.7 Payments to be made on without prejudice basis

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

## 2.8 Action taken will not prejudice later claim

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

# Part F: Vehicle Change

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## Explanatory Note

A. Part F provides a procedure through which changes to railway vehicles, the use of which is permitted in the access contract and related safety documentation, may be assessed and implemented. Vehicle Change includes any alteration to the physical characteristics of vehicles, including but not limited to, any increase in the length of any trains beyond that permitted by the relevant access contract and supporting operational documentation and any introduction of different vehicles on to the relevant routes which, in any case, is likely materially to affect the maintenance or operation of the HAL infrastructure or the operation of trains on the HAL infrastructure.

B. The general principle is that before any Vehicle Change can be implemented:

- (i) it must be formally proposed under Part F; and
- (ii) it must be accepted by HAL; or
- (iii) to the extent that there is any dispute as to whether the change should be implemented, or the terms on which it should be implemented, such dispute must be resolved (whether by agreement or in accordance with the ADRR) in favour of the change being implemented, although any such dispute should not prevent the implementation of the Vehicle Change, if such change is safety related.

C. Condition F1 imposes a general obligation on HAL to facilitate Vehicle Change, which includes a number of specific obligations to provide information to Access Beneficiaries and to publish documents generated under Part F on its website. HAL is also obliged to publish model terms and conditions that it is prepared to use in connection with the implementation of Vehicle Change proposals.

D. Where an Access Beneficiary wishes to make a Vehicle Change proposal, through either the normal Vehicle Change procedure the process is as follows:

- (i) The Access Beneficiary (the "Sponsor") gives a notice of proposal to HAL, affected Access Beneficiaries and other relevant persons. This would include, technical compatibility with the HAL infrastructure, all vehicle characteristics required to assess the proposed change, and proposals as to how HAL or affected Access Beneficiaries should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change. HAL must then evaluate the proposal and be permitted to consult with Access Beneficiaries and other relevant persons about the effects of the proposal.
- (ii) Within 30 days of receiving a notice from an Access Beneficiary, HAL is required to give a notice setting out the Sponsor's proposal and adding further information on its own account (in particular, where it disagrees with elements of the Sponsor's proposal). The notice includes a deadline for HAL to respond to the Sponsor's notice of proposal, which may be adjusted in the light of consultation.
- (iii) If the deadline for responses is 90 or more days after the date of the notice of proposal, the Sponsor may require HAL to submit preliminary responses or estimates of the costs, losses and expenses which it may incur as a result of the implementation of the proposed change.
- (iv) HAL is entitled to be reimbursed 75% its reasonable costs of assessing a Vehicle Change proposal by the Sponsor. The Sponsor may require HAL to provide it with estimates of such assessment costs, or to cease incurring such costs.
- (v) In responding formally to a Vehicle Change proposal, HAL must state whether it, or another Access Beneficiary, objects to the proposal in principle or on the grounds that it contains insufficient information, or whether it, or another operator of railway assets, objects on compensation grounds. The benefits of the change to an Access Party and its chances of recouping its costs or losses from third parties (including passengers) are to be taken into account when determining the amount of any compensation.

## Part F: Vehicle Change

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

# Part F: Vehicle Change

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## Definitions

In this Part F, unless the context otherwise requires:

“Authorised Variation”	means a variation to an Established Vehicle Change, where:  (a) the terms and conditions on which the Vehicle Change in question was established contain a Variation Procedure; (b) that Variation procedure has been followed in accordance with its terms; and (c) the result of the operation of that Variation procedure is that the Established Vehicle Change has been varied;
“Established Vehicle Change”	means a change which the Sponsor is entitled by this Part F to carry out, and “establish” and “establishment” of a Vehicle Change shall be construed accordingly;
“modification”	includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;
“Relevant Response Date”	means, in relation to a proposal for a Vehicle Change under this Part F, the later of such dates as are reasonably specified by HAL under Condition F2.3.1(b)(i) or Condition F2.4.3 as the date on or before which HAL 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 HAL infrastructure and Access Beneficiaries, and which shall not be: (A) less than 60 days; or (B) unless HAL and the Sponsor agree otherwise in writing, more than 90 days, from the date on which HAL’s notice under Condition F2.3.1(c) is given;
“Specified Equipment”	means, in respect of an Access Agreement, any railway vehicle the use of which is permitted on the track pursuant to that agreement;
“Sponsor”	means, in relation to a proposal for a Vehicle Change under Condition F2.1, the Access Beneficiary which has made the proposal;
“Variation”	means any modification to the terms or conditions (including as to the specification of the works to be done, their timing, the manner of their implementation, the costs to be incurred and their sharing, and the division of risk) on which an Established Vehicle Change is to be carried out, and “varied” and any other cognate words shall be construed accordingly;
“Variation Procedure”	means, in relation to an Established Vehicle Change, a procedure which: (a) forms part of the terms and conditions on which the Vehicle Change is established; and (b) provides for the Established Vehicle Change itself to be varied after it has been first established; and
“Vehicle Change”	means, in relation to an Access Beneficiary: (a) any change to Specified Equipment (or, in the case of an Access Option Holder, any change to the type or performance specification of any vehicle specifically identified within an access option) including by way of:

## Part F: Vehicle Change

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	<p>(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);</p> <p>(ii) any increase in the length of any trains beyond that permitted by that Access Beneficiary's Access Agreement; or the inclusion in Specified Equipment of any railway vehicle which is not so included; or the inclusion in an access option of any vehicle which is not so included; or</p> <p>(b) any material variation to an Established Vehicle Change which has yet been implemented, other than Authorised Variation; which, in any case, is likely materially to affect the maintenance or operation of the HAL infrastructure or the operation of trains on the HAL infrastructure, but excluding any Authorised Variation.</p>
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# Part F: Vehicle Change

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## Condition F1: Facilitation of Vehicle Change

### 1.1 Obligation to facilitate Vehicle Change

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

### 1.2 Facilitation

The obligation of HAL under Condition F1.1 includes:

- (a) the provision to an Access Beneficiary of such information concerning the condition, capacity and/or capability of the HAL infrastructure as 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 HAL Network Code) of:
  - (i) every proposal for Vehicle Change made by an Access Beneficiary under Condition F2.1;
  - (ii) every response to a proposal for Vehicle Change made by HAL under Condition F3.1;
  - (iii) every determination of matters which have been referred in accordance with the relevant ADRR under Condition F5.1;
  - (iv) every Authorised Variation;
  - (v) standard forms, produced after consultation with every other Access Party and approved by the ORR, for the notification under this Part F of proposals for Vehicle Change, and of responses to such proposals, which:
    - may include different forms for different types of Vehicle Change having regard to the size, complexity and value of the change in question; and
    - shall be used by any person notifying or responding to a proposal for Vehicle Change under this Part F, unless it is not reasonably practicable for it to do so; and
  - (vi) model terms, produced after consultation with every other Access Party and approved by the ORR, by way of supplement to the terms of this Part F and on which HAL is prepared to contract for or in connection with the implementation of a Vehicle Change which:
    - (A) shall provide appropriate and proportionate forms of contract for different types of Vehicle Change having regard to the size, complexity and value of the change;
    - (B) may include Variation Procedures; and
    - (C) shall, so far as reasonably practicable, form the basis of any terms and conditions relating to the implementation of a Vehicle Change which are proposed by an Access Beneficiary or under Condition F2;
- (c) the provision of a preliminary response to an Access Beneficiary's proposal for Vehicle Change under Condition F2.4;
- (d) such consultation before a notice of a proposal for a Vehicle Change is submitted by an Access Beneficiary as may reasonably be expected to enable that operator to assess the feasibility and affordability of the proposed change; and
- (e) such consultation with each Access Beneficiary that HAL considers may be affected by the implementation of the proposed Vehicle Change before a notice of a proposal for a Vehicle Change is submitted by an Access Beneficiary as:

# Part F: Vehicle Change

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- (i) HAL considers reasonably necessary; and
- (ii) any such person may reasonably request,
  - to enable the proposal to be developed in an efficient and economical manner; and

(f) If requested, provision of the names and contact details of each Access Beneficiary which HAL considers may be affected by the implementation of the proposed Vehicle Change.

## Condition F2: Initiation of Vehicle Change procedure

### 2.1 Submission of proposal

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

- (a) submit to HAL and each Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change as advised by HAL 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) provide details to HAL of all Access Beneficiaries to which the proposal for change has been submitted under Condition F2.1(a);
- (c) notify:
  - (i) the Secretary of State; and
  - (ii) the ORR;

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

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

### 2.2 Content of Sponsor's notice of proposal

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

- (a) state:
  - (i) the reasons why it is proposed to make the change;
  - (ii) the nature of the change, including:
    - (A) any material change which the Sponsor proposes to make to the physical characteristics of any vehicle which is already included within the Specified Equipment; and
    - (B) a description of any vehicle which is not already included within the Specified Equipment, but which the Sponsor proposes to include within the Specified Equipment;
  - (iii) in the case of any vehicle of the kind referred to in Condition F2.2(a)(ii)(A):
    - whether it is proposed to operate it on any part of the HAL infrastructure on which it does not already operate; and
    - 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 HAL infrastructure 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 HAL infrastructure, and at what speeds, it proposes to operate such vehicles;

# Part F: Vehicle Change

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- (v) the proposed timetable for the implementation of the change, including whether it intends to implement the change using the Expedited Procedure;
- (vi) the Sponsor's proposals (if any) for the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to any Access Party in respect of the change; and
- (vii) any additional terms and conditions which the Sponsor proposes should apply to the change, including any proposed Variation Procedure; and

(b) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of each Access Beneficiary that HAL considers may be affected by the implementation of the proposed Vehicle Change, to enable:

- (i) HAL; and
- (ii) any Access Beneficiary that HAL considers may be affected by the implementation of the proposed Vehicle Change,
  - to assess the likely effect of the proposed change on its business, its assets and its performance of any obligations or the exercise of any rights or discretions which it has in relation to railway services.

## 2.3 Evaluation of proposal and consultation

2.3.1 If HAL 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 HAL and other operators of trains;
- (b) within 30 days of the date on which the Sponsor's notice under Condition F2.1 was given, give a notice to the persons specified in Conditions F2.1 (a) (with the exception of HAL) and (c), with a copy to the Sponsor, inviting them to submit comments on the proposed Vehicle Change by a specified date, which shall not be earlier than 10, or later than 7 days before the Relevant Response Date, stating:

  - (i) the Relevant Response Date and the obligations of Access Parties under Conditions F2 and F3;
  - (ii) HAL's estimate of the likely impact of the change on the operation and performance of the HAL infrastructure; and
  - (iii) HAL's own proposals as to:
    - (A) the arrangements for, and any proposed terms applicable to, the implementation of the change;
    - (B) the arrangements for determining and paying any compensation in respect of the change;
    - (C) the timetable for implementation of the change;
    - (D) the division of the costs of carrying out the change; and
    - (E) the additional terms and conditions (if any) which should apply to the change, including any Variation Procedure;

- (c) send the proposal for Vehicle Change to any Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change if the Sponsor has not already done so in accordance with Condition F2.1 (a); and

# Part F: Vehicle Change

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- (d) provide details to the Sponsor of all Access Beneficiaries (if any) to which HAL has sent the proposal for Vehicle Change under Condition F2.3.1 (c).

## 2.3.2 In preparing a notice under Condition F2.3.1, HAL:

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

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

## 2.4 Preliminary response and estimate

### 2.4.1 Except in the circumstances and to the extent specified in Condition F2.4.2, HAL 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 HAL; or
- (b) a preliminary written response in respect of a proposed Vehicle Change, which shall:
  - (i) be binding on HAL, unless HAL indicates otherwise; and
  - (ii) if it is negative, include reasons.

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

### 2.4.3 After consultation with the Sponsor HAL may notify a later Relevant Response Date to the Sponsor and the persons to whom it gave its notice under Condition F2.3.1(b).

## 2.5 Reimbursement of costs

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

# Part F: Vehicle Change

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## 2.6 Provision of estimate of costs by HAL

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

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

## 2.7 Accuracy of estimates

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

## 2.8 Obligation to incur no further costs

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

## 2.9 Relationship with HAL Network Change

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

## 2.10 Vehicle Change for safety reasons

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

# Condition F3: Response to vehicle change proposal

## 3.1 Obligation to give notice of response

HAL 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 HAL breaching any access contract (other than an access contract to which the Sponsor is a party);
  - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition F2.2 provided that HAL shall first have given the Sponsor a reasonable opportunity to remedy that failure; or

# Part F: Vehicle Change

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- (iii) the implementation of that change would result in a material adverse effect on the maintenance or operation of the HAL infrastructure or operation of trains on the HAL infrastructure, which in any such case cannot adequately be compensated under this Condition F3;
- (b) any Access Beneficiary shall have given notice to HAL that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either
  - (i) in accordance with compensation terms proposed under Condition F2,
  - (ii) in the absence of any compensation terms proposed under Condition F2, or
  - (iii) on compensation terms other than those proposed under Condition F2; and/or
- (d) any other operator of railway assets shall have given notice to HAL that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either
  - (i) in accordance with compensation terms proposed under Condition F2,
  - (ii) in the absence of any compensation terms proposed under Condition F2, or
  - (iii) on compensation terms other than those proposed under Condition F2.

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

## 3.2 Amount of compensation

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

## 3.3 Benefits to be taken into account

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

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

# Condition F4: Changes imposed by competent authorities

## 4.1 Where an Access Beneficiary is required (other than at the request or instigation of the Access Beneficiary) to implement a Vehicle Change as a result of any Change of Law or any Direction of any

# Part F: Vehicle Change

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Competent Authority other than the ORR exercising any of its functions which do not fall within the definition of 'safety functions' as defined in section 4 of the Act:

- (a) each Access Party shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1, F2.2 and F2.3 (other than Conditions F2.2(a)(vi) and F2.3.1(b)(iii)(B) and (D)) in respect of that Vehicle Change;
- (b) HAL shall make such alterations (if any) to the HAL infrastructure as are reasonably necessary to accommodate that Vehicle Change and each Access Party shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2; and
- (c) each Access Party shall bear its own costs and losses arising out of the implementation of the Vehicle Change and the consequences thereof.

## Condition F5: Appeal procedure

### 5.1 Right of appeal in accordance with the ADRR

#### 5.1.1 If any Access Party is dissatisfied as to:

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

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

## Condition F6: Establishment and implementation

### 6.1 Implementation of a proposed Vehicle Change

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

- (a) HAL has not given notice under Condition F3.1 by the Relevant Response Date; or
- (b) HAL 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) HAL has received notice from an Access Beneficiary under Condition F3.1(d) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5; and
- (d) there is no other unresolved dispute under this Part F (whether under this Condition F6 or otherwise) as regards the proposed change between the Sponsor and HAL or any Access Beneficiary.

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

## Part F: Vehicle Change

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

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

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

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

6.2 When a Vehicle Change may not be implemented

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

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

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

# Part G: HAL Network Change

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## Explanatory Note

A. Part G is concerned with the procedures which Access Parties must go through when certain types of change to the HAL infrastructure (defined as "HAL Network Change") occur or are proposed.

B. The definition of "HAL Network Change" is broad, and much of it is expressed in non-exhaustive terms (i.e. after some general words of definition, HAL Network Change is said to "include" certain specific things by way of illustration or example, but that does not necessarily mean that other things are excluded). The definition should always be considered carefully and in its entirety before any decision is made as to whether a particular change falls within the scope of Part G. The following specific points should also be noted:

- (i) only changes which are likely to have a material effect on the operation of the infrastructure or of trains operated on the infrastructure are HAL Network Changes;
- (ii) HAL Network Changes can either be physical (e.g. changes to the layout, configuration or condition of the infrastructure) or operational (e.g. the introduction of a speed restriction on a section of track, a change to the way HAL maintains track or a change to the monitoring points used in the application of Schedule 8 of the Track Access Agreements), but operational changes are only HAL Network Changes if they last, or are likely to last, for more than six months;
- (iii) closures of lines which are covered by the statutory procedures under the Act (i.e. lines which are, or have in the preceding five years been, used for passenger services) and
- (iv) closures of lines which are not covered by the statutory procedures under the Act (i.e. lines which are, or have in the preceding five years, been used only for freight services) are HAL Network Changes.

C. From a procedural point of view, Part G divides HAL Network Changes into two categories: those proposed by HAL and those proposed by an Access Beneficiary. All HAL Network Changes, whether proposed by HAL or by an Access Beneficiary, are implemented by HAL.

D. The general principle is that before any HAL Network Change can be implemented:

- (i) it must be formally proposed under Part G; and
- (ii) it must be accepted by those Access Beneficiaries whom it will affect (and, where the change is proposed by an Access Beneficiary, by HAL); or
- (iii) to the extent that there is any dispute as to whether the change should be implemented, or the terms on which it should be implemented, such dispute must be resolved (whether by agreement or in accordance with the ADRR) in favour of the change being implemented.

E. However, it is recognised that:

- (i) safety considerations will sometimes dictate that HAL must make a HAL Network Change very quickly, without recourse to all the procedures under Part G. In such cases, HAL's obligations under Part G may be subordinated to the interests of safety to a greater or lesser extent, depending on the circumstances (see further Condition G1.10); and
- (ii) where a HAL Network Change is required to be made as a result of a Change of Law or a Direction of a Competent Authority, most of the normal obligations of Access Parties under Part G do not apply (see further Condition G9).

F. Condition GA imposes a general obligation on HAL to facilitate HAL Network Change, which includes a number of specific obligations to provide information to Access Beneficiaries and to publish documents generated under Part G on its website. HAL is also obliged to publish model terms and conditions which it is prepared to use in connection with the implementation of HAL Network Change proposals.

# Part G: HAL Network Change

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G. Conditions G1 and G2 are concerned with proposals made by HAL. Conditions G3 and G4 are concerned with proposals made by Access Beneficiaries. Condition G5 is concerned with the expiry and reversal process of a Short Term HAL Network Change. G6 is concerned with mandatory changes (resulting from a Change of Law or a Direction of a Competent Authority). Condition G7 is concerned with the processes that may be adopted for establishing and implementing HAL Network Changes. Condition G8 is concerned with dispute resolution in connection with HAL Network Change proposals.

H. Where HAL wishes to make a HAL Network Change proposal the procedure is as follows:

- (i) HAL gives a notice of proposal and sets a deadline for Access Beneficiaries to respond to it. Conditions G1.1 and G1.2 specify the persons to whom the notice must be given and what it must contain. In particular, the notice is to contain information on the likely material effects of the HAL Network Change and the reasons for its proposal and proposals as to how affected Access Beneficiaries should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change.
- (ii) HAL consults with operators of railway assets likely to be affected by the proposed change and may adjust the deadline for responses in the light of consultation.
- (iii) If the deadline for responses is 60 or more days after the date of HAL's notice, HAL may require Access Beneficiaries to submit preliminary responses or estimates of the costs, losses and expenses which they may incur as a result of the implementation of the proposed change.
- (iv) Access Beneficiaries are entitled to be reimbursed 75% of their reasonable costs of assessing a HAL Network Change proposal by HAL. HAL may require Access Beneficiaries to provide it with estimates of such assessment costs, or to cease incurring such costs.
- (v) In responding formally to a HAL Network Change proposal, an Access Beneficiary must either accept the proposal in its entirety or object to it on one or more of the grounds specified in Condition G2.1.1(a). Grounds for objection fall into four categories: objections to the proposed change because it would breach the Access Beneficiary's access contract; objections to the change proposal on the grounds that it does not contain sufficient information to allow the Access Beneficiary to make an informed response; objections to the proposed change on the grounds that it would result in a material deterioration in performance that could not adequately be compensated; and objections to the proposed change because it does not take into account the reasonable expectations of the Access Beneficiary in relation to the future use of the part of the HAL infrastructure in question. When making a claim for compensation for costs, losses and expenses which it may incur as a result of the proposed change, an Access Beneficiary must state on what terms it believes such compensation should be paid. The benefits of the change to the Access Beneficiary and its chances of recouping its costs or losses from third parties (including passengers) are to be taken into account when determining the amount of such compensation.
- (vi) HAL must then either reach agreement with any objecting Access Beneficiaries, refer the matters in dispute in accordance with the ADRR or abandon the proposal. Implementation will then depend on whether the ADRR proceedings result in a determination that the change should be implemented on terms which are acceptable to HAL. If no Access Beneficiary objects to a HAL Network Change proposal, HAL is entitled to implement following the procedure set out in Condition G7.

I. The Short Term HAL Network Change process allows HAL to propose to maintain any part of the infrastructure at less than the published capability for a specified period. Condition G5 provides Access Beneficiaries with the ability to request, at HAL's cost, the reversal of any such change should they have a reasonable expectation as to the future use of the relevant part of the HAL infrastructure before the expiry of the specified period.

J. Where an Access Beneficiary wishes to make a HAL Network Change proposal, the procedure is as follows:

## Part G: HAL Network Change

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- (i) The Access Beneficiary (“Sponsor”) gives a notice of proposal to HAL. Condition G3.2 prescribes the contents of such a notice. In particular, the notice is to contain information on the likely material effects of the HAL Network Change and the reasons for its proposal and proposals as to how HAL and affected Access Beneficiaries should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change. HAL must then evaluate the proposal and be permitted to consult with Access Beneficiaries and other relevant persons about the effects of the proposal.
- (ii) Within 30 days of receiving the Sponsor’s notice, HAL gives a notice setting out the Sponsor’s proposal and adding further information on its own account (in particular, where it disagrees with elements of the Sponsor’s proposal). The notice includes a deadline for HAL to respond to the Sponsor’s notice of proposal, which may be adjusted in the light of consultation.
- (iii) If the deadline for responses is 90 or more days after the date of HAL’s notice, the Sponsor may require HAL to submit preliminary responses or estimates of the costs, losses and expenses which it may incur as a result of the implementation of the proposed change.
- (iv) HAL is entitled to be reimbursed 75% of its reasonable costs of assessing a HAL Network Change proposal by the Sponsor. The Sponsor may require HAL to provide it with estimates of such assessment costs, or to cease incurring such costs.
- (v) In responding formally to a HAL Network Change proposal, HAL must state on its own behalf and on behalf of any other Access Beneficiary, whether the proposal is accepted in its entirety or objected to on one or more of the grounds specified in Condition G4.1.1(a) or (b). If a HAL Network Change proposal is accepted and HAL and/or an affected Access Beneficiary make a claim for compensation for costs, losses and expenses which it may incur as a result of the proposed change, HAL must state on what terms it (or another Access Beneficiary) believes such compensation should be paid. The benefits of the change to HAL or any other Access Beneficiary and their chances of recouping their costs or losses from third parties (including passengers) are to be taken into account when determining the amount of any compensation.
- (vi) The Sponsor must then either reach agreement with HAL and other Access Beneficiaries to the extent that they raise objections to the proposal, refer the matters in dispute for determination in accordance with the ADRR or abandon the proposal. Implementation will then depend on whether the ADRR proceedings (see further Condition G10) result in a determination that the change should be implemented.
- (vii) Where a proposal for HAL Network Change proposed by an Access Beneficiary requires the implementation of a Vehicle Change, that Access Beneficiary must follow the required procedures under Part F as well as those under Part G.

K. This Explanatory Note does not form part of the HAL Network Code.

# Part G: HAL Network Change

## Definitions

In this Part G, unless the context otherwise requires:

“Authorised Variation”	means a variation to an Established HAL Network Change, where: (a) the terms and conditions on which the HAL Network Change in question was established contain a Variation Procedure; (b) that Variation Procedure has been followed in accordance with its terms; and (c) the result of the operation of that Variation Procedure is that the Established HAL Network Change has been varied;
“Change”	includes: (a) improvement or deterioration, enlargement or reduction; and (b) for the purposes of paragraph (b) of the definition of HAL Network Change, a series of changes;
“Effective Date”	means the date specified in a notice of proposal of a Short Term HAL Network Change upon which the Short Term HAL Network Change is proposed to become effective;
“Established Date”	means the first date upon which a Short Term HAL Network Change can be implemented in accordance with Condition G7, whether or not the Change is implemented on that day;
“Established HAL Network Change”	means a Change falling within the definition of “HAL Network Change” and which: (a) in the case of a HAL Network Change proposed by HAL, HAL is entitled to carry out having complied with the procedural and other requirements of this Part G; and (b) in the case of a HAL Network Change proposed by an Access Beneficiary, HAL is required by this Part G to carry out, and “establish” and “establishment” of a HAL Network Change shall be construed accordingly;
“Expiry Date”	means the date specified in a notice of proposal in relation to a Short Term HAL Network Change which shall not be more than two years, or such longer period as is agreed between HAL and each Access Beneficiary that may be affected by the implementation of the proposed Short Term HAL Network Change or determined in accordance with Condition G8, from the later of the Effective Date and the Established Date;
“Governmental Body”	means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the ORR);
“Method of Delivery”	includes the means of securing access to an operational document and the ability to make use of the data contained in an operational document;
“modification”	includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;
“HAL Network Change”	means, in relation to an Access Beneficiary: (a) any Change in or to any part of the infrastructure (including its layout, configuration or condition) which is likely materially to affect the operation of: (i) the infrastructure; or (ii) trains operated by, or anticipated as being operated in accordance with the terms of any access option, by or on behalf of that Access Beneficiary on the infrastructure; or (b) any Change to the operation of the infrastructure (being a Change which does not fall within paragraph (a) above) which: (i) is likely materially to affect the operation of trains operated by, or anticipated as being operated in accordance with the terms of any access option, by or on behalf of that Access Beneficiary on the infrastructure; and

## Part G: HAL Network Change

	<p>(ii) has lasted or is likely to last for more than six months, including</p> <ul style="list-style-type: none"> <li>(A) a temporary speed restriction;</li> <li>(B) a material Change to the location of any of the specified points referred to in Condition B1.1.1(a); or</li> <li>(C) a Change to the Method of Delivery of any operational documentation (other than Railway Group Standards) owned or used by an Access Party; or</li> <li>(D) any material variation to an Established HAL Network Change, other than an Authorised Variation,</li> </ul> <p>but does not include a closure (as defined in the Railways Act 2016)</p>
“Preparatory Works”	means testing, trials, pilot activities, surveys and all other activities reasonably necessary to develop the proposed HAL Network Change;
“Relevant Costs”	<p>means, in respect of any HAL Network Change implemented in accordance with Condition G6:</p> <ul style="list-style-type: none"> <li>(a) in respect of HAL, all costs, direct losses and expenses (including loss of revenue and liabilities to other Access Beneficiaries but excluding liabilities under any Access Beneficiary’s Access Agreement as a consequence of any Restriction of Use in connection with the implementation of that HAL Network Change) incurred by HAL as a consequence of the implementation of that HAL Network Change;</li> <li>(b) in respect of any Access Beneficiary, the amounts which would otherwise be due under that Access Beneficiary’s Access Agreement as a consequence of any Restriction of Use in connection with the implementation of that HAL Network Change;</li> </ul>
“Relevant Response Date”	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in relation to a proposal for a HAL Network Change under Condition G1, the later of such dates as are reasonably specified by HAL under Condition G1.2(a) and Condition G1.3.2 as the date on or before which an Access Beneficiary is to give notice of its response to that proposal under Condition G2.1, having regard to: <ul style="list-style-type: none"> <li>(i) the size and complexity of the Change; and</li> <li>(ii) the likely impact of the Change on the Access Beneficiary, and which shall not be less than 30 days from the date on which the notice of the proposal for Change is given; and</li> </ul> </li> <li>(b) in relation to a proposal for a HAL Network Change under Condition G3, the later of such dates as are reasonably specified by HAL under Condition G3.3.1(c)(i) and Condition G3.4.3 as the date on or before which it is to give notice of its response to that proposal under Condition G4.1, having regard to: <ul style="list-style-type: none"> <li>(i) the size and complexity of the Change; and</li> <li>(ii) the likely impact of the Change on Access Beneficiaries, and which shall not be: <ul style="list-style-type: none"> <li>(A) less than 60 days; or</li> <li>(B) unless HAL and the Sponsor agree otherwise in writing, more than 90 days,</li> </ul> </li> </ul> <p>from the date on which HAL’s notice under Condition G3.3.1(c) is given;</p> </li> </ul>
“Short Term HAL Network Change”	means a HAL Network Change which HAL specifies as such in any proposal made under Condition G1, being a HAL Network Change which involves only a temporary reduction in the capability of the infrastructure for a defined period of time during which there is no reasonable expectation of a requirement for the capability being temporarily withdrawn;
“Sponsor”	means, in relation to a proposal for a HAL Network Change under Condition G3.1, the Access Beneficiary which has made the proposal;

## Part G: HAL Network Change

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<b>“variation”</b>	means any modification to the terms or conditions (including as to the specification of the works to be done, their timing, the manner of their implementation, the costs to be incurred and their sharing, and the division of risk) on which an established HAL Network Change is to be carried out, and “varied” and any other cognate words shall be construed accordingly; and
<b>“Variation Procedure”</b>	means, in relation to an established HAL Network Change, a procedure which: (a) forms part of the terms and conditions on which the HAL Network Change is established; and (b) provides for the Established HAL Network Change itself to be varied after it has been first established.

# Part G: HAL Network Change

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## Condition GA: Facilitation of HAL network change

### A1 Obligation to facilitate HAL Network Change

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

### A2 Limit of obligation

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

### A3 Facilitation

The obligation of HAL under Condition GA1 includes:

- (i) the provision to an Access Beneficiary of such information concerning the condition, capacity and/or capability of the infrastructure as that Access Beneficiary may reasonably request in connection with the development of a proposal for HAL Network Change (whether the proposal is made by that Access Beneficiary or another person);
- (a) the publication on its website (subject to Condition A3 of the HAL Network Code) of:
  - (i) every proposal for HAL Network Change made by HAL under Condition G1.1 or by an Access Beneficiary under Condition G3.1;
  - (ii) every response to a proposal for HAL Network Change made by an Access Beneficiary under Condition G2.1 or by HAL under Condition G4.1;
  - (iii) the determinations of matters which have been referred for determination in accordance with the ADRR under Condition G8.1 and which fall to be published in accordance with the ADRR;
  - (iv) every Authorised Variation;
  - (v) standard forms, produced after consultation with every other Access Party and approved by the ORR, for the notification under this Part G of proposals for HAL Network Change, and of responses to such proposals, which:
    - (A) may include different forms for different types of HAL Network Change having regard to the size, complexity and value of the Change in question; and
    - (B) shall be used by any person notifying or responding to a proposal for HAL Network Change under this Part G, unless it is not reasonably practicable for it to do so; and
  - (vi) model terms and conditions, produced after consultation with every other Access Party by way of supplement to the terms of this Part G and on which HAL is prepared to contract for or in connection with the implementation of a HAL Network Change which:
    - (A) shall provide appropriate and proportionate forms of contract for different types of HAL 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 HAL Network Change which are proposed by HAL under Condition G1 or by an Access Beneficiary under Condition G3;
- (b) the provision of a preliminary response to a proposal for HAL Network Change by an Access Beneficiary under Condition G3.4;
- (c) such consultation before a notice of a proposal for a HAL 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

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(d) such consultation with the persons specified in Condition G1.1(a) and G3.1.1(b) before a notice of a proposal for a HAL Network Change is given by HAL or submitted by an Access Beneficiary as:

- (i) HAL considers reasonably necessary; and
- (ii) any person specified in Condition G1.1(a) and G3.1.1(b) may reasonably request, to enable the proposal to be developed in an efficient and economical manner.

## Condition G1: HAL Network change proposal by HAL

### 1.1 Notice of proposal

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

- (a) give notice of its proposal for HAL Network Change to:
  - (i) each Access Beneficiary that may be affected by the implementation of the proposed HAL Network Change;
  - (ii) Secretary of State, the ORR; and
  - (iii) Transport for London if it may be affected by the implementation of the proposed HAL Network Change; and
- (b) without delay publish on its website a summary of its proposal for HAL Network Change.

### 1.2 Content of notice of proposed HAL Network Change

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

- (a) state the Relevant Response Date and the obligations of Access Parties
- (b) indicate whether the proposed HAL Network Change is a Short Term HAL Network Change;
- (c) invite the persons specified in Condition G1.1(a)(ii)-(iii) to submit comments by the Relevant Response Date;
- (d) 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 infrastructure or on trains operated on the infrastructure;
  - (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 infrastructure 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) HAL'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 HAL Network Change:
    - (A) HAL's proposals as to the Effective Date;
    - (B) HAL's proposals as to the Expiry Date;
    - (C) the estimated timescale in which the Change could reasonably be reversed if so requested by an Access Beneficiary based on its reasonable expectations as to future use of the infrastructure; and

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- (D) the capability of the relevant section of the infrastructure before the proposed Short Term HAL Network Change (and any Short Term HAL Network Change which it succeeds) and the proposed reduction to that capability;
- (vi) any additional terms and conditions which HAL 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
- (e) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition G1.1(a), to enable any such person to assess the likely effect of the proposed Change on its business and its performance of any obligations or the exercise of any discretions which it has in relation to railway services.

## 1.3 Consultation

- 1.3.1 HAL shall, after giving notice of any proposal for HAL 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, HAL may notify a later Relevant Response Date to the persons to whom the notice of proposal for HAL Network Change was given.

## 1.4 Obligations on Access Beneficiaries to facilitate HAL 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 HAL under Condition G1.3, take all reasonable steps to comply with any written request of HAL to provide HAL, within a reasonable period of time and at no cost to HAL, 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 HAL Network Change, which shall:
    - (i) be binding on the Access Beneficiary, unless the Access Beneficiary indicates otherwise; and
    - (ii) if it is negative, include reasons.
- 1.4.2 An Access Beneficiary shall not be obliged to comply with a request from HAL 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 HAL Network Change was given; and
    - (ii) the request is made at the same time as HAL gives its notice under Condition G1.1; or
  - (b) to the extent that the Access Beneficiary is unable to comply with such a request, having regard to the information reasonably available to it.

## 1.5 Reimbursement of costs

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

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## 1.6 Further information regarding costs

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

## 1.7 Accuracy of estimates

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

## 1.8 Obligation to incur no further costs

An Access Beneficiary shall, if requested by HAL at any time, incur no further costs (except any costs which cannot reasonably be avoided) in respect of any proposal for HAL Network Change made by HAL.

## 1.9 Changes to the operation of the HAL infrastructure

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

## 1.10 HAL Network Change for safety reasons

To the extent that a HAL Network Change within the meaning of paragraph (a) of that term's definition is required to be made by HAL for safety reasons, HAL 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, HAL shall promptly commence implementing and thereafter comply with the procedure set out in this Part G as if the relevant HAL Network Change were a HAL Network Change proposed by HAL.

# Condition G2: Response by access beneficiary to HAL network change proposal

## 2.1 Obligation to give notice of response

### 2.1.1 The Access Beneficiary shall give notice to HAL 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 HAL breaching an access contract to which that Access Beneficiary is a party;
  - (ii) HAL has failed, in respect of the proposed Change, to provide sufficient particulars to that Access Beneficiary under Condition G1.2;

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- (iii) the implementation of the proposed Change would result in a material deterioration in the performance of that Access Beneficiary's trains which cannot adequately be compensated under this Condition G2 or (where that Access Beneficiary is a Train Operator) in respect of a Restriction of Use in connection with the implementation of the proposed Change under that Train Operator's Access Agreement; or
- (iv) the proposed Change does not adequately take account of the reasonable expectations of the Access Beneficiary as to the future use of the relevant part of the HAL infrastructure; and/or

(b) it should be entitled to compensation from HAL 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(b)(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 HAL should provide.

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

2.2 **Amount of compensation**

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

2.3 **Benefits to be taken into account**

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

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

2.4 **Restrictions of Use**

2.4.1 The amount of the compensation referred to in Condition G2.2 shall exclude the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed Change.

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2.4.2 The benefits taken into account in determining the amount of the compensation for the proposed Change under Condition G2.3 shall exclude the benefit (if any) to be obtained or likely in the future to be obtained by the Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed Change (with that exclusion including any compensation payable to that Train Operator in respect of that Restriction of Use under its Access Agreement).

## Condition G3: HAL Network change proposal by access beneficiary

### 3.1 Notice of proposal

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

- (a) submit to HAL a proposal for such Change; and
- (b) permit HAL to consult with:
  - (i) each Access Beneficiary that may be affected by the implementation of the proposed HAL Network Change;
  - (ii) Secretary of State, the ORR; and
  - (iii) Transport for London if it may be affected, by the implementation of the proposed HAL Network Change,

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

### 3.2 Content of Sponsor's notice of proposal

3.2.1 A notice of a proposed HAL 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 HAL infrastructure or on trains operated on the HAL infrastructure;
  - (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 HAL infrastructure 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 HAL 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) HAL; 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.

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## 3.3 Evaluation of proposal and consultation

### 3.3.1 If HAL receives a proposal for HAL 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 HAL Network Change on either or both of HAL and other operators of trains;
- (b) consult with each person specified in Condition G3.1(b) likely to be materially affected by the proposed Change to the extent reasonably necessary so as properly to inform them of the Change and to enable them to assess the consequences for them of the Change; and
- (c) for the purpose of the consultation under Condition G3.3.1(b), within 30 days of the date on which the Sponsor's notice under Condition G3.1 was given, give a notice to the persons specified in Condition G3.1(b), with a copy to the Sponsor, inviting them to submit comments by the Relevant Response Date and stating:
  - (i) the Relevant Response Date and the obligations of Access Parties under Conditions G3 and G4;
  - (ii) the reasons given by the Sponsor under Condition G3.2(a)(i) for proposing to make the Change;
  - (iii) HAL's estimate of the likely impact of the Change on the operation and performance of the infrastructure; and
  - (iv) HAL'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 infrastructure 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), HAL:

- (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.

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## 3.4 Facilitation of HAL Network Change by HAL

3.4.1 Except in the circumstances and to the extent specified in Condition G3.4.2, HAL 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 HAL; and/or
- (b) a preliminary written response in respect of the proposed HAL Network Change, which shall:
  - (i) be binding on HAL, unless HAL indicates otherwise; and
  - (ii) if it is negative, include reasons.

3.4.2 HAL 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 HAL's notice under Condition G3.3.1(c) was given; and
  - (ii) the request is made within 7 days of the Sponsor receiving HAL's notice under Condition G3.3.1(c); or
- (b) to the extent that HAL 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), HAL may notify a later Relevant Response Date to the Sponsor and the persons to whom it gave its notice under Condition G3.3.1(c).

## 3.5 Reimbursement of costs

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

## 3.6 Provision of estimate of costs by HAL

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

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

## 3.7 Accuracy of estimates

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

## 3.8 Obligation to incur no further costs

HAL 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 HAL Network Change made by the Sponsor.

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## 3.9 Relationship with Vehicle Change

If the implementation of a HAL 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 HAL Network Change or vice versa.

## Condition G4: Response by HAL to Access Beneficiary Network Change Proposal

### 4.1 Obligation to give notice of response

#### 4.1.1 HAL 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 HAL 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 HAL 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 infrastructure or the operation of any train on the HAL infrastructure which in any such case cannot adequately be compensated under this Condition G4 or in respect of a Restriction of Use in connection with the implementation of the proposed Change under the relevant Train Operator's Access Agreement; or
  - (iv) the proposed Change does not adequately take account of the reasonable expectations of an Access Party (other than the Sponsor) as to the future use of the relevant part of the HAL infrastructure;
- (b) any Access Beneficiary shall have given notice to HAL 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 HAL 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 HAL 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

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- (b) if HAL 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 HAL or the relevant Access Beneficiary's decision.

## 4.2 Amount of compensation

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

- (a) subject to Condition G4.4.1 an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by HAL 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 HAL as consequence of implementing a HAL Network Change including the recovery of any payments made by HAL to the relevant Train Operator under that Train Operator's Access Agreement for the relevant Restriction(s) of Use.

## 4.3 Benefits to be taken into account

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

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

## 4.4 Restrictions of Use

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

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## Condition G5: Short Term HAL Network Change

### 5.1 Reversal of a Short Term HAL Network Change

- 5.1.1 An Access Beneficiary may request in writing that HAL reverse the effect of a Short Term HAL Network Change before its Expiry Date if the effect of the Short Term HAL Network Change would prevent the Access Beneficiary using the infrastructure in a manner consistent with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the infrastructure.
- 5.1.2 The Access Beneficiary shall include with any notice requesting the reversal of the effect of a Short Term HAL Network Change served under Condition G5.1.1 evidence to support the Access Beneficiary's claim of reasonable expectations as to the future use of the relevant part of the HAL infrastructure which requires that reversal.
- 5.1.3 The Access Beneficiary shall provide HAL with such further information as HAL may reasonably require to enable HAL to assess the reasonableness of the Access Beneficiary's request to reverse the effect of a Short Term HAL Network Change.
- 5.1.4 Upon receipt of a notice to reverse the effect of a Short Term HAL Network Change served under Condition G5.1.1, HAL shall:
  - (a) reverse the effect of the Short Term HAL 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 HAL Network Change served under Condition G1.1; and
      - (B) the timescale within which HAL can complete the reversal without incurring any greater cost than would have reasonably been incurred by HAL had the effect of the Short Term HAL Network Change been reversed in accordance with the estimated timescale for reversal set out in the notice of proposed HAL 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 HAL does not believe that the effect of the Short Term HAL Network Change is preventing the Access Beneficiary using the HAL infrastructure in accordance with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the HAL infrastructure and giving reasons for its decision.

HAL 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 HAL must reverse the effect of the Short Term HAL Network Change as calculated under Condition G5.1.4(a).

### 5.2 Expiry of a Short Term HAL Network Change

- 5.2.1 HAL shall restore at its own cost any part of the HAL infrastructure which has been subject to a Short Term HAL Network Change to its original capability as set out in the notice of proposal for the Short Term HAL Network Change by the Expiry Date unless and to the extent that:
  - (a) a HAL Network Change has been implemented in place of the Short Term HAL Network Change; or
  - (b) a further Short Term HAL Network Change has been implemented.

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## 5.3 Notification of reversal of a Short Term HAL Network Change prior to the Expiry Date

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

## Condition G6: Changes imposed by competent authorities

6.1 Where HAL is required (other than at its own request or instigation) to implement a HAL Network Change as a result of any Change of Law or any Direction of any Competent Authority other than the ORR exercising any of its functions which do not fall within the definition of 'safety functions' as defined in section 4 of the Act:

- (a) HAL shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 in respect of that HAL Network Change;
- (b) each Access Beneficiary shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that HAL 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 Condition F2.2(a)(vi));
- (c) subject to Condition G9(d), each Access Party shall bear its own costs or losses arising out of the implementation of the HAL Network Change or the consequences thereof;
- (d) where HAL recovers compensation in respect of that HAL Network Change from a Competent Authority or some other Governmental Body, it shall pay to Access Beneficiaries:
  - (i) where any compensation paid to HAL in relation to that HAL Network Change is sufficient to cover the Relevant Costs of the Access Beneficiary and of HAL, 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 HAL's Relevant Costs and all the Access Beneficiary's Relevant Costs in respect of that HAL Network Change; and
- (e) HAL shall use reasonable endeavours to negotiate with the relevant Competent Authority or Governmental Body (as applicable) a level of compensation in respect of that HAL Network Change which is sufficient to ensure that the Access Beneficiary receives compensation for all of its Relevant Costs. HAL 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 G7: Establishment and implementation

### 7.1 Implementation of a HAL proposed HAL Network Change

7.1.1 HAL shall be entitled to implement a proposed HAL Network Change if:

- (a) it has not received a notice from any Access Beneficiary under Condition G2.1 by the Relevant Response Date; or
- (b) it has received notice by the Relevant Response Date from an Access Beneficiary under Condition G2.1(c) and either the amount of any compensation referred to in Condition G2.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G8; and
- (c) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed Change between HAL and any affected Access Beneficiary.

# Part G: HAL Network Change

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- 7.1.2 HAL may, if it considers it expedient to do so in order to confirm whether or not Condition G7.1.1 has been satisfied, issue a notice to all affected Access Beneficiaries when it reasonably believes it is entitled to implement a proposed HAL Network Change.
- 7.1.3 HAL's entitlement to implement a proposed HAL Network Change shall be treated as confirmed 21 days after it has served a notice in respect of that HAL Network Change in accordance with Condition G7.1.2 unless it receives notice from an Access Beneficiary within those 21 days disputing HAL's entitlement to implement that proposed HAL Network Change under Condition G7.1.1 and giving full particulars of its reasons.
- 7.1.4 If HAL does not agree with the contents of a notice served by an affected Access Beneficiary in accordance with Condition G7.1.3, HAL may:
  - (a) refer the matter for determination in accordance with the ADRR and Condition G8 shall apply; or
  - (b) withdraw the proposed HAL Network Change.

**7.2 Implementation of a Sponsor proposed HAL Network Change**

- 7.2.1 The Sponsor shall be entitled to instruct HAL to implement a proposed HAL Network Change if:
  - (a) HAL has not given notice under Condition G4.1 by the Relevant Response Date; or
  - (b) HAL 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 G8; or
  - (c) HAL 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 G8; and
  - (d) there is no other unresolved dispute under this Part G (whether under this Condition G7 or otherwise) as regards the proposed Change between the Sponsor and any Access Party.
- 7.2.2 The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition G7.2.1 has been satisfied, instruct HAL to issue a notice to all affected Access Beneficiaries when the Sponsor reasonably believes that it is entitled to instruct HAL to implement a proposed HAL Network Change and HAL shall then serve such a notice within 7 days of the instruction.
- 7.2.3 The Sponsor's entitlement to instruct HAL to implement a proposed HAL Network Change shall be treated as confirmed 35 days after HAL has served a notice in respect of that HAL Network Change in accordance with Condition G7.2.2 unless:
  - (a) HAL gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to require the implementation of that HAL Network Change under Condition G7.2.1 and giving full particulars of its reasons; or
  - (b) HAL receives notice from an Access Beneficiary within 21 days of the notice served by HAL disputing the Sponsor's entitlement to require the implementation of that HAL Network Change under Condition G7.2.1 and giving full particulars of its reasons.
- 7.2.4 If the Sponsor does not agree with the contents of a notice served by HAL or an affected Access Beneficiary in accordance with Condition G7.2.3, the Sponsor may:
  - (a) refer the matter for determination in accordance with the ADRR and Condition G8 shall apply; or
  - (b) withdraw the proposed HAL Network Change.

# Part G: HAL Network Change

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## 7.3 When a HAL Network Change may not be implemented

7.3.1 HAL shall not be entitled, and a Sponsor shall not be entitled to require HAL, to implement a proposed HAL Network Change unless it is so entitled to implement, or require the implementation of that HAL Network Change under Condition G7.1.1 or Condition G7.2.1.

7.3.2 For the purposes of the Conditions G7.1.1 and G7.2.1, unresolved disputes shall include:

- (a) a notice has been served under Condition G2.1.1(a) or (b) or Condition G4.1.1(a) or (b) which has not been withdrawn, resolved under Condition G8 or agreed not to apply; and
- (b) a notice has been served under Condition G4.1.1(c) or (d) which has not been agreed or resolved as referred to in Condition G7.1.1(b) or G7.2.1(b) or (c) or otherwise agreed, resolved or withdrawn.

## Condition G8: Appeal Procedure

### 8.1 Right of referral in accordance with the ADRR

8.1.1 If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure in this Part G;
- (b) the contents of any notice given under Condition G2.1, G4.1, G5.1.1 or G7 (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 HAL Network Change can be reasonably reversed, in a notice of proposed HAL Network Change given under Condition G1.1; or
- (e) the reasons given by HAL as to why it does not believe that the effect of the Short Term HAL Network Change is preventing the Access Beneficiary using the infrastructure in accordance with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the HAL infrastructure under Condition G5.1.4(b),

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

# Part H: HAL Railway Operational Code

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## Explanatory Note

- A. Part H sets out a requirement for HAL, in consultation with the industry, to establish a Heathrow Railway Operational Code (the "ROC"). For these purposes the Network Rail ROC will be adopted through a Connection Agreement and will be supported by the Heathrow Emergency Plan (the "HEP").
- B. The HEP describes the arrangements that are specific to the HAL infrastructure and relate to the interfaces between the HAL infrastructure and Heathrow Airport. The obligations within the HEP are sub contracted out to Heathrow Express Operating Company under ROGs. Both the ROC and the HEP arrangements share the objective of sustaining operation of train services on the HAL infrastructure in accordance with the working timetable, as well as where necessary restoring operation in accordance with the working timetable, having regard to the needs of passengers; the interests of safety and security; the efficient and economical operation of the HAL infrastructure and of trains operating on it; and criteria published by the ORR.
- B. The ROC is to be kept under regular review, and covers such issues as notification of disruptive events; contingency plans; clearance of track blockages and assistance to failed trains; emergency timetabling procedures; control arrangements; train regulation; seasonal-preparedness; and other matters necessary or expedient to achieve its objective.
- C. The HEP is to be kept under regular review, and covers such issues as incident command structure; contingency plans; incident management and control; control arrangements; roles and responsibilities; welfare arrangements; emergency services and local authority support and other matters necessary or expedient to achieve its objective.
- D. Part H also sets out a procedure for varying the HEP.
- E. The ROC is part of the services procured by HAL under contract to Network Rail. Any changes to the ROC can only be made through the provisions of the Network Rail Network Code and therefore requests for variations from parties to the HAL Network Code should be made to HAL for submission to Network Rail.
- E. This Explanatory Note does not form part of the HAL Network Code.

## Definitions

In this Part H, unless the context otherwise requires:

"appeal"	<p>means, in relation to a ROC Section, the exercise by a person of a right under the Network Rail Network Code to make a reference in that respect; and</p> <p>means, in relation to the Heathrow Emergency Plan, the exercise by a person of a right under the HAL Network Code to make a reference in that respect;</p>
"Disruptive Event"	means any event or circumstance which materially prevents or materially disrupts the operation of trains or any part of the HAL infrastructure in accordance with the Working Timetable;
"established"	means, in relation to a ROC Section, or a variation to a ROC Section, as the case may be, that the ROC Section or the variation has come into

# Part H: HAL Railway Operational Code

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	effect under Condition H5; and "establish" and "establishment" shall be construed accordingly;
"Extended Disruption"	means a Disruptive Event which is likely to be of sufficient duration as to make it practicable to adopt a revised timetable;
"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.
"Objective"	means the objective of the Railway Operational Code and Heathrow Emergency Plan specified in Condition H1.2;
"Network Rail ROC Criteria"	means any document published by Network Rail from time to time specifying the matters to which Network Rail will expect to have regard and the relative weight which it will expect to be placed on such matters when any reference made under Condition HA7 is considered by an appeal body;
"Permitted Exemptions"	has the meaning ascribed to it in Condition H3.3;
"Railway Operational Code"	has the meaning ascribed to it in Condition H1.1;
"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.
"Heathrow Emergency Plan"	means all plans, procedures and documents which are required to be produced to support the arrangements and application of the Heathrow Emergency Plan

## Condition H1: Railway Operational Code and Heathrow Emergency Plan and their Objective

### 1.1 Railway Operational Code and Heathrow Emergency Plan

1.1.1 The Railway Operational Code which applies to the Wider UK Rail Network is also applicable to the HAL infrastructure and 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.

1.1.2 The Heathrow Emergency Plan is established under this Part H.

### 1.2 Objective

The objective of the Railway Operational Code and Heathrow Emergency Plan 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 Network Rail ROC Criteria, having regard to:

- (a) the needs of passengers;

# Part H: HAL Railway Operational Code

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- (b) the interests of safety and security; and
- (c) the efficient and economical operation of the HAL infrastructure and of trains operating on it.

## 1.3 Relationship of Railway Operational Code and Heathrow Emergency Plan to the HAL Network Code

### 1.3.1 The Railway Operational Code:

- (a) is a national code procured by HAL and where a Train Operator wishes to vary the Railway Operational Code, a request should be submitted to HAL to propose that variation to Network Rail for consideration under the procedures set out in the Network Rail Network Code; and
- (b) does not form part of the HAL Network Code.

### 1.3.2 The Heathrow Emergency Plan describes the arrangements that are specific to the HAL infrastructure and contains emergency procedures that reflect the specific interfaces between the HAL infrastructure and Heathrow Airport.

### 1.3.4 The procedures to vary the Heathrow Emergency Plan are set out in Condition H8.

## Condition H2: Obligation to observe the Railway Operational Code and Heathrow Emergency Plan

### 2.1 HAL and each Train Operator shall comply with the Railway Operational Code and Heathrow Emergency Plan.

## Condition H3: Scope of Railway Operational Code

### 3.1 Contents of Railway Operational Code

#### 3.1.1 The Railway Operational Code contains:

- (a) a specification of the procedures and policies by which HAL in cooperation with Train Operators will promote achievement of the Objective, including:
  - (i) a procedure for notification of, and communication in relation to, Disruptive Events or reasonably foreseeable Disruptive Events;
  - (ii) train regulation policies;
  - (iii) an emergency timetable procedure in the event of Extended Disruption;
  - (iv) arrangements for clearance of track blockages and assistance for failed trains;
  - (v) arrangements for:
    - (A) the provision of equipment to deal with adverse weather conditions; and
    - (B) the preparation for and response to seasonal disruptions;
  - (vi) control arrangements; and

# Part H: HAL Railway Operational Code

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- (vii) other matters which it is necessary or expedient should be covered in order to promote achievement of the Objective;
- (b) procedures for reviewing and monitoring the effectiveness of the Railway Operational Code; and
- (c) procedures for the production, review, approval and publication of Subsidiary Documentation.

## 3.2 Publication

### 3.2.1 The ROC shall be published on its website by HAL subject to:

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

## 3.3 Permitted Exemptions

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

## 3.4 Subsidiary Documentation

All Subsidiary Documentation shall:

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

## Condition H4: Appeals relating to Railway Operational Code

### 4.1 Right of appeal in accordance with the ADRR

As the Railway Operational Code, as varied under the Network Rail Network Code, is being adopted for the HAL infrastructure, neither HAL nor Train Operators can appeal against such variations through the provisions of this HAL Network Code. Insofar as Train Operators are also parties to the Network Rail Network Code, any such appeal should be made through the provisions of the Network Rail Network Code.

## Condition H5: Variations to Railway Operational Code

The Railway Operational Code is a national code managed by Network Rail. Any variations to the code will be managed through the provisions set out in the Network Rail Network Code.

## 5.1 HAL Variations

HAL may request, but cannot compel, that Network Rail consider sponsoring variations to the Railway Operational Code on its behalf if:

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

# Part H: HAL Railway Operational Code

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

## 5.2 Variations proposed by a Train Operator

A Train Operator may request that HAL propose to Network Rail variations to the ROC through the Variation Procedure within the Network Rail Network Code, if it reasonably considers that this is necessary in order better to promote the achievement of the Objective and any such request shall include:

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

## 5.3 Issue of varied ROC Section

HAL shall publish on its website in accordance with Condition H3.2 any variation to a ROC Section.

## 5.4 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, HAL may request, but cannot compel, that Network Rail propose that those consequential changes are made and are effective from the date on which the relevant change to Part H is established.

# Condition H6: Scope of Heathrow Emergency Plan

## 6.1 Contents of Heathrow Emergency Plan

The Heathrow Emergency Plan contains:

- (a) Incident management and control procedures;
- (b) Control roles and responsibilities;
- (c) Welfare arrangements;
- (d) Emergency services and local authority support; and
- (e) other matters necessary or expedient to achieve its objective.

## 6.2 Publication

The Heathrow Emergency Plan shall be published on its website by HAL subject to Condition A3 of the HAL Network Code.

# Condition H7: Appeals

## 7.1 Right of appeal in accordance with the ADRR

Subject to Condition H7.3, if any Train Operator is dissatisfied as to any matter concerning or in connection with:

# Part H: HAL Railway Operational Code

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- (a) any variation to the Heathrow Emergency Plan issued under Condition H8; or
- (b) any decision by HAL not to implement a variation proposed by a Train Operator under Condition H8.2, the Train Operator may refer the matter for determination in accordance with the ADRR (as supplemented or varied by this Condition H7).

## 7.2 Time limits for appeal

A Train Operator's right of appeal under Condition H7.1 shall lapse if the relevant matter is not referred in accordance with the ADRR in the case of a variation under Condition H8:

- (a) if Condition H7.1 (a) applies, within 30 days of the later of the date on which it is published, or
- (b) if Condition H7.1(b) applies, within 30 days of HAL notifying the Train Operators of its decision not to implement a variation proposed by the Train Operator.

## 7.3 Information to be sent in relation to the appeal

If there has been a reference for determination in accordance with the ADRR under Condition H7.1:

- (a) in the case of a referral under Condition H7.1, HAL shall provide the Train Operator and the relevant ADRR Panel with the name and address of every other Train Operator who HAL reasonably considers may be affected by the variation within 7 days of the making of the reference; and
- (b) the person making the reference shall include with his reference a statement in reasonable detail as to the matter in question and his reasons for making the reference; and
- (c) within 14 days of the reference HAL shall publish a copy of the reference and the statement specified in Condition H7.1 (b).

## 7.4 Criteria for appeal

Any matter referred under Condition H7.1 shall be determined by reference to the most effective manner of promoting the achievement of the Objective.

## 7.5 Issue of adjusted Heathrow Emergency Plan

When any appeal brought under this Condition H7 has been finally concluded, HAL shall promptly publish on its website and, if the outcome of the appeal is the adjustment of the Heathrow Emergency Plan, send to each affected Train Operator and the ORR the Heathrow Emergency Plan as adjusted by the outcome of such appeal.

# Condition H8: Variations to Heathrow Emergency Plan

## 8.1 Mandatory Variations

HAL shall sponsor proposed variations to the Heathrow Emergency Plan at any time if it reasonably considers that it is necessary in order better to promote the achievement of the Objective and any such proposal shall include:

- (a) the reasons why it is proposed to make the variation; and

# Part H: HAL Railway Operational Code

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- (b) details of the proposed variation.

## 8.2 Variations proposed by a Train Operator

A Train Operator may propose to HAL variations to the Heathrow Emergency Plan if it reasonably considers that this is necessary in order better to promote the achievement of the Objective and any such proposal shall include:

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

## 8.3 Procedure for variations proposed by a Train Operator

Following receipt of a proposed variation to the Heathrow Emergency Plan from a Train Operator HAL shall:

- (a) evaluate and discuss the proposed variation with that Train Operator for such period as is reasonable having due regard to the likely impact of the proposed variation on the achievement of the Objective and on any of HAL and other operators of trains; and
- (b) following the evaluation and discussion:
  - (i) implement the variation and issue the revised Heathrow Emergency Plan in accordance with paragraph H8.4; or
  - (ii) propose a variation under Condition H8.1 to implement the proposed variation; or
  - (iii) inform the Train Operator that HAL does not propose to implement the proposed variation, giving reasons for its decision.

## 8.4 Issue of varied Heathrow Emergency Plan Section

HAL shall publish on its website in accordance with Condition H3.2 any variation to the Heathrow Emergency Plan, and send a copy of the revised Heathrow Emergency Plan to each affected Train Operator.

## Condition H9: Emergency Access to HAL Infrastructure

9.1 During any emergency affecting the railway, HAL shall, to the extent that it is legally entitled to do so, grant to any person requesting it such permission to use any of the HAL infrastructure as is necessary or expedient to alleviate the effects of the emergency.

# Part J: Access to HAL infrastructure

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## Condition J1: Introduction

### 1.1 Overview

1.1.1 Part J provides mechanisms where, if a Train Operator referred to as "Part J Access Beneficiaries", is not using Access Rights they can be removed from the Part J Access Beneficiary's contract. The mechanisms can be instigated by:

- (a) the Part J Access Beneficiary itself as set out in Condition J2;
- (b) HAL as set out in Condition J4; or
- (c) by a third party Part J Access Beneficiary who wishes to use the rights in question. Condition J5 sets out a process where a Part J Access Beneficiary can apply for rights held by another Part J Access Beneficiary where that Part J Access Beneficiary has not used them and the applicant has a commercial need for them.

1.1.2 Condition J6 provides that HAL should hold regular meetings with each Part J Access Beneficiary for the purpose of reviewing the Access Rights held by that Part J Access Beneficiary and its use of them. Where HAL does not do this, the ORR can direct HAL to hold such a meeting.

1.1.3 Condition J7 obliges HAL to publish templates for any notice required under Part J and a copy of any notice served. Where HAL does not do this, the ORR can direct HAL to do so.

1.1.4 Condition J8 sets out a dispute resolution process whereby any dispute arising under Part J is first of all referred for determination in accordance with the ADRR and any appeal is referred to the ORR.

### 1.2 Interpretation

1.2.1 Where the following definitions are used in this Part J, they shall have the meanings shown below:

"ADRR"	means the Access Dispute Resolution Rules described in Part A of this Code;
"ADRR Determination"	means a determination made in accordance with the ADRR following a reference made under Condition J8.1, where such determination has not been referred to the ORR under either Condition J8.2 within the time limit for such referral;
"Access Proposal"	has the meaning shown in Part D of this code;
"Access Right"	means, in relation to an Access Agreement, permission to use track for the purpose of the operation of trains on that track by a beneficiary and rights ancillary thereto which are provided or charged for in the Access Agreement in question;
"Affected Person"	means, in relation to Qualifying Information, the person to whose affairs the information relates;
"Allocation Chair"	has the meaning shown in the ADRR;
"Ancillary Movements"	has the meaning shown in Part D of this code;
"Applicant"	has the meaning shown in: (a) Condition J5.1.1
"beneficiary"	has the meaning shown in section 17(7) of the Act;
"Commencement Date"	means the date on which the relevant Quantum Access Right takes effect in accordance with the Part J Access Beneficiary's Access Agreement;
"Confidentiality Direction"	has the meaning shown in Condition J3.8.1;
"Confidentiality Undertaking"	has the meaning shown in Condition J3.15.1;
"Contingent Right"	has the meaning shown, in the relevant Access Agreement;
"Counter Notice"	means a notice given by the Part J Access Beneficiary to HAL under Condition J4.8, J5.3.1(b);

# Part J: Access to HAL infrastructure

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“Determination”	means an ADRR Determination or an ORR Determination, as the case may be and “Determined” (and cognate expressions) shall be construed accordingly;
“Failure to Use”	has the meaning shown in Condition J4.1.1;
“Failure to Use Notice”	means a notice given by HAL to a Part J Access Beneficiary under Condition J4.4;
“Funder”	means the appropriate franchising authority, each Passenger Transport Executive and any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) or other person which provides money by way of grant or loan with the primary purpose of securing the provision of services relating to railways;
“Incumbent”	has the meaning shown in Condition J5.1.1 (b)(ii);
“J6 Direction”	has the meaning shown in Condition J6.2.1;
“J7 Direction”	has the meaning shown in Condition J7.3.1;
“Level Two Right”	has the meaning shown, , in the relevant Access Agreement;
“New Working Timetable”	has the meaning shown in Part D of this code;
“Notice of Objection”	means a notice given by an Affected Person to HAL of the kind referred to in Condition J3.5.1(b);
“ORR Determination”	means a determination made by the ORR following a reference made under Condition J8.2;
“ORR’s Model Passenger Track Access Contract”	means the model passenger track access contract published by the ORR under section 21 of the Act, as amended from time to time;
“Part J Access Beneficiary”	means a Train Operator
“Period for Objections”	means the period specified in Condition J3.5.1(b);
“Primary Purpose”	means conveying 50% or more of the gross tonnage transported using the Rights Subject to Surrender, over the 12 month period immediately preceding the date of service of the Third Party Notice, for a Primary Purpose Customer
“Qualifying Information”	means information which HAL has acquired in relation to the affairs of any Affected Person under an Access Agreement between HAL and that person;
“Quality Adjustment”	means the alteration of any aspect of the Access Rights of the Part J Access Beneficiary (whether in relation to performance, the quality or condition of the infrastructure, the liability of any person to any other person, or in any other respect) other than a Quantum Adjustment in a manner which is not inconsistent with this code;
“Quantum Access Right”	means any right under an Access Agreement in respect of a number (or quantum) of Train Slots in any specified period (including rights to Train Slots in respect of additional trains or relief services), and includes part of such a right;
“Quantum Adjustment”	means the surrender of any Access Right of the Part J Access Beneficiary in question;
“relate” and “in respect of”	in relation to a Train Slot and a Quantum Access Right where these terms are used together, means that the Train Slot in question has been secured by the Part J Access Beneficiary in accordance with Part D in the exercise of that Quantum Access Right;
“Released Capacity”	means track capacity made available to HAL as a consequence of the making of a Specified Relevant Surrender or a Specified Relevant Adjustment, and “release of capacity” shall be construed accordingly;
“Relevant Adjustment”	means a Quality Adjustment or a Quantum Adjustment, and “adjust” shall be construed accordingly;
“Relevant Enquiry”	means an enquiry made of HAL by the Part J Access Beneficiary under Condition J2;
“Relevant Financial Consequences”	means the cost savings or costs incurred referred to in Condition J2.4.1(a);

# Part J: Access to HAL infrastructure

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“Relevant Information”	means information which complies with the provisions of Condition J2.4;
“Relevant Response”	means HAL’s answer to a Relevant Enquiry under Condition J2;
“Relevant Surrender”	means the surrender to HAL of Access Rights possessed by the Part J Access Beneficiary;
“Rights Review Meeting”	means a meeting held between HAL and a Part J Access Beneficiary for the purpose of reviewing the Quantum Access Rights held by that Part J Access Beneficiary and its use of them;
“Rights Review Notice”	has the meaning shown in Condition J6.1.2;
“Rights Subject to Surrender”	means, in relation to: (a) a Failure to Use Notice; or (b) a Third Party Notice, as applicable, the Quantum Access Right 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 Access Right; (ii) any Ancillary Movements or Stabling that HAL considers; (A) are directly associated with the relevant Quantum Access Right; and (B) will no longer be required by the relevant Part J Access Beneficiary following the surrender or reduction of the Quantum Access Right, as applicable; and (iii) any Access Proposal relating to any such Quantum Access Right;
“Rights under Review”	shall have the meaning shown in Condition J6.1.2;
“Specified Relevant Adjustment”	means a Relevant Adjustment specified in a Relevant Enquiry;
“Specified Relevant Surrender”	means a Relevant Surrender specified in a Relevant Enquiry;
“Stabling”	has the meaning shown in the relevant Access Agreement;
“Train Operator Variation Request”	has the meaning shown in Part D of this code;
“Train Slot”	has the meaning shown in Part D of this code;
“Use Period”	has the meaning shown in Condition J4.2.3;
“Use Quota”	has the meaning shown in Condition J4.2.2
“Y-Path”	means a Train Slot incorporated in the Working Timetable that is identified as such by the incorporation of the letter “Y” in the operating characteristics part of the Train Slot’s heading.

## Condition J2: Adjustment of Access Rights

### 2.1 Obligation of Part J Access Beneficiaries to surrender Access Rights

- 2.1.1 Without prejudice to the rest of this Part J, a Part J Access Beneficiary shall voluntarily and in good faith surrender those Access Rights or part or parts of such Access Rights in respect of which it has no current or foreseeable reasonable on-going commercial need.
- 2.1.2 If a Part J Access Beneficiary wishes to make a Relevant Surrender pursuant to Condition J2.1.1, it shall give HAL notice to that effect. The Relevant Surrender shall have effect 10 days from the date on which notice is given to HAL.

### 2.2 Obligation of HAL to answer Part J Access Beneficiary’s Relevant Enquiries

- 2.2.1 HAL shall provide the Part J Access Beneficiary with a Relevant Response within 30 Working Days of the making of a Relevant Enquiry.

# Part J: Access to HAL infrastructure

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## 2.3 Contents of Relevant Enquiries

### 2.3.1 Each Relevant Enquiry shall contain:

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

## 2.4 Information to be provided by HAL

### 2.4.1 Subject to Condition J3, the Relevant Information which HAL shall provide in each Relevant Response shall be a statement of:

- (a) the costs which HAL may reasonably expect to save or incur if any Specified Relevant Surrender or Specified Relevant Adjustment is made;
- (b) the times at which and the periods over which the Relevant Financial Consequences will have effect;
- (c) the steps which HAL would expect to take to achieve the Relevant Financial Consequences within the times referred to in Condition J2.4.1 (b) and the opportunities which HAL has to accelerate or postpone the effect of the Relevant Financial Consequences;
- (d) the extent to which any Released Capacity may reasonably be expected to be used:
  - (i) by any other operator of trains
  - (ii) in relation to the maintenance, re-alignment, re-configuration, repair or renewal of any part of the infrastructure;
- (e) the reasonably foreseeable financial effects on HAL of the release of capacity;
- (f) HAL's proposals as to the amounts (if any) which should be payable by or to the Part J Access Beneficiary under the Access Agreement as a consequence of the making of any Specified Relevant Surrender or Specified Relevant Adjustment and its reasons for them, including in relation to the sharing between HAL and the Part J Access Beneficiary of the Relevant Financial Consequences; and
- (g) whether any other person has made an enquiry of HAL pursuant to an agreement between that person and HAL in relation to the surrender or adjustment of Access Rights under that agreement which, if made, might reasonably be expected to affect the interests of the Part J Access Beneficiary in relation to the Specified Relevant Surrender or Specified Relevant Adjustment in question,

# Part J: Access to HAL infrastructure

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2.4.2 together with such other information as the Part J Access Beneficiary reasonably requests, in each case in a form and amount of detail which is sufficient to enable the Part J Access Beneficiary to make a proper assessment of the effect of the making of the Specified Relevant Surrender or Specified Relevant Adjustment in question. In preparing each Relevant Response, HAL shall:

(a) except to the extent otherwise requested by the Part J Access Beneficiary and in accordance with such (if any) conditions as the Part J Access Beneficiary shall specify; and

(b) subject to Condition J3,

carry out such consultation of:

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

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

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

## 2.5 Obligation to co-operate

2.5.1 If:

(a) HAL has made any enquiry of a Part J Access Beneficiary in relation to a Relevant Enquiry made by that Part J Access Beneficiary or any other Part J Access Beneficiary under this Condition J2; and

(b) the enquiry is one which the Part J Access Beneficiary may reasonably be expected to answer, the Part J Access Beneficiary shall provide HAL with a response to the enquiry to the extent and in the amount of detail which is reasonable in the circumstances.

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

## 2.6 Estimated costs of providing Relevant Response

2.6.1 HAL:

(a) shall provide the Part J Access Beneficiary, if so requested by it and as soon as reasonably practicable after the request, with:

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

(ii) having provided such an estimate, its best estimate of the costs which it has incurred in preparing the Relevant Response in question up to the date of the request or any other date specified in the request; and

(b) shall not, in preparing a Relevant Response, exceed the amount of the estimate without first notifying and obtaining the consent of the Part J Access Beneficiary.

## 2.7 Payments of costs of Relevant Responses

2.7.1 The Part J Access Beneficiary shall:

(a) be entitled to make any request of the kind referred to in Condition J2.8 at the time of making the Relevant Enquiry in question and at any time and from time to time thereafter, and the failure of the

# Part J: Access to HAL infrastructure

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Part J Access Beneficiary to make any such request on any occasion shall not prejudice its right to make such a request on a later occasion;

- (b) pay to HAL an amount calculated pursuant to Condition J2.10; and
- (c) be entitled to receive from HAL, on request, a certificate from its auditors verifying that the costs referred to in Condition J2.10 have been incurred in providing the Relevant Response.

## 2.8 Division and payments of costs

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

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

2.8.2 For the purposes of this Condition J2, HAL's costs shall include a fair allocation of its administrative costs of carrying on its business.

## 2.9 Right to elect to surrender or adjust Access Rights

2.9.1 If, following receipt of a Relevant Response, the Part J Access Beneficiary:

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

it shall be entitled to do so after giving to HAL a notice to that effect within 15 Working Days after the date upon which it receives the Relevant Response in question. The Specified Relevant Adjustment shall have effect from the same date.

2.9.2 If, following receipt of a Relevant Response, the Part J Access Beneficiary:

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

it shall give HAL notice to that effect within 15 Working Days after the date upon which it receives the Relevant Response in question. The Specified Relevant Surrender shall have effect from the same date.

## 2.10 Right of Part J Access Beneficiary to have Access Rights adjusted

2.10.1 If it is Determined that the Part J Access Beneficiary should be entitled to make any Relevant Surrender or have any Relevant Adjustment given effect, the Part J Access Beneficiary shall give notice to HAL as to whether it elects to exercise that entitlement. If the Part J Access Beneficiary does not give notice to HAL within 15 Working Days of the date of the Determination, the Part J Access Beneficiary shall lose the entitlement in question.

# Part J: Access to HAL infrastructure

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## Condition J3: Confidentiality

### 3.1 Affected Persons and their interests

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

- (a) it is necessary for it to disclose to the Part J Access Beneficiary any Qualifying Information; and
- (b) such disclosure would or might, in HAL's reasonable opinion, seriously and prejudicially affect the interests of the Affected Person,

HAL shall give notice to that effect to the Part J Access Beneficiary.

### 3.2 Part J Access Beneficiary's right to elect for Relevant Response without Qualifying Information

3.2.1 Having received a notice from HAL pursuant to Condition J3.1, the Part J Access Beneficiary shall be entitled, by notice given to HAL, to elect either:

- (a) that the Relevant Response be provided to it without the Qualifying Information; or
- (b) that HAL should give notice to the Affected Person in question pursuant to Condition J3.4 and thereafter comply with the procedures established in this Condition J3.

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

### 3.3 Relevant Response without Qualifying Information

3.3.1 If the Part J Access Beneficiary makes an election pursuant to Condition J3.2.1 (a):

- (a) HAL shall proceed to prepare and provide the Relevant Response so as to omit the Qualifying Information; and
- (b) if, having received a Relevant Response of the kind referred to in Condition J3.3.1(a), the Part J Access Beneficiary wishes HAL to revise it so as to include any Qualifying Information, it shall be entitled to do so by notice to HAL.

3.3.2 If the Part J Access Beneficiary gives notice to HAL pursuant to Condition J3.3.1(b), HAL shall proceed to give notice to the Affected Person in question pursuant to Condition J3.4 and thereafter comply with the procedures established in this Condition J3.

### 3.4 Relevant Response with Qualifying Information

3.4.1 If the Part J Access Beneficiary makes an election pursuant to Condition J3.2.1(b), HAL shall give notice to the Affected Person that it has grounds for a belief of the kind referred to in Condition J3.1.

### 3.5 Contents of notice to Affected Person

3.5.1 The notice given to the Affected Person pursuant to Condition J3.4 shall be accompanied by:

- (a) a statement of the information which HAL considers it necessary to disclose; and
- (b) a statement to the effect that, unless the Affected Person gives notice to HAL within 15 Working Days of his receipt of the notice that he objects to the disclosure in question, that person shall have lost the right to object to its disclosure.

# Part J: Access to HAL infrastructure

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## 3.6 Entitlement of HAL to include Qualifying Information if no Notice of Objection

3.6.1 Subject to Condition J2.5, if no Notice of Objection has been given to HAL within the Period for Objections, HAL shall be entitled to include the Qualifying Information in the Relevant Response.

## 3.7 Discretion of the Allocation Chair to order confidentiality

3.7.1 If HAL has received a Notice of Objection within the Period for Objections, it shall immediately give notice of that fact to the Part J Access Beneficiary and the Secretary who shall pass that notice to the Allocation Chair.

3.7.2 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.

3.7.3 The notice given to the Secretary shall be accompanied by:

- (a) a copy of the Notice of Objection;
- (b) an explanation by HAL as to its reasons for the belief referred to in Condition J3.1; and
- (c) a request for directions of the kind referred to in Condition J3.7.4.

3.7.4 The parties shall comply with such directions which the Allocation Chair gives them in relation to the preservation of the positions of the parties (including the Affected Person) and the confidentiality of the Qualifying Information pending the determination of the matter. No such directions shall have effect for a period which is longer than 90 days without being renewed by the Allocation Chair.

## 3.8 Allocation Chair's directions as to preservation of confidentiality of Qualifying Information

3.8.1 In a case to which Condition J3.7 applies, and subject to Condition J2.5, HAL shall be entitled to include Qualifying Information in a Relevant Response except where directed not to do so by the Allocation Chair, to the extent stated and subject to such conditions (if any) as shall be specified in the direction (a "Confidentiality Direction").

3.8.2 No Relevant Response containing Qualifying Information shall be given until after the expiry of the period specified by the Allocation Chair in any directions of the kind referred to in Condition J3.7.4.

## 3.9 Grounds on which the Allocation Chair may order confidentiality

3.9.1 A Confidentiality Direction shall only have effect if:

- (a) it is stated by the Allocation Chair to have been given on the grounds that:
  - (i) the disclosure to the Part J Access Beneficiary of the Qualifying Information in question would or might seriously and prejudicially affect the interests of the Affected Person; and
  - (ii) such prejudice outweighs or is likely to outweigh the interests of operators and potential operators of railway assets, in each case on the part of the HAL infrastructure in question in its disclosure to the Part J Access Beneficiary, having due regard to the matters about which duties are imposed on the ORR by section 4 of the Act; and
- (b) the Allocation Chair has complied with the requirements specified in Conditions J3.11 and J3.12.

## 3.10 Opportunity to make representations to the Allocation Chair

3.10.1 Within 20 Working Days of the Allocation Chair's receipt of a notice pursuant to Condition J3.7.1, each of HAL, the Part J Access Beneficiary and the Affected Person shall be entitled to make representations to the Allocation Chair:

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- (a) as to whether it considers that the Allocation Chair should exercise his discretion to give a Confidentiality Direction; and, if so
- (b) the extent and conditions of the Confidentiality Direction.

3.10.2 Any such representations shall be accompanied by the reasons why the person in question believes the Allocation Chair should or should not (as the case may be) give a Confidentiality Direction.

## 3.11 Hearing on confidentiality representations

3.11.1 If he has received any representations of the kind contemplated by Condition J3.10, the Allocation Chair shall be entitled to hear the parties on the matter. The Allocation Chair has an absolute discretion as to the procedure to be followed in any such hearing, and may at any time amend it if he considers it necessary to do so for the fair resolution of the matter.

## 3.12 Written reasons for decision

3.12.1 If any representations have been made to him pursuant to Condition J3.10, unless the parties concerned otherwise agree, the Allocation Chair shall provide them with his reasons for his determination. Such reasons shall be given in writing.

## 3.13 Immunity of the Allocation Chair

3.13.1 The Allocation Chair shall not be liable in damages or otherwise for any act or omission to act on their part (including negligence) in relation to any reference to them under this Condition J3.

3.13.2 Each of the Part J Access Beneficiary and HAL shall:

- (a) indemnify and hold harmless the Allocation Chair, against every claim which may be made against any of them in relation to any of the matters referred to in Condition J3.13.1; and
- (b) to the extent that it is the creditor in the indemnity in Condition J3.13.2(a), hold the benefit of that indemnity upon trust as bare trustee for the benefit of the Allocation Chair.

3.13.3 No provision of the Access Agreement which operates so as to exclude or restrict the liability of either party shall apply to the obligations of the parties under this Condition J3.13.

## 3.14 Preservation of confidentiality of Qualifying Information pending determination

3.14.1 In making any determination of the kind contemplated by this Condition J3, the remit of the Allocation Chair shall include a requirement that:

- (a) any hearing of the kind contemplated by Condition J3.11 shall be conducted in such a way as not to disclose any part of the Qualifying Information; and
- (b) the reasons for the Allocation Chair's determination shall, if given to the parties, not disclose to the Part J Access Beneficiary any part of the Qualifying Information.

## 3.15 Obligation to provide Confidentiality Undertaking

3.15.1 If:

- (a) an Affected Person has given notice to HAL that it does not propose to give a Notice of Objection within the Period for Objections; or
- (b) the Allocation Chair has determined that no Confidentiality Direction shall be given in relation to Qualifying Information; or

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- (c) the Affected Person requires HAL to procure that the Part J Access Beneficiary gives a Confidentiality Undertaking for the benefit of the Affected Person,  
the Part J Access Beneficiary shall deliver to HAL an undertaking of strict confidentiality in relation to the Qualifying Information (a "Confidentiality Undertaking").

3.15.2 A Confidentiality Undertaking shall:

- (a) contain an undertaking that the person giving it will hold the Qualifying Information disclosed to it strictly confidential and will not, without the consent of the Affected Person, disclose it to any person;
- (b) contain no limitations on the liability of the person who gives it in the case of its breach; and
- (c) in every other respect, be unqualified.

3.15.3 A Confidentiality Undertaking shall be:

- (a) given to HAL by the Part J Access Beneficiary as soon as reasonably practicable after HAL has requested the Part J Access Beneficiary to provide it; and
- (b) held by HAL upon trust for the Affected Person.

3.15.4 If the Part J Access Beneficiary fails to comply with its obligations under this Condition J3.15, HAL shall not include the Qualifying Information in its Relevant Response.

## Condition J4: Failure to Use

### 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 Access Right occurs if:

- (a) after the Commencement Date, the Part J Access Beneficiary fails to secure the quantum of Train Slots which the Quantum Access Right permits in a New Working Timetable published by HAL at D-26 or in any subsequent variation of this published in accordance with D2.7.4; or
- (b) the Part J Access Beneficiary fails to make use of a Train Slot which has been included in the Working Timetable and which relates to that Quantum Access Right.

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

- (a) where the Part J Access Beneficiary was unable to secure the necessary quantum of Train Slots permitted by the Quantum Access Right because of Restrictions of Use;
- (b) to Level Two Rights or Contingent Rights where HAL has been unable to accommodate the Part J Access Beneficiary's Access Proposal into the New Working Timetable.

4.1.3 For the purposes of Condition J4.1.1(b), the Part J Access Beneficiary 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.

### 4.2 Use Quota and Use Period

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 Access Right 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.

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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.

## 4.3 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 Part J Access Beneficiary's control; and
- (b) is temporary in nature.

## 4.4 Service of Failure to Use Notice

4.4.1 If HAL considers there has been a Failure to Use by a Part J Access Beneficiary and that Failure to Use is continuing it may serve a Failure to Use Notice on the Part J Access Beneficiary requiring the Part J Access Beneficiary to surrender Rights Subject to Surrender.

## 4.5 Cessation of Failure to Use

4.5.1 Before a Failure to Use Notice has been served in accordance with Condition J4.4, 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 Part J Access Beneficiary makes:
  - (i) a Train Operator Variation Request for a Train Slot in respect of the relevant Quantum Access Right in the Working Timetable; or
  - (ii) an Access Proposal for a Train Slot in respect of the relevant Quantum Access Right in any subsequent New Working Timetable; or
- (b) in relation to a Failure to Use under Condition J4.1.1(b), the Part J Access Beneficiary makes use of a relevant Train Slot such that the Use Quota is met.

## 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 HAL considers has occurred;
- (b) the Rights Subject to Surrender which HAL requires the Part J Access Beneficiary to surrender; and
- (c) the date on which the Relevant Surrender is intended to take effect.

## 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 HAL;
- (b) the Rights Subject to Surrender shall be surrendered with effect from the date on which notice is given to HAL unless otherwise agreed.

## 4.8 Counter Notice

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

- (a) it considers the Failure to Use Notice to be invalid;

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- (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; and/or
- (c) any Ancillary Movements and/or Stabling specified in the Failure to Use Notice as being Rights Subject to Surrender:
  - (i) are not directly associated with the relevant Quantum Access Right; and/or
  - (ii) would still be required by the Part J Access Beneficiary following the surrender of the relevant Quantum Access Right; and/or
- (d) there is a Ground for Objection to the proposed surrender within Condition J4.9, detailing the Ground for Objection on which it relies,

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

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

- (a) the Part J Access Beneficiary will be deemed to have agreed to the surrender specified in the Failure to Use Notice;
- (b) the Rights Subject to Surrender shall be surrendered with effect 10 days after the date on which notice is given unless otherwise agreed.

## 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: the Rights Subject to Surrender relate to an enhancement of the HAL infrastructure for which the Access Beneficiary is contracted to pay through access charges ("Grounds for Objection").

## 4.10 HAL agrees with the Part J Access Beneficiary

4.10.1 If HAL agrees with the Part J Access Beneficiary:

- (a) that the matters set out in Condition J4.8.1(a), (b) or (c) have been substantiated; or
- (b) that the Part J Access Beneficiary's Grounds for Objection has been substantiated in respect of any or all of the Rights Subject to Surrender,

the Failure to Use Notice shall have failed and HAL shall notify the Part J Access Beneficiary in writing that this is the case within 5 Working Days of receipt of the Counter Notice.

## 4.11 HAL does not agree with the Part J Access Beneficiary

4.11.1 If HAL considers that:

- (a) the matters set out in Condition J4.8.1(a), (b) or (c) have not been substantiated; and
- (b) the Part J Access Beneficiary's Grounds for Objection have not been substantiated in respect of any or all of the Rights Subject to Surrender,

then it shall notify the Part J Access Beneficiary in writing that this is the case within 5 Working Days of receipt of the Counter Notice.

## 4.12 Surrender of Access Rights

4.12.1 The surrender of the Rights Subject to Surrender will occur:

- (a) where either the Part J Access Beneficiary accepts HAL's decision made pursuant to Condition J4.11 or there is an ADRR Determination, on the date on which such Determination is given.

# Part J: Access to HAL infrastructure

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## 4.13 Access Proposals

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

## Condition J5: Failure to Use: third party application

### 5.1 Failure to Use Notices

5.1.1 If:

- (a) HAL receives an application from a Part J Access Beneficiary (the "Applicant") for a Quantum Access Right to a Train Slot; and
- (b) the Train Slot:
  - (i) is one in respect of which the Applicant can demonstrate a reasonable commercial need; and
  - (ii) was secured in exercise of a Quantum Access Right of another Part J Access Beneficiary (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 HAL shall serve a Failure to Use Notice under Condition J4.4 on the Incumbent. 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 HAL shall serve a notice on the Applicant rejecting its application and setting out its reasons for rejecting the application.

### 5.2 Cessation of Failure to Use

5.2.1 For the purposes of Condition J5.1.1(b)(iii), there will have been a cessation of a Failure to Use if the test in Condition J4.5 has been met.

### 5.3 Application of Conditions

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

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## 5.4 Counter Notice

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

## Condition J6: Rights Review Meetings

### 6.1 The Rights Review Meeting

6.1.1 HAL shall hold Rights Review Meetings as frequently as necessary in order for it to ensure that capacity on the infrastructure is shared in the most efficient and economical manner in the overall interest of users, providers, potential providers and funders of railway services.

6.1.2 HAL shall give a Part J Access Beneficiary at least 10 Working Days written notice of a Rights Review Meeting ("Rights Review Notice"). HAL shall, in the Rights Review Notice, list the Quantum Access Rights, related Train Slots or associated Ancillary Movements, Stabling or Y-Paths which are going to be the subject matter of the meeting ("Rights under Review").

6.1.3 Where a Part J Access Beneficiary has received a Rights Review Notice in accordance with Condition J6.1.2, it shall attend the meeting and participate in it in a collaborative manner in order to assist HAL to meet its objectives set out in Condition J6.1.4 below.

6.1.4 In holding a Rights Review Meeting, HAL's objectives shall include:

- (a) establishing why any Rights under Review are not being used;
- (b) assessing whether it is appropriate for HAL to commence the Failure to Use procedure under Condition J4 in relation to any of the Rights under Review;
- (c) assessing whether it is appropriate for any Relevant Adjustment to be made to the Part J Access Beneficiary's Access Rights; and
- (d) considering whether it is appropriate to agree any amendments or additions to the Part J Access Beneficiary's Access Rights.

6.1.5 Further to a Rights Review Meeting, HAL shall, where it considers it appropriate, commence and pursue the Failure to Use procedure under Condition J4 to remove any of the Rights under Review from the Part J Access Beneficiary.

### 6.2 ORR Power to Direct a Rights Review Meeting

6.2.1 If the ORR considers that a Part J Access Beneficiary is not using any of its Quantum Access Rights, related Train Slots or associated Ancillary Movements, Stabling or Y-Paths and HAL has not held a Rights Review Meeting related to this, then the ORR may, in writing, direct HAL to hold a Rights Review Meeting ("J6 Direction").

6.2.2 HAL shall comply with a J6 Direction within 10 Working Days of its receipt.

6.2.3 If any third party Part J Access Beneficiary reasonably believes that another Part J Access Beneficiary is not using any of its Quantum Access Rights, related Train Slots or associated Ancillary Movements, Stabling or Y-Paths and HAL has not held a Rights Review Meeting related to this, then it may report the matter to the ORR. The ORR will then consider whether it is appropriate for it to direct, pursuant to Condition J6.2.1, HAL to hold a Rights Review Meeting.

6.2.4 Where HAL has failed to comply with a J6 Direction in accordance with Condition J6.2.2, the ORR may apply to the High Court for it to make such order as it thinks fit for requiring the failure to be made good.

# Part J: Access to HAL infrastructure

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## Condition J7: Obligation of HAL to publish documentation

### 7.1 Template Notices

- 7.1.1 HAL shall publish promptly templates, and any revision to them, for any notices required under this Part J.
- 7.1.2 Before publishing templates or any revisions to them in accordance with Condition J7.1.1, HAL shall consult with relevant Part J Access Beneficiaries.

### 7.2 Publication of Other Documentation

- 7.2.1 Subject to Condition A3, HAL shall publish promptly an accurate and up-to-date copy or statement of every notice or notification given or received pursuant to this Part J, in order to inform persons holding or contemplating holding or surrendering Access Rights about how the allocation of capacity on any part of HAL's network may change over time.

### 7.3 ORR Power to Direct HAL to Publish

- 7.3.1 If HAL fails to comply with any of its obligations in Condition J7.1 or Condition J7.2, then ORR may, in writing, direct that HAL do so comply ("J7 Direction").
- 7.3.2 HAL shall start any process to comply with a J7 Direction within 10 Working Days of receipt of it and shall have complied with the J7 Direction within 30 Working Days of receipt of it.
- 7.3.3 Where HAL has failed to comply with a J7 Direction in accordance with Condition J7.3.2, the ORR may apply to the High Court for it to make such order as it thinks fit for requiring the failure to be made good.

## Condition J8: Appeals

### 8.1 Appeal in accordance with the ADRR

- 8.1.1 Any dispute arising under this Part may be referred by any Part J Access Beneficiary or HAL for determination in accordance with the ADRR.
- 8.1.2 A reference for determination brought under Condition J8.1.1 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 J8.1.2(a) includes Christmas Day, within 10 Working Days of such receipt.

### 8.2 Appeal to the ORR

- 8.2.1 Where either HAL or any Part J Access Beneficiary is dissatisfied with the decision reached in accordance with the ADRR under Condition J8.1, it may refer the matter to the ORR for determination under Part M:
  - (a) within 5 Working Days of receipt of the written determination reached in accordance with the ADRR to which objection is made; or
  - (b) where the period referred to in Condition J8.2.1(a) above includes Christmas Day, within 10 Working Days of such receipt.

# Part K: Information

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## Explanatory Note

- A. Part K provides for the two-way flow of key information between Access Parties both on a regular and an ad-hoc basis.
- B. HAL is required to produce and update annual information and report on progress
- C. HAL is entitled to request information from an Access Beneficiary, and an Access Beneficiary is similarly entitled to request information from HAL, where this is reasonably requested for either party to plan its business with a reasonable degree of assurance.
- D. Part K will have effect subject to a notice or notices served by the ORR concerning the types and classes of information, timeliness of provision, quality (including completeness and accuracy) and level of detail of the information.
- E. Save as provided in the notice or notices served by the ORR, the information to be provided under Part K is to be complete and accurate in all material respects to the greatest extent reasonably practicable.
- E. This Explanatory Note does not form part of the HAL Network Code.

# Part K: Information

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## Definitions

In this Part K:

“Accounting Period”	means each of thirteen consecutive periods in each Relevant Year, each such period being 28 days in length, save that the length of the first and last period in the Relevant Year shall be such as shall be adopted by HAL;
“Information”	means HAL Annual Information, HAL Monitoring Information and Requested Information;
“Monitoring Period”	shall consist in each financial year commencing on 1 April of one of four consecutive periods, each of which shall comprise three consecutive Accounting Periods except the last which shall comprise four consecutive Accounting Periods, or such periods beginning and ending on such other dates as the ORR may specify in a notice;
“HAL Annual Information”	means the information specified in Condition K1.1;
“HAL Annual Report”	means the report referred to in Condition K3.1;
“HAL Monitoring Information”	means the information specified in Condition K1.2;
“HAL Monitoring Report”	means the report referred to in Condition K3.2;
“Relevant Year”	means each 12 month period beginning 1 April;
“Requested Information”	means the information specified in Condition K1.3; and

## Condition K1: Information covered by Part K

### 1.1 HAL Annual Information

HAL Annual Information means, in relation to any Access Beneficiary:

- (a) projections of future infrastructure quality and capability requirements;
- (b) planned activities and volumes of work in respect of the carrying out of:
  - (i) relevant activities; and
  - (ii) infrastructure services in relation to the Relevant Infrastructure to be carried out by any other person;
- (c) the expected effect of relevant activities on the quality and capability of the Relevant Infrastructure, the quality of infrastructure services and the ability of users to provide improved services to their customers; and
- (d) the expected effect of relevant activities on the outputs required of HAL and established in the last access charges review.

In this Condition K1.1:

“duty”	means the duty incumbent on HAL to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances;
“purpose”	is to secure:
(a)	the operation and maintenance of the infrastructure;
(b)	the renewal and replacement of the infrastructure; and
(c)	the improvement, enhancement and development of the infrastructure,

# Part K: Information

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in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:

- (i) the quality and capability of the infrastructure; and
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the infrastructure;

“relevant activities” means the activities which are necessary or expedient in order to carry out the duty;

“relevant asset categories” means track, signalling and telecommunications, structures, electrification equipment, stations, maintenance depots, real and heritable property, information systems and such other categories of material asset as are necessary or expedient so as to facilitate compliance by HAL with the duty

## 1.2 HAL Monitoring Information

HAL Monitoring Information means, in relation to any Access Beneficiary:

- (a) information as to any changes to the programmes of work contained in the last HAL Annual Report and HAL Monitoring Report which changes are likely materially to affect the operation of trains operated by any Access Beneficiary on the Infrastructure;
- (b) a statement of HAL’s actual performance on the Relevant Infrastructure in the immediately preceding Monitoring Period, and its projected performance on the Relevant Infrastructure for the remainder of the Relevant Year;
- (c) information as to the addition or removal of temporary speed restrictions on the Relevant Infrastructure in the immediately preceding Monitoring Period, and any temporary speed restrictions which are likely to be added or removed in the current Monitoring Period and in the remainder of the Relevant Year;
- (d) a statement of the duration of any temporary speed restrictions on the Relevant Infrastructure in the immediately preceding Monitoring Period and the likely duration of any temporary speed restrictions in the current Monitoring Period and in the remainder of the Relevant Year; and
- (e) a statement of the efficiency of possession utilisation on the Relevant Infrastructure in the immediately preceding Monitoring Period, including the proportion of possessions cancelled or subject to late change.

## 1.3 Requested Information

Requested Information means:

- (a) in relation to information to be provided by HAL, 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.
- (b) in relation to information to be provided by an Access Beneficiary, such information as HAL may reasonably request from time to time in order to plan its business with a reasonable degree of assurance,

in each case

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

# Part K: Information

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(ii) to the extent specified in a notice given by the ORR under Condition K6.1.

## Condition K2: Provision of Information

### 2.1 Provision of Information by HAL

HAL shall, subject to Condition K3.3, make available to each Access Beneficiary:

- (a) HAL Annual Information;
- (b) HAL Monitoring Information; and
- (c) Requested Information,

in accordance with this Part K.

### 2.2 Provision of Information by each Access Beneficiary

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

### 2.3 Limitation on use of Information by HAL

Any Information provided to HAL under this Part K may only be used by HAL in accordance with this code.

### 2.4 Form of Information

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

- (a) HAL to assess the effect of the matters disclosed in the Information provided to it on its provision of infrastructure
- (b) the relevant Access Beneficiary to assess the effect of the matters disclosed in the Information provided to it on its Services.

### 2.5 Quality of information

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

## Condition K3: Provision of HAL Annual Information and HAL Monitoring Information

### 3.1 Provision of annual report

Subject as provided in Condition K3.3, HAL Annual Information shall be provided as an annual report.

### 3.2 Provision of report

Subject as provided in Condition K3.3, HAL Monitoring Information shall be provided in the form of a report for each Monitoring Period.

# Part K: Information

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## 3.3 Provision of information at election of Access Beneficiary

- (a) HAL shall not be obliged to provide any Access Beneficiary with HAL Annual Information or Infrastructure Monitoring Information unless that Access Beneficiary has notified HAL that it elects to receive such information. Any such election shall have effect 28 days from the date it is received by HAL and shall continue until any date specified for its duration by the Access Beneficiary in the notice or (if no date is specified) until the election is withdrawn. An Access Beneficiary may withdraw or vary any such election made by it at any time by giving 28 days notice to HAL. The ability of an Access Beneficiary to seek Requested Information shall not be prejudiced by any failure by that Access Beneficiary to elect to receive information under this Condition K3.3.
- (b) Where an Access Beneficiary makes or has made an election to receive HAL Annual Information or Infrastructure Monitoring Information it may, either in the election or subsequently, inform HAL which elements of that information it wishes to receive. HAL shall use all reasonable endeavours, following consultation where appropriate with the Access Beneficiary, to meet the Access Beneficiary's request in respect of those elements of that information.
- (c) Where HAL complies with any request by an Access Beneficiary under Condition K3.3(b) regarding the elements of information required to be provided, it shall not also have to provide to that Access Beneficiary the balance of the information which is not required by that Access Beneficiary.

## Condition K4: Timing of provision of information

### 4.1 Provision of Information by HAL

HAL shall provide to each Access Beneficiary, having elected to receive such information under Condition K3.3 and while its election remains effective:

- (a) HAL Annual Information by such date as shall be agreed between HAL and the relevant Access Beneficiary or, where the ORR specifies a date upon the application of any party, by the date specified;
- (b) HAL Monitoring Information within 28 days after the beginning of each Monitoring Period, unless the ORR agrees to the provision of such information on another date upon the application of any party, in which event the HAL Monitoring Information shall be provided on such other date; and
- (c) Requested Information in a timely manner after such information is requested, subject to Condition K4.3.

### 4.2 Provision of Information by Access Beneficiary

Each Access Beneficiary shall provide to HAL Requested Information in a timely manner after such information is requested, subject to Condition K4.3.

### 4.3 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.

# Part K: Information

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## Condition K5: Appeal procedure

### 5.1 Right of appeal to senior officers or in accordance with the ADRR

If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure set out in this Part K;
- (b) any refusal by an Access Party to provide Requested Information;
- (c) the interpretation by an Access Party of the provisions of this Part K or any notice given by the ORR under Condition K6.1 in relation to whether or not any information requested is Requested Information; or
- (d) the adequacy of information provided or the time taken to provide that information, in each case in response to a Request for Requested Information,

the matter shall be referred by that Access Party for review by the Access Parties concerned, with the review process to involve a senior manager of each of those Access Parties. If those Access Parties fail to reach a resolution within 28 days of the referral, either party may refer the matter for determination in accordance with the ADRR.

## Condition K6: Application of Part K

### 6.1 Extent and timing of information obligations

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

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

as are specified in a notice or notices given by the ORR.

### 6.2 Consultation

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

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

## Condition K7: Other obligations to continue

### 7.1 This Part K is:

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

# Part M: Appeal

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## Condition M1: Introduction

### 1.1 Overview

1.1.1 Part M provides the process by which a party dissatisfied with either a decision of a Timetabling Panel in relation to a dispute arising under Part D or a decision reached by Access Disputes Adjudication in relation to a dispute arising under Part J, can appeal the matter to the ORR for determination:

### 1.2 Interpretation

#### 1.2.1 In this Part M:

- (a) the singular shall include the plural and vice versa;
- (b) the headings are for convenience only and shall not affect interpretation; and
- (c) capitalised words have the meanings shown below:

#### 1.2.2 In this Part M, capitalised words have the meanings shown below:

“Appellant”	means any Dispute Party seeking to challenge a determination made in accordance with the ADRR by appeal to the ORR;
“Dispute Party”	means any person who fulfilled the definition of “Dispute party” set out in the ADRR;
“Respondent”	means, in relation to any determination which is challenged under this Part M, any other dispute party which is affected by such determination.

## Condition M2: Notice of Appeal

### 2.1 Requirements

#### 2.1.1 Any appeal made under this Part M must:

- (a) comply with the requirements of Condition M3; and
- (b) be served on the ORR and the Respondent(s):
  - (i) within five Working Days of receipt of the decision to which objection is made;
  - (ii) where the period referred to in Condition M2.1(b)(i) includes Christmas Day, within ten Working Days of that decision.

#### 2.1.2 The ORR may extend the timeframe referred to in Condition M2.1(b) if it considers it appropriate to do so.

## Condition M3: Content of a Notice of Appeal

### 3.1 Content of a Notice of Appeal

#### 3.1.1 A notice of appeal must:

- (a) identify the determination which the Appellant wishes to challenge;
- (b) detail why the Appellant believes that the determination is:
  - (i) wrong; or

# Part M: Appeal

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- (ii) unjust because of a serious procedural or other irregularity; and
- (c) insofar as reasonably practicable, attach any evidence on which the Appellant wishes to rely in support of the appeal.

## Condition M4: Right of The ORR to Refuse to Hear an Appeal

### 4.1 Grounds of decision

- 4.1.1 Within 10 Working Days of service of a notice of appeal pursuant to Condition M2, the ORR may decide that the appeal should not proceed to it, including on the grounds that:
  - (a) the matter in question is not of sufficient importance to the industry;
  - (b) the reference is frivolous or vexatious;
  - (c) the conduct of the party making the reference ought properly to preclude its being proceeded with; or
  - (d) it is appropriate or convenient for the matter instead to be disposed of by the High Court.

### 4.2 Consequences of decision

- 4.2.1 If the ORR decides that the reference to appeal should not proceed, it shall immediately notify the Appellant and each Respondent of its decision, and:
  - (a) in the case of decision on any of the grounds specified in Condition M4.1.1(a), (b) or (c), the decision in accordance with the ADRR shall stand; and
  - (b) in the case of a decision on the ground specified in Condition M4.1.1(d), either party to the appeal shall be entitled to apply to the High Court for any appropriate relief.

## Condition M5: Respondent's Notice

### 5.1 Requirements

- 5.1.1 Within 10 Working Days of service of a notice of appeal a Respondent may serve on the Appellant, any other Respondent and the ORR a notice:
  - (a) stating that he opposes the appeal; and
  - (b) insofar as reasonably practicable, attaching any evidence on which the Respondent wishes to rely in opposing the appeal.
- 5.1.2 In the event that a Respondent seeks more time to serve such a notice the ORR may, upon the Respondent providing the ORR with evidence which satisfies it that an extension of the timeframe for service of the notice is appropriate, grant such longer period for service of the notice as it considers necessary:

## Condition M6: Expedited Process

### 6.1 Appellant or Respondent Request to Expedite

- 6.1.1 Where a party to the appeal believes that the appeal should be dealt with on an expedited basis, it should make representations to the ORR, copied to the other party, explaining why it believes this to be the case and its proposed timetable for the appeal. Where the Appellant makes such representations, it should do so as part of its Notice of Appeal. Where the Respondent makes such representations, it should do so within two Working Days of receipt of the Notice of Appeal.

# Part M: Appeal

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- 6.1.2 On receipt of representations in accordance with Condition M6.1.1, the ORR shall give the other party to the appeal an opportunity to make any representations in response.
- 6.1.3 Having received any representations in accordance with Conditions M6.1.1 and 6.1.2, where the ORR believes it is in the interests of justice to do so, it shall order that the appeal is heard on whatever expedited timeframe it considers appropriate.

## Power of ORR to order Expedited Process

- 6.2.1 Even where a party to the appeal does not request that the appeal be dealt with on an expedited basis in accordance with Condition M6.1, the ORR may, where it believes it is in the interests of justice to do so, order that an appeal is heard on whatever expedited timeframe it considers appropriate.

## Condition M7: Matters to be Considered on Appeal

### 7.1 Scope

- 7.1.1 Every appeal will be limited to a review of the decision of the lower tribunal unless the ORR considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

### 7.2 Grounds

- 7.2.1 At any hearing of the appeal, a party may not rely on a matter not contained in the appeal notice or Respondent's notice unless the ORR gives permission.

## Condition M8: Powers of the ORR

### 8.1 ORR's Powers

- 8.1.1 The ORR shall, in determining the matter in question, have the power:
  - (a) to give directions as to the procedure to be followed in the appeal, including in relation to the time limits within which anything must be done, the making of any written and oral submissions, and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to any other;
  - (b) to appoint any person to act as a legal or technical assessor who it considers has suitable knowledge and experience to assist the ORR;
  - (c) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by the ORR; and
  - (d) to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the ORR shall determine) which shall be borne by each party.

## Condition M9: Immunity of the ORR

### 9.1 Immunity of ORR

- 9.1.1 The ORR shall not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the conduct of any reference to appeal.

# Part M: Appeal

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## Condition M10: Obligation to Comply with Determination of Appeal

### 10.1 Obligation to Comply with Determination of Appeal

#### 10.1.1 All Appellants and Respondents shall:

- (a) subject to and pending the final determination of any reference to the ORR, comply with:
  - (i) any determination made in accordance with the ADRR in relation to any dispute referred; and/or
  - (ii) any interim order of the ORR; and
- (b) comply with any final determination of the ORR.

## Condition M11: Effective Date of ORR's Decision

### 11.1 Effective Date of ORR's Decision

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

## Annex 1 - Access Dispute Resolution Rules

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**THE ACCESS DISPUTE  
RESOLUTION RULES**

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**March 2016**

## **EXPLANATORY NOTE**

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

*This Explanatory Note provides a brief overview of the purpose and structure of the Access Dispute Resolution Rules (ADRR).*

*The ADRR themselves are intended to be a readable single point of reference for parties involved in a dispute. However, further background, and the templates required for use in connection with the ADRR are available at the access disputes website. <http://www.accessdisputesrail.org>.*

### **Overview**

*The purpose of the ADRR is to provide a clear, coherent, and effective structure for dealing with those rail disputes arising under access agreements and access conditions/codes that should be dealt with under access-specific processes.*

### **Structure**

**Chapter A** of the ADRR sets out principles which should be applied throughout the determination procedure by the parties, Chairs, arbitrators, experts and others involved. Those using the Rules are expected to respect the principles and have regard to them at all stages in the determination procedure. Failure to do so is intended to carry penalties including potential adverse Costs awards.

**Chapter B** provides the mechanism by which a dispute will be initiated and allocated to the agreed or most appropriate Forum.

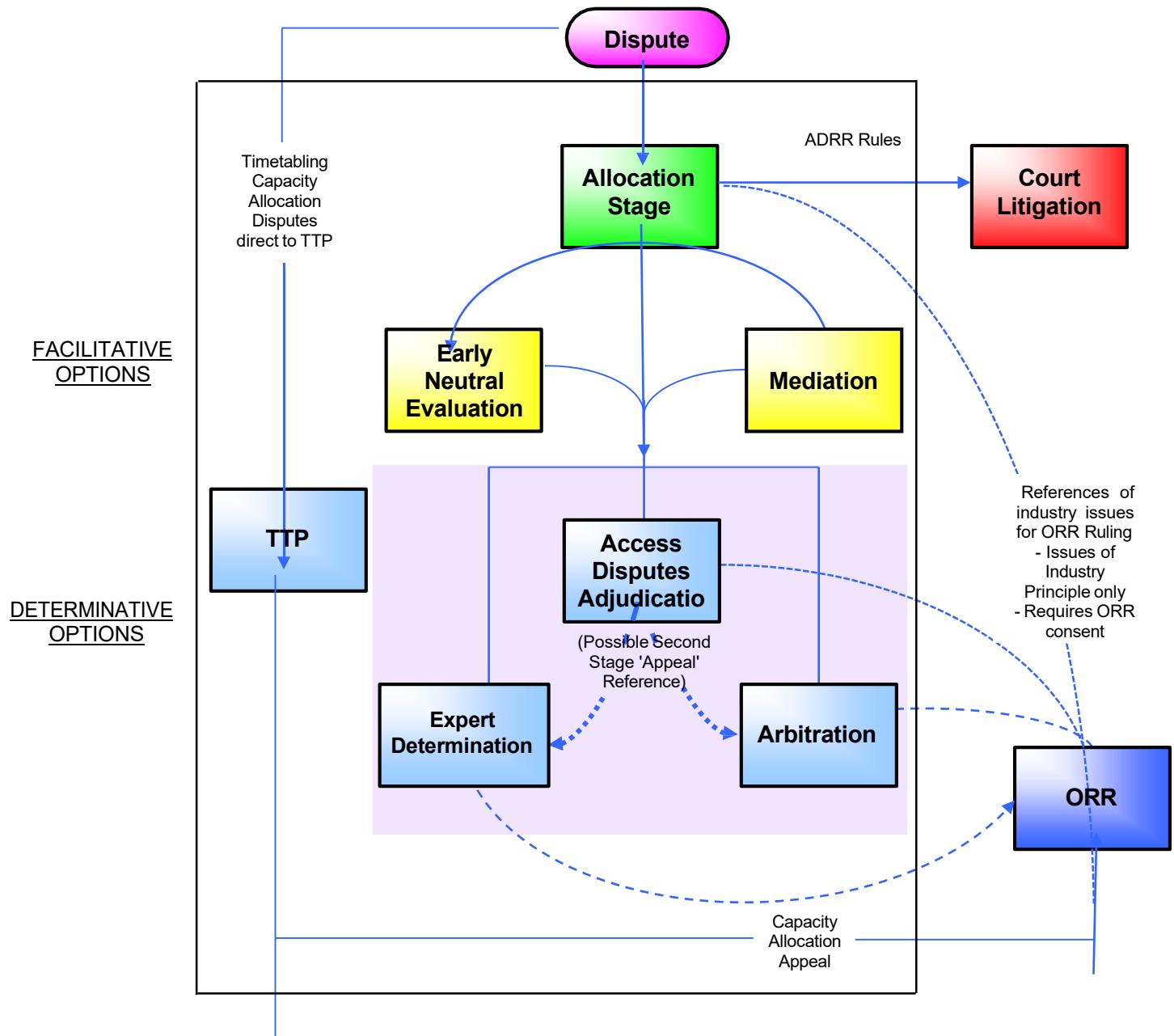
**Chapter C** describes the mechanism by which issues of wider industry concern and issues of a regulatory nature (including those which come within the scope of the Regulations can be referred to the ORR at any stage of the process.

**Chapters D-I** set out the Rules applicable to each of the dispute resolution processes provided for in the Rules. These include facilitative and determinative processes which may be conducted in parallel (particularly in the case of mediation in parallel with a determinative process) or by way of offering a means of appeal from a first instance decision.

**Chapter J** contains the constitutional, governance and administrative arrangements required to provide the services contained within the Rules.

**Chapter K** sets out the mechanism for dealing with disputes where there may be overlaps with the Non-Access Dispute Resolution Rules and the dispute resolution procedure in the Disputes Resolution Agreement, either because it is a mixed dispute or because the access jurisdiction is challenged by one of the parties to the dispute.

*In addition it is envisaged that it will be possible in certain cases to refer cases outside these Rules to ORR under the Regulations or to court on particular issues for which a commercial jurisdiction is most beneficial. The following diagram illustrates how allocation can take place:*



## **DEFINITIONS AND INTERPRETATION**

1 In these Rules, unless the context otherwise requires, the following words and phrases where capitalised shall mean:

<b>Term</b>	<b>Definition</b>
Access Conditions	Means, as the context so requires, the HAL Network Code, the HAL Station Access Conditions, the Emergency Access Code, the Performance Data Accuracy Code, the Railway Systems Code (or successor documents) or any other document carrying out a similar purpose;
Access Contract	Means in respect of a railway facility, an agreement which has HAL as a party to it and which incorporates by reference the Access Conditions applicable to that railway facility;
Act	The Railways Act 1993 as amended from time to time;
ADA	Access Disputes Adjudication in accordance with Chapter G;
ADC Co	Means the limited liability company incorporated in England and Wales by the Committee, pursuant to the Companies Act 2006;
ADRR	Means the set of rules known as the "Access Dispute Resolution Rules" which apply to the resolution of disputes arising under, or in connection with, an Access Contract;
Allocation Chair	The individual appointed by the Committee, pursuant to Rule J 2, or, where the context so allows, another individual appointed as a substitute by the Secretary, to discharge the role of the Allocation Chair in respect of a specific dispute in accordance with these Rules;
Appellant	Means any Dispute Party seeking to challenge a determination made under these Rules by appeal to the ORR;
Arbitration Acts	Means those acts in force from time to time governing arbitration proceedings in England (including the Arbitration Act 1996);
Case Summary	Is as defined by Rule D7(a) in respect of a mediation and Rule E5(a) in respect of an ENE;
Committee	The Access Disputes Committee constituted under Rule J2 of the Network Rail ADRR;
Committee Chair	A Committee Member appointed as Committee Chair pursuant to Rule J19 of the Network Rail ADRR;
Committee Member	A person appointed to the Committee pursuant to Rule J6 of the Network Rail ADRR;
Conflict of Interest	Includes bias or an appearance of bias, a potential conflict of interest and any circumstances in which a reasonable third party may consider that there is a real risk of a conflict of interest existing or arising in the future;
Costs	Professional and other costs and expenses which would be recoverable following a judgment in Court proceedings in England.

<b>Term</b>	<b>Definition</b>
Dispute Party	An Involved Party which is likely to be materially affected by the outcome of the dispute and is putting its position to the Forum and/or requesting a determination from a Forum;
Document	Hard copy or electronic data of any kind and in any format including internal or external correspondence, emails or other communications, documents, spreadsheets and databases;
ENE	Early Neutral Evaluation in accordance with Chapter E;
Evaluation Documents	Is as defined in Rule E5(b);
Forum	Each Hearing Chair of an ADA or Timetabling Panel, evaluator, mediator, arbitrator and determining expert appointed under these Rules;
Hearing Chair	An individual appointed by the Secretary to determine a dispute referred to TTP or ADA in accordance with these Rules;
HAL Network Code	The document entitled HAL Network Code maintained by HAL as amended from time to time;
Human Rights Act	The Human Rights Act 1998 as amended from time to time;
Industry Advisor	An individual appointed as such in accordance with Rule J11;
Infrastructure Manager	Has the meaning given to it in the Regulations;
Involved Party	In relation to a dispute, dispute procedure or dispute resolution process means a party directly involved in the dispute including the Secretary, all Dispute Parties, and the Forum;
Mediation Documents	Are those defined in Rule D7(b);
Network Rail ADRR	Means the set of rules known as the Access Dispute Resolution Rules published by Network Rail which apply to the Wider UK Rail Network;
Non-Access Dispute Resolution Rules	Means the dispute resolution procedure set out in the Railway Industry Disputes Resolution Rules, or “RIDR”;
Notice of Dispute	A notice issued by a Resolution Service Party wishing to refer a dispute to resolution in accordance with these Rules;
ORR	The Office of Rail and Road (and where relevant the former Rail Regulator) or any successor body or regulator;
Panel Member	In respect of a dispute to be resolved by TTP or ADA, each individual member of the panel appointed from time to time in respect of that dispute;
Principles	The principles set out in Rules A5-A10;
Procedure Agreement	Is as defined in Rule B10;
Reference	In respect of a reference to ORR, is as defined in Rule C6;

<b>Term</b>	<b>Definition</b>
Referring Party	Is as defined in Rule C2;
Regulations	The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as may be amended from time to time;
Regulatory Issue	<p>A principle, issue or process connected with the railway industry (and any interactions between such principles, issues and processes) which</p> <ul style="list-style-type: none"> <li data-bbox="545 585 1318 652">(a) concerns the regulated structure of the high speed railway industry as a whole or a material part of it, or</li> <li data-bbox="545 681 1307 749">(b) relates to or is closely aligned with a matter on which the ORR has regulatory oversight (from time to time); or</li> <li data-bbox="545 778 1312 845">(c) is connected with the ORR's relevant duties, functions or powers as a regulator under the Regulations;</li> </ul>
Relevant Dispute	Is as defined in Rule B4C;
Resolution Service Party	A party entitled to use the dispute resolution service described in these Rules;
RIDR Secretary	The disputes secretary appointed in accordance with the Non-Access Dispute Resolution Rules;
Secretariat	Individuals appointed as such in accordance with Rule J21;
Secretary	The individual appointed as such in accordance with Rule J16;
Statement of Case	Any of the initial submissions setting out a Dispute Party's case including a statement of claim, reference, statement of defence, reply, answers and response and such other Documents as a Hearing Chair, arbitrator or determining expert shall identify as such;
Timetabling Dispute	A dispute arising out of or concerning issues of timetabling, timetable change and/or changes in the allocation of capacity, for which the TTP is identified in the relevant Underlying Contract as the relevant dispute resolution process;
Timetabling Panel	The panel including a Hearing Chair and one or more members of the Timetabling Pool appointed in respect of a dispute to be resolved by TTP.
Timetabling Pool	The pool of potential members of Timetabling Panels;
TTP	The dispute resolution process for resolving Timetabling Disputes in accordance with Chapter H of these Rules;
Underlying Contract	Any contract (or to the extent applicable any other source of a reference to a dispute) under which disputes are or can be referred to resolution under these Rules, and this may include such interrelated contracts as govern access to infrastructure;
Working Day	Is as defined in Part A of the HAL Network Code; and
Working Timetable	Is as defined in Part A of the HAL Network Code.

## **Interpretation**

2 Unless the context otherwise requires:

- (a) Terms and expressions defined in the Act, the Regulations or the HAL Network Code shall, unless the contrary intention appears, have the same meaning in these Rules.
- (b) Certain decision making procedures have been adopted from the Network Rail ADRR. Reference has been made to the Network Rail ADRR as appropriate.
- (c) Use of the singular shall include the plural.
- (d) References to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re-enactments (whether with or without modification).
- (e) Any agreement, instrument, licence, standard, timetable, code or other document referred to in these Rules or entered into, approved, authorised, accepted or issued by a person pursuant to this code shall be construed, at the particular time, as a reference to that agreement, instrument, licence, standard, timetable, code or other document, as it may then have been amended, varied, supplemented or novated.
- (f) Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in these Rules and the rules of interpretation contained in that Act shall apply to the interpretation of these Rules.
- (g) Where in these Rules any obligation of any party is required to be performed within a specified time limit that obligation shall continue after that time limit if the party fails to comply with that obligation within the time limit.
- (h) The words "include" and "includes" are to be construed without limitation.
- (i) References to Rules and Chapters are to Rules and Chapters of these Rules.
- (j) References to the law shall be to the law of England and shall include all binding legislation (including regulations and statutory instruments) and directly effective European law.
- (k) The headings in these Rules are used for convenience only and shall not affect the interpretation of the Rules.

## **CHAPTER A - THE PRINCIPLES AND OPERATION OF THE DETERMINATION PROCEDURE**

- 1 The Principles set out in this Chapter A are intended to be applied to the whole of the conduct and determination of disputes by all parties including the Allocation Chair, the Secretary and each Forum.
- 2 Except as otherwise provided in these Rules, any and all references in any contractual document to resolution or determination of a dispute, matter or issue under or in accordance with the whole or any part of, or any process subject to or governed by:
  - (a) the Access Dispute Resolution Rules (or ADRR) incorporated into (or annexed to) the HAL Network Code; or
  - (b) the HAL Network Code itself;shall be a reference to resolution in accordance with these Rules as a whole and (unless otherwise provided in these Rules) no such reference shall restrict or otherwise limit or determine the process or processes to be adopted under these Rules to resolve or determine any dispute or issue.

### **Purpose**

- 3 The determination procedure for disputes described in these Rules is intended to:
  - (a) include one or more dispute resolution processes appropriate to the dispute;
  - (b) include at least one available determinative stage which is objectively impartial and fair trial compliant;
  - (c) provide a relatively swift and easy to access disputes process for all cases where this is appropriate;
  - (d) be able to accommodate larger cases of significant value or wider importance including cases that reasonably require extensive documentation and/or witness evidence;
  - (e) provide a mechanism for the parties or any relevant Forum to obtain a determination on Regulatory Issues from ORR;
  - (f) allow parties to resolve disputes as efficiently and effectively as possible;
  - (g) allow the parties flexibility to identify and adopt the most appropriate dispute resolution process(es) for each dispute; and
  - (h) avoid the use by any party of any dispute resolution process to delay, frustrate or avoid determination or resolution of the dispute.
- 4 The Allocation Chair and each Forum under these Rules shall have regard to the Principles:
  - (a) when making any procedural decisions; and
  - (b) at any stage when Costs are awarded.

## **PRINCIPLES**

### **Determinations and Remedies**

- 5 Each and every Forum shall reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis. Each and every Forum shall act in accordance with the law; and all its decisions, including its determinations and decisions on procedure, shall be in accordance with the law.
- 6 Each and every Forum shall:
  - (a) where the Access Conditions or Underlying Contract require that a specific remedy be granted, grant that remedy accordingly; or
  - (b) where a specific remedy is provided for at law, grant that remedy accordingly; or
  - (c) where the choice of remedy is not a matter of entitlement but is a question properly falling within the discretion of the Forum, exercise that discretion in accordance with

any requirements and criteria set out in the Access Conditions and Underlying Contract after due consideration of all remedies and orders that could properly be made.

### **Precedent**

7 In reaching its determination, each and every Forum shall:

- (a) take note of relevant published ADA or TTP determinations and of any other relevant tribunal regarding HAL excluding (to the extent referred to in (b) below) the ORR, as persuasive authority but need not be bound by them;
- (b) be bound by any relevant decision of the ORR on a Regulatory Issue and any relevant decisions of the courts.

The Forum will act reasonably in taking note of any such decision or determination. However, given the unique nature of the HAL infrastructure, the Forum shall not be bound by any determination made in relation to railway infrastructure other than the HAL infrastructure in relation to any dispute to be determined in accordance with these Rules.

### **Impartiality**

8 Members of Forums may be appointed in part due to their particular industry expertise. Nonetheless, all members of Forums shall exercise their functions impartially and not on behalf of any specific organisation, company, business, trade or profession.

### **Duties of Dispute Parties**

9 Dispute Parties shall at all times:

- (a) co-operate with any reasonable request of the Allocation Chair, any Forum, the Secretary and each other;
- (b) conduct themselves in good faith with the objective of resolving the dispute; and
- (c) avoid antagonistic or unduly adversarial behaviour.

10 Dispute Parties shall provide voluntarily, or where reasonably requested, to each other, to the Allocation Chair, the Secretary and to any Forum, all material required for the effective consideration and determination of the dispute, mindful of the requirements of Rules F20, G25, H26, and I20 on Documents.

## **OPERATION OF THE RULES**

### **Funding**

11 The delivery of the dispute resolution service provided for in these Rules will be funded by potential users of the service in accordance with the provisions of the Access Contracts.

### **The Role of the Allocation Chair and Secretary**

12 The Allocation Chair:

- (a) has oversight (under the powers contained in Chapter B) of the effective overall case management of a dispute;
- (b) will consider any disputes referred under Chapter B in accordance with these Rules and the Dispute Parties' proposals for the procedure for resolution of them including whether any issues should or could be referred to the ORR;
- (c) may, at the request of any Resolution Service Party, give guidance on dispute procedure prior to the reference of any dispute for resolution under these Rules;
- (d) where the Dispute Parties are not in agreement will seek to facilitate an agreement between them concerning the most appropriate determination procedure;
- (e) has responsibility for any allocation hearing including directions for any submissions, the hearing itself and any decisions connected with allocation.

13 The Allocation Chair may, where reasonable to do so, delegate the performance of any of their functions in any dispute to the Secretary appointed under Rule J16 or any member of the Secretariat appointed under Rule J21 but such delegation shall not affect the obligations and responsibilities of the Allocation Chair set out in Rule A12.

14 The Secretary:

- (a) has responsibility for appointing Hearing Chairs and Industry Advisors from a register maintained by the Secretary and, where parties are unable to agree, arbitrators and determining experts;
- (b) shall assist the Allocation Chair, as required, in the discharge of the functions in Rule A12;
- (c) shall receive disputes referred under Chapter B, record them and allot a case number to them;
- (d) is responsible for managing the delivery of the determination procedure allocated to the dispute;
- (e) may at the request of any Resolution Service Party, give guidance on dispute procedure prior to the reference of any dispute for resolution under these Rules.

### **Timely Determination**

15 Subject to the other provisions of these Rules and any specific timescale provisions of the Access Conditions, Underlying Contract or any other legal requirements, a Forum shall reach its determination in a timely manner consistent with the nature and complexity of the dispute. Notwithstanding the generality of the foregoing, all disputes under the Regulations and the ADRR will be determined no later than ten Working Days after the final submission of all relevant information (as reasonably determined by the decision maker or decision making panel) under any of the determination routes or channels outlined in the ADRR.

### **Consequences of procedural default**

16 If a Dispute Party is in procedural default, the Allocation Chair or Forum (as appropriate) may, whether or not upon the application of the other Dispute Party, make one or more of the following orders:

- (a) that the defaulting party comply with its obligation;
- (b) that the defaulting party is prohibited from relying upon the information or other matter which it has failed to provide in accordance with these Rules or a valid direction;
- (c) that the dispute can proceed to determination without one or more steps being taken which have not been taken because of the procedural default; and/or
- (d) that the Costs arising from or connected with the procedural default be paid by the defaulting party on an interim or final basis.

In addition, and where appropriate to do so, adverse inferences may be drawn by any Forum in respect of the position for which the defaulting party contends.

17 For the purposes of Rule A16 procedural default shall include:

- (a) failure to take a step by the time required by these Rules;
- (b) failure to comply with any direction of the Allocation Chair, the Secretary or any Forum;
- (c) failure to abide by the Principles.

### **Representation**

18 A Dispute Party is entitled to be represented by such person(s) (legally qualified or otherwise), as it chooses.

19 A Dispute Party shall not be prejudiced by its choice of one category of representative as against another. It shall, however, ensure that:

- (a) the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value);
- (b) where a representative is also a witness, that representative is able to perform both duties in full;
- (c) where a representative is not a witness, any appropriate witnesses are present at the hearing to provide relevant information; and
- (d) its representatives shall respect and act at all times in accordance with the Principles.

#### **Hierarchy**

20 In the event of conflict (when using these Rules) between the Regulations, the Act, the Access Conditions, an Underlying Contract, and these Rules the following order of precedence shall apply:

- (a) the Act;
- (b) the Regulations;
- (c) the Access Conditions;
- (d) these Rules; and
- (e) the Underlying Contract.

#### **Service of Documents and Notice**

21 Documents may be served:

- (a) in person on any director of any party, in which case service shall be deemed to take place on the day on which the documents are given to the director in person;
- (b) by personal delivery to the registered address or principal business address within the UK of any party, or such other address (including that of a representative or adviser) as that party identifies in connection with the relevant dispute; in which case service shall be deemed to take place on the day of delivery or, if delivery is made after 5pm, the following Working Day;
- (c) by first class post, to the registered address or principal business address within the UK of any party, or such other address (including that of a representative or adviser) as that party identifies in connection with the relevant dispute; in which case service shall be deemed to take place two Working Days after posting;
- (d) by email, to any party which has previously identified in writing an electronic address for service of documents in connection with the relevant dispute (including the address of a representative or adviser) in which case service shall be deemed to take place on the day of receipt, or if receipt is after 5pm, the day following receipt. For the purposes of this Rule A21(d) the Secretary will accept documents sent to them at the email address as listed on the Access Disputes Committee website; [www.accessdisputesrail.org](http://www.accessdisputesrail.org).
- (e) by fax to the advertised fax number of any party, in which case service shall be deemed to take place on the day of transmission or, if transmission is completed after 5pm, the following Working Day;
- (f) where a party has no registered address or principal business address within the UK, service may be made in accordance with the above requirements to the Secretary on behalf of that party. The Secretary shall be considered to be the relevant party's agent for service and shall take all reasonable efforts to transmit the documents on to the party at such address as is specified outside the UK.

Provided that, in all cases in which documents are sent to any company or corporate entity, such documents are addressed "Urgent; for the attention of the Company Secretary" or addressed to a person representing the party who has previously confirmed in writing their willingness to receive such documents on behalf of the party.

22 In these Rules, whenever any notice is required to be given in writing, writing shall include email.

- 23 Any reference to pages is a reference to A4 pages containing reasonably legible typescript at 1.5 line spacing. All documents submitted shall be made in a form compatible with software agreed with the Secretary from time to time and all attachments should be where reasonably possible, in electronic format.
- 24 All documents, correspondence, communications and other material including spoken statements, submissions and communications shall be in the English language.
- 25 In the event that any date specified in these Rules for service of documents or any action by any party, Forum, Allocation Chair, Hearing Chair or Secretary or any other date specified would fall between 25 December and 31 December in any year, it shall be extended by seven days. Any such date falling on a public holiday in England shall be extended to the next Working Day.

## CHAPTER B - INITIATING A DISPUTE AND ALLOCATION

1 Disputes proceedings will be initiated and referred for allocation in accordance with the following Rules.

### NOTIFICATION OF A DISPUTE

2 A Resolution Service Party wishing to refer a dispute shall serve a written Notice of Dispute on the Secretary and shall serve a copy of the Notice of Dispute on every other party to the dispute.

3 The Notice of Dispute shall, unless otherwise advised by the Secretary, normally be in accordance with the template format for a Notice of Dispute (found on the access disputes website) and shall do all of the following:

- (a) state the contract and relevant contractual clause under which the reference is made (or such other basis for the reference under these Rules);
- (b) list the other parties concerned whether as a Dispute Party to the dispute or otherwise;
- (c) summarise the basis of the claim including a brief list of issues;
- (d) state whether the Dispute Parties have already agreed on a determination procedure, or, if not, specify the referring party's initial preference for a determination procedure, including, if it believes it is a Timetabling Dispute, a statement to this effect; and
- (e) state whether exceptional circumstances exist requiring an expedited hearing or process.

4 Valid service of a Notice of Dispute upon the Secretary in accordance with Rule B2 shall amount to the issuing of proceedings relating to the dispute for the purposes of all relevant limitation periods or provisions. Provided that the dispute has not subsequently been finally resolved or withdrawn in accordance with Rule 4A (upon the occurrence of which all relevant limitation periods shall be calculated by excluding the period during which the claim was subject to these Rules), no party shall raise any argument, defence or exclusion in subsequent proceedings (whether under these Rules or otherwise) on the basis of the expiry, after the date of valid service of a Notice of Dispute in accordance with Rule B2, of any limitation period.

4A A party which has referred a dispute by service of a Notice of Dispute in accordance with Rule B2 may (without affecting any powers in these Rules to make consequential orders as to costs) discontinue the dispute by serving written notice of withdrawal of the Notice of Dispute on the Secretary and on every other party to the dispute.

4B Rule 4C applies where a party which has served a notice of withdrawal in accordance with Rule 4A and seeks to serve a further Notice of Dispute in accordance with Rule B2, in which:

- (a) one or more other parties to the dispute referred by the further Notice of Dispute was or were a party to the dispute which has been withdrawn in accordance with Rule 4A; and
- (b) the dispute referred by the further Notice of Dispute arises out of facts which are, in the most part, the same as those relating to the withdrawn dispute.

4C In the circumstances described in Rule 4B, the dispute identified by the further Notice of Dispute (the "Relevant Dispute") will not be referred as a dispute under these Rules unless and until:

- (a) all parties to the Relevant Dispute (and any other party to the withdrawn dispute that is not a party to the Relevant Dispute) have indicated to the Secretary that they agree that the Relevant Dispute should be referred under these Rules; or
- (b) upon reference to the Allocation Chair by the Secretary and having invited submissions by all affected parties and duly considered these, the Allocation Chair gives permission for the Relevant Dispute to be referred under these Rules having regard to the circumstances of the withdrawal and the

further reference whether those circumstances amount to an abuse of the ADRR process whether the dispute party which is seeking permission has acted oppressively or unreasonably, the terms of any undertaking offered by the dispute party which is seeking permission to be responsible for the costs incurred by the other dispute parties in connection with the withdrawn dispute and the terms of any cost order made upon the withdrawal.

## **ALLOCATION PROCESS**

- 5 All Timetabling Disputes shall be referred to a Timetabling Panel in accordance with Chapter H of these Rules. Following service of a Notice of Dispute relating to a Timetabling Dispute Rule H11 shall apply and a Procedure Agreement shall be drawn up by the Secretary accordingly.
- 6 All disputes referred to resolution in accordance with these Rules under Condition B2.4.6 of the HAL Network Code shall be referred to an ADA in accordance with Chapter G of these Rules as a single stage dispute resolution process with no appeal. Following service of a Notice of Dispute relating to such a dispute Rule G9 shall apply and a Procedure Agreement shall be drawn up by the Secretary accordingly.
- 7 All disputes referred to resolution in accordance with these Rules under Condition J5 of the HAL Network Code shall be referred to an ADA in accordance with Chapter G of these Rules with a right of appeal to the ORR for determination in accordance with Part M of the HAL Network Code. Following service of a Notice of Dispute relating to such a dispute Rule G9 shall apply and a Procedure Agreement shall be drawn up by the Secretary accordingly.
- 8 Unless otherwise ordered by the Allocation Chair, following service of a Notice of Dispute, the Secretary:
  - (a) shall allot a case number to the dispute and notify this case number to all Involved Parties including those identified in the Notice of Dispute according to Rule B3(b);
  - (b) where the Secretary reasonably believes that another party or parties are likely to be directly affected by the outcome of the dispute and it is appropriate that they should be informed of the existence of the dispute, may seek clarification from the party initiating proceedings about why that party has not been identified in accordance with Rule B3(b) and inform the Allocation Chair or relevant Hearing Chair (as appropriate) accordingly;

- (c) (unless a Procedure Agreement has already been drawn up or served on the Secretary) shall set a date and time for an allocation hearing to take place within 28 days of the service of the Notice of Dispute or such other time as the Dispute Parties may agree;
- (d) (unless a Procedure Agreement has already been drawn up or served on the Secretary) shall provide initial directions to the parties setting out the following initial timetable (or such variation of the timetable as the Allocation Chair shall approve):
  - (i) fixing a date and time of the allocation hearing, a provisional method by which such allocation hearing shall take place (in writing, in person at a specified location, or by telephone conference or otherwise) and an estimated duration for the allocation hearing;
  - (ii) encouraging the parties to seek to agree a determination procedure between them and in the event of reaching such an agreement immediately to notify the Secretary accordingly;
  - (iii) requiring each party to serve upon the Secretary and exchange with the other parties a statement, at least seven days before the hearing, containing that party's:
    - (A) assessment of the basis of the claim and a brief list of issues. Alternatively agreement with the basis of the claim and list of issues provided with the Notice of Dispute; and
    - (B) preferences for the Forum and any facilitative stages together with short reasons in support of such process; and
    - (C) assessment of any issues which should be referred to the ORR together with the proposed form of words for the reference and short reasons in support of such a reference.

Such statements should each be less than three pages long unless the Allocation Chair directs otherwise.

- 9 The Secretary shall assist the parties to reach an agreement regarding the most appropriate determination procedure and whether any issues can or should be referred to the ORR or to the courts. In doing so the Secretary shall act in a facilitative role impartially between the parties and shall not seek to impose the Secretary's own assessment or preference upon the parties.
- 10 If the parties reach agreement upon a determination procedure, they shall confirm their agreement and the terms of that agreement to the Secretary by way of a written procedure agreement (the "**Procedure Agreement**") executed by or confirmed in writing on behalf of all Dispute Parties. The form of the executed Procedure Agreement received by the Secretary shall be definitive evidence of the agreement reached and shall specify at least:
  - (a) the dispute resolution process or processes agreed by the parties and the order in which they will take place (or specify that facilitative processes are to take place in parallel to other dispute resolution processes);
  - (b) where appropriate, the basis on which any appeal or reference to a second (or later) stage may be made;
  - (c) (subject to the provisions of Part M of the HAL Network Code) where the ORR is identified as an appeal body, confirmation that ORR has agreed to accept an appeal as part of the determination procedure; and
  - (d) where any dispute is agreed to be referred to the courts at any stage, specify the timescale (which shall not be less than 2 months nor more than 9 months) by which any claim must be initiated following conclusion of any prior stages, otherwise the dispute will be deemed withdrawn.
- 11 The Procedure Agreement may specify dispute resolution processes provided for in these Rules (including Court proceedings) or otherwise (provided that agreement from any tribunal/ determinative body not provided for in these Rules is obtained before a reference to it is agreed).

The Procedure Agreement may not specify that a dispute be referred to a Timetabling Panel unless it is a Timetabling Dispute.

- 12 The Procedure Agreement may also specify any agreed timings for commencement of any dispute resolution process, the terms of any reference agreed to be made to the ORR by the Dispute Parties and any other agreement between the parties regarding the procedure to be adopted.
- 13 The Allocation Chair shall preside over any allocation hearing which takes place. At an allocation hearing the Allocation Chair shall:
  - (a) consider the Notice of Dispute, the written statements of the parties and any oral representations from the parties;
  - (b) ask questions to identify the most appropriate determination procedure and whether any issues exist which could be referred to the ORR;
  - (c) seek to facilitate an agreement between the parties on the most appropriate determination procedure and whether any issues exist which should be referred to the ORR;
  - (d) having heard each party's full submissions, if no agreement has been reached, state clearly any view the Allocation Chair has of the most appropriate determination procedure;
  - (e) in the event that any party claims the right to refer a matter or issue directly to the ORR under the Regulations (without the need to first refer the matter to a Timetabling Panel), determine whether it is arguable that such a right exists and if so direct the reference of the matter to the ORR;
  - (f) in the event that any party claims the right to refer a matter or issue to a Timetabling Panel and subsequently to the ORR in accordance with the Regulations, determine whether it is arguable that such a right exists and if so refer the matter to a Timetabling Panel followed by appeal to the ORR. There is a presumption that disputes referred to resolution under Condition D5.1.1 of the HAL Network Code shall, unless there are compelling reasons to the contrary relating to subject matter, be allocated to a Timetabling Panel. Consequently the Allocation Chair shall not allocate a dispute ostensibly falling within Condition D5.1.1 other than to a Timetabling Panel without first inviting written representations from the Dispute Parties on the Allocation Chair's intention to do so (to be provided by the parties within seven days of the request or such other time as the Allocation Chair shall specify) and giving proper consideration to any representations made;
  - (g) in the event that the parties agree that an issue would be best determined by the ORR but are unable to agree to the wording of the necessary reference, determine the wording of the reference and write to the ORR (copying the parties) identifying the issue and requesting that the issue be considered in accordance with Chapter C;
  - (h) in the event that agreement in principle on the resolution procedure has been reached, but the parties are unable to agree on the timings of each stage (including adjustments to the default timings in these Rules), determine the timings to be applied following consideration of the parties' submissions in that respect;
  - (i) in the event that agreement is reached between the parties (including agreement following the exercise by the Allocation Chair of their powers under (g) and/or (h)), the Allocation Chair shall draw up, with the parties' assistance, the Procedure Agreement and the parties shall execute it or confirm it in writing;
  - (j) in the event that no agreement is reached between the parties and neither (e) or (f) applies, determine that, unless the parties reach a contrary agreement within seven days of the allocation hearing, the matter shall be referred to final determination by arbitration subject to Chapter F as a one stage determination procedure with appeal only in accordance with the Arbitration Acts and shall draw up the Procedure Agreement accordingly and shall sign it as Allocation Chair.

14 Following an allocation hearing in accordance with Rule B13 the Allocation Chair may at their discretion write formally to all parties stating the Allocation Chair's view on the best allocation of the dispute and the approach taken by the parties leading to the actual allocation of the dispute.

15 Following service upon the Secretary of a Procedure Agreement in accordance with Rule B10 or drawing up of a Procedure Agreement in accordance with Rule B5, 6, 7 or 13, the Secretary shall write to all the Involved Parties:

- (a) dispensing with any remaining stages of any previous directions;
- (b) confirming receipt of the Procedure Agreement and recording the determination procedure to be adopted for the dispute;
- (c) confirming the first dispute resolution process and the first dates required by these Rules in respect of that process; and
- (d) where the first dispute resolution process is ADA or TTP, identifying the Hearing Chair appointed for the dispute;

16 For the purposes of these Rules the first dispute resolution process specified in the Procedure Agreement shall commence upon the date on which the Secretary writes to the Involved Parties in accordance with Rule B15. Subsequent dispute resolution processes provided for in the Procedure Agreement shall commence upon receipt by the Secretary in accordance with these Rules of notice from any party of that party's decision to refer the dispute to such dispute resolution process in accordance with these Rules.

17 In discharging the Allocation Chair's roles in respect of allocation under this Chapter B, the Allocation Chair shall have regard to:

- (a) these Rules including the Principles;
- (b) the allocation criteria (if any) published from time to time by the Committee on the access disputes website;
- (c) the objective importance of the dispute to the Dispute Parties;
- (d) the complexity of the issues;
- (e) the significance (if any) to the railway industry of the issues involved;
- (f) the scale of any financial claims involved;
- (g) the relevant laws including the Arbitration Acts, the Act, the Regulations and the right to a fair trial at common law and under the Human Rights Act; and
- (h) the provisions of Chapter K (Mixed Disputes)

18 The Allocation Chair (aided by the Secretary) shall continue to actively encourage and facilitate resolution of disputes throughout the life of the dispute. All parties and all Forums shall have liberty to apply to the Allocation Chair at any stage in respect of a restructuring of the determination procedure including as appropriate the addition of any facilitative process in parallel with determinative processes or otherwise.

19 In exceptional circumstances requiring an expedited hearing or process or where alternative actions or directions are required, the Allocation Chair may at any stage on the application of any party give directions varying the timescales provided for in these Rules and nothing in this Chapter B shall restrict such directions being given.

20 Upon the application of any Dispute Party or at the Allocation Chair's own instigation the Allocation Chair may order that any two or more disputes be joined or heard and resolved together where such disputes appear to the Allocation Chair in their absolute discretion to concern the same or similar subject matter and where it is in the interests of efficient and fair resolution to do so.

21 Subject to the Arbitration Acts, any party may at any stage issue or initiate proceedings before the High Court in England, for any interim remedies including injunctions, interdict or specific implement and nothing in this Chapter B shall prevent them from so doing.

## CHAPTER C - REFERENCE TO THE ORR IN THE COURSE OF A DISPUTE RESOLUTION PROCESS

1 This section describes how issues connected to disputes may be referred to the ORR by the parties, the Allocation Chair or any Forum at any stage of the determination procedure and the basis on which ORR will determine such references.

### ISSUES TO BE REFERRED

2 Issues may only be referred to the ORR under these Rules by:

- (a) the parties together acting by agreement;
- (b) the Allocation Chair in accordance with the provisions of Chapter B; or
- (c) any Forum acting in accordance with these Rules

in each case a "Referring Party"

3 A Referring Party may at any stage or stages in a dispute refer to ORR any discrete issue or matter which is connected to or forms part of a dispute and:

- (a) concerns information to which ORR has access and which is not readily available from another source; or
- (b) is or concerns a Regulatory Issue; or
- (c) is an issue or matter of wider railway industry relevance which would benefit from ORR's industry specific experience and/or knowledge.

4 The purpose of a reference to ORR is to obtain answers to issues of general application to the railway industry (or a significant part of it) in respect of which ORR has relevant information or knowledge which may inform the resolution of the Dispute Parties' respective entitlements. Consequently (except where it is legally required to hear specific claims) ORR may at its discretion decline references which relate solely to one or more parties' specific factual or financial position or refuse to determine any party's rights on the basis of the particular facts applicable to that party. The ORR may exercise its discretion not to consider the substantive commercial issues in dispute or give an opinion on the merits of the dispute or on the proposed Forum for resolution.

5 The provisions of this Chapter C are without prejudice to any statutory or Access Conditions provisions which provide a right for a party to refer an appeal to ORR.

### PROCESS FOR REFERENCES

6 Where a Referring Party decides to refer an issue or matter to the ORR it shall send a Reference to the ORR (copied to all other Involved Parties) ("Reference") containing the following:

- (a) the Referring Party's formulation of a specific question or questions for the ORR to answer with sufficient clarity to enable the ORR to understand the nature of the answer requested from it; and
- (b) a brief explanation of how the issue or matter fulfils the requirements of Rule C3; and
- (c) a statement of the steps which have already been taken to resolve the issue; and
- (d) (at the discretion of that Dispute Party) a statement from each Dispute Party of no more than three pages:
  - (i) stating that Dispute Party's position in respect of the Reference; and
  - (ii) explaining why the Reference should or should not be decided by the ORR; and
  - (iii) attaching any relevant Documents which the party wishes to bring to the attention of the ORR in connection with ORR's decision on whether the Reference should be decided by it.

Where applicable, the Referring Party should also state whether it believes that any party has a right to refer the issue or matter to ORR in accordance with the Regulations or the HAL Network Code or otherwise.

- 7 For the purposes of this Chapter C, References to ORR may be sent to the following email address: [adrr.references@orr.gsi](mailto:adrr.references@orr.gsi).
- 8 ORR will aim to acknowledge receipt of a Reference within seven days to the Referring Party.
- 9 ORR will consider the Reference including any statements served under Rule C6 and will respond in writing within 21 days or such other period as the ORR may specify to the Referring Party (copying to all other Involved Parties):
  - (a) to advise it that the ORR declines to respond to the Reference and that the issue remains a matter for the relevant dispute Forum to determine and to provide reasons for this decision; or
  - (b) to provide a response on questions of fact and/or copies of relevant Documents or records in response to the Reference; or
  - (c) where the ORR accepts the Reference, but requires additional time, information or submissions to consider its response, to set directions and a timetable for any further stages in responding to the Reference.
- 10 Following receipt of a response from the ORR in accordance with Rule C9, the relevant Forum, if appropriate, shall give directions concerning any procedural steps required in light of the response including whether a stay is required pending further consideration by ORR.
- 11 Following completion of its process, ORR shall send its final written determination of the Reference to the Involved Parties. Following receipt of a final determination the Allocation Chair or the relevant Forum, as the case may be, shall give further directions concerning any procedural steps required in light of the determination.
- 12 Subject to any order from ORR for partial or complete redaction, all References, statements and submissions made under this Chapter C and all responses provided by ORR may be published by the ORR and shall also be made accessible from the access disputes website.
- 13 In accordance with Rule A4, ORR's determinations will be applied (in accordance with Rule A7(b) by relevant Forums to the resolution of the dispute on the basis of the Dispute Parties' respective entitlements. Consequently, subject to any specific legal obligations on ORR in considering a reference received under this Chapter C, ORR's determinations on the Regulatory Issues raised will be made in accordance with the Dispute Parties' respective entitlements. The ORR will not take account of any argument raised by any Dispute Party which is not based upon the parties' respective entitlements or would have the effect of avoiding or rendering ineffective any Resolution Service Party's existing entitlements.

## **CHAPTER D - FACILITATIVE PROCESS RULES - MEDIATION**

1 Mediation under these Rules is a private facilitative dispute resolution process in which a neutral mediator tries to help the parties to reach a negotiated settlement.

### **Disputes to be submitted to mediation**

2 Any dispute which the Dispute Parties have agreed shall be submitted to mediation under these Rules shall proceed according to the Rules of this Chapter D. Such agreement may be made when the dispute arises or previously or in the Procedure Agreement or while any other dispute resolution process is taking place and may be made orally or in writing. Any mediation agreed by the parties which is not specified in the Procedure Agreement shall commence upon notification to the Secretary in writing by all parties (or confirmation in writing of such a notification on behalf of all parties) of their agreement to mediate.

3 Where a dispute which would otherwise be submitted to mediation in accordance with this Chapter D is similar to or so closely connected with another dispute (whether in either case involving the same parties or not) between parties to the Non-Access Dispute Resolution Rules that it is expedient for the two disputes to be submitted to mediation in the same proceedings, the dispute shall be submitted to mediation in accordance with this Chapter D save that the parties to the other dispute in question shall be offered the opportunity to participate in the mediation on the same terms as the Dispute Parties, provided that such other parties shall not thereby become party to any Access Contract.

### **Beginning a mediation**

4 Upon commencement of a mediation (in accordance with the Procedure Agreement and Rule B16 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable mediator if not already done.

5 If no mediator can be agreed by the parties within 21 days of the date of commencement of the mediation, the Secretary shall recommend an appropriate individual from lists maintained by the Secretary or otherwise. If any party rejects the recommended individual then the mediation will be deemed to have failed and the Secretary shall write to the Involved Parties stating that that mediation stage has been terminated on the date of the Secretary's letter.

6 Upon appointment of a mediator, the parties and the mediator will agree a date for the mediation session within 60 days of appointment of the mediator (subject to contrary agreement on timescales between the parties).

### **Exchange of Information**

7 Following appointment of a mediator, each party shall prepare the following documents:

- (a) a concise summary ("the Case Summary") of its case in the dispute ; and
- (b) all documents to which the summary refers and any others to which it may wish to refer to in the mediation ("the Mediation Documents").

8 The parties will exchange the Case Summary and Mediation Documents with each other at least seven days before the mediation session, or other such date as may be agreed between the parties and the mediator. Copies shall be sent directly to the mediator on the same date.

9 Subject to contrary agreement between the parties:

- (a) each Case Summary shall be a maximum of ten pages long; and
- (b) a joint set of documents will be provided to the mediator containing the Mediation Documents requested by each party.

### **The Mediation**

10 The mediator, where appropriate, will:

- (a) consult with the parties before the mediation session;
- (b) read before the mediation session each Case Summary and all the Mediation Documents sent to the mediator;

- (c) determine the procedure for the mediation including the mediation session;
- (d) facilitate the drawing up of any settlement agreement;
- (e) be bound by the terms for the appointment of a mediator agreed with the parties; and
- (f) abide by the terms of this Chapter D.

11 The mediation session will take place at the place and time stated by the mediator which is best suited to the location of the Dispute Parties.

12 No recording or transcripts of the mediation session will be made.

13 Each party shall be represented at the mediation session by at least one individual who shall be a senior manager with full decision-making authority to settle the dispute. If there is any restriction on that authority this should be discussed with the mediator before the mediation session. Parties should inform the mediator prior to the date of the mediation session of the identity of its representation which may include professional or other advisers. No other persons may attend without the mediator's agreement.

14 The mediator may see each party on their own if the mediator sees fit. The mediator shall not be entitled to disclose matters told to them in confidence without the permission of the party disclosing such matters.

15 Within seven days of the end of the mediation session, if the parties have not resolved the dispute by agreement and only if all the parties request, the mediator may advise the parties of their non-binding views as to the likely outcome of the dispute if it were to be referred back to the determination procedure and/or what the mediator considers would be a fair settlement of the dispute.

### **Settlement Agreement**

16 Any settlement reached in the mediation will not be legally binding until it has been recorded in writing and signed by the parties.

### **Confidentiality**

17 The mediation is and shall be kept confidential.

18 The parties, their representatives and advisers, the mediator and the Secretary shall keep confidential all Documents, submissions, statements and other information disclosed in the mediation, including any agreement for the settlement of the dispute, except when and insofar as disclosure is necessary:

- (a) to implement or enforce the agreement for settlement of the dispute; or
- (b) to comply with an obligation to disclose owed to any financial associate of the party making the disclosure or any obligations at law.

19 Its use in the mediation shall not affect the extent to which any Document, submission, statement or other information disclosed in the mediation is admissible or subject to disclosure or production in any subsequent arbitration, legal or other proceedings involving the parties.

20 New Documents generated in the course and for the purposes of the mediation shall be treated as being on the same basis as without prejudice negotiations in an action in the courts.

### **Costs**

21 Unless the Dispute Parties otherwise agree, each Dispute Party shall bear its own costs of the mediation. The Dispute Parties shall share equally the mediator's fees and expenses, any costs of the mediator's appointment and all other administrative costs of the procedure.

### **Termination of the mediation**

22 The mediation shall terminate upon the earliest of:

- (a) the occurrence of the events in Rule D5;
- (b) service by one party to the mediation on the others and on the mediator of a notice of withdrawal from the mediation;

- (c) the provision to all parties by the mediator of their views in accordance with Rule D15;
- (d) the expiry of 14 days from the end of the mediation session;
- (e) withdrawal of the mediator from the mediation; or
- (f) the conclusion of a written settlement agreement.

23 Upon termination any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of the termination and its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to another dispute resolution process (unless such other process has already been commenced) within 28 days of termination the claim shall be deemed to have been withdrawn.

**Exclusion of liability**

24 None of the Allocation Chair, the Secretary or any mediator shall be liable to any party for any act or omission (including negligence) in connection with any mediation under these Rules unless the act or omission is shown to have been in bad faith.

**Mediator barred from further proceedings**

25 The mediator shall not be entitled to act in any capacity in relation to the subject matter of the mediation in which they acted as mediator in any subsequent arbitration, legal or other similar proceedings.

## CHAPTER E - FACILITATIVE PROCESS RULES - EARLY NEUTRAL EVALUATION

- 1 Early Neutral Evaluation (ENE) under these Rules is a private facilitative dispute resolution process in which a neutral evaluator provides a confidential assessment of the likely merits of the case and tries to help the parties to reach a negotiated settlement.

### Disputes to be submitted to ENE

- 2 Any dispute which the Dispute Parties have agreed shall be submitted to ENE under these Rules shall proceed according to the Rules of this Chapter E. Such agreement may be made when the dispute arises or previously or in the Procedure Agreement or while any other dispute resolution process is taking place and may be made orally or in writing. Any ENE agreed by the parties which is not specified in the Procedure Agreement shall commence upon notification of the Secretary in writing by all parties (or confirmation in writing of such a notification on behalf of all parties) of their agreement to an ENE.

### Beginning an ENE

- 3 Upon commencement of an ENE (in accordance with the Procedure Agreement and Rule B16 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable evaluator, if not already done.
- 4 In the event that no evaluator can be agreed by the parties within 21 days of commencement of the ENE, the Secretary shall recommend an appropriate individual from lists maintained by the Secretary or otherwise. If any party rejects the recommended individual then the ENE will be deemed to have failed and the Secretary shall write to all involved Parties stating that that ENE stage has been terminated on the date of the Secretary's letter.

### Exchange of Information

- 5 Following appointment of an evaluator, each party will prepare the following documents:
  - (a) a concise summary ("the Case Summary") of its case in the dispute; and
  - (b) all documents to which the summary refers and any others to which it considers to be relevant to the evaluation ("the Evaluation Documents").

Unless the evaluator specifies otherwise, each Case Summary should be limited to 15 pages.

- 6 The evaluator will specify the date for exchange of submissions and the parties will exchange the Case Summary and Evaluation Documents with each other on that date. Copies shall be sent directly to the evaluator on the same date.
- 7 Within seven days of the receipt by the evaluator of the Case Summaries and Evaluation Documents the evaluator shall notify the parties of any further submissions required before making the evaluation including any questions the evaluator requires the parties to answer, the date for provision of such further submissions and if necessary the time for an oral hearing. The evaluator need not hold an oral hearing if they consider it unnecessary.

### The Evaluation

- 8 The evaluator where appropriate, will:
  - (a) read each Case Summary and all the Evaluation Documents sent to them;
  - (b) determine whether any further submissions are required and whether an oral presentation from the parties would assist the evaluator;
  - (c) provide a written statement of the evaluator's evaluation of the dispute;
  - (d) facilitate the drawing up of any settlement agreement;
  - (e) be bound by the terms for the appointment of an evaluator agreed with the parties; and
  - (f) abide by the terms of this Chapter E.
- 9 Any oral hearing will take place at the place and time stated by the evaluator who will chair and determine the procedure for the hearing. No recording or transcripts of the hearing will be made.

Unless the evaluator orders otherwise each party shall be limited to one submission of up to one hour. The evaluator may require the parties to answer questions posed by the evaluator.

10 Within seven days of any hearing or confirmation from the evaluator that there will be no hearing, or such other date as the parties and the evaluator shall agree, the evaluator shall provide a written statement of their evaluation to all parties. The evaluation will state, on the basis of the information provided to the evaluator:

- (a) the evaluator's assessment of the dispute, the background and each party's arguments in respect of the facts;
- (b) the evaluator's conclusions on, or their best estimate of, the likely outcome of the case and the merits of each party's case;
- (c) the key issues or facts which the evaluator identifies as influencing the likely outcome of the case; and
- (d) at the evaluator's discretion, any suggestions on a fair or appropriate settlement of the dispute as between the parties.

11 No party shall be bound to adopt the views expressed, or accept the advice provided, by the evaluator.

**Settlement Agreement**

12 Any settlement reached in connection with the ENE will not be legally binding until it has been recorded in writing and signed by the parties.

**Confidentiality**

13 The evaluation is and shall be kept confidential.

14 The parties, their representatives and advisers, the evaluator and the Secretary shall keep confidential all Documents, submissions, statements and other information disclosed in the ENE, including any agreement for the settlement of the dispute, except when and insofar as disclosure is necessary:

- (a) to implement or enforce the agreement for settlement of the dispute; or
- (b) to comply with an obligation to disclose owed to any financial associate of the party making the disclosure or any obligations at law.

15 Its use in the ENE shall not affect the extent to which any Document, submission, statement or other information disclosed in the ENE is admissible or subject to disclosure or production in any subsequent arbitration, legal or other proceedings involving the parties.

16 The evaluator's evaluation shall be treated as being on the same basis as without prejudice negotiations in an action in the courts.

**Costs**

17 Unless the Dispute Parties otherwise agree, each Dispute Party shall bear its own costs of the ENE. If the evaluator is chosen from the Committee's pool of Hearing Chairs then the Committee shall not charge the parties for any part of the evaluation. Otherwise, the Parties shall share equally the evaluator's fees and expenses, the costs of the evaluator's appointment and all other administrative costs of the procedure.

**Termination of the ENE**

18 The ENE shall terminate upon the earliest of:

- (a) the occurrence of the events in Rule E4;
- (b) the service by one party to the ENE on the others and on the evaluator of a notice of withdrawal from the ENE;
- (c) withdrawal of the evaluator from the ENE; or
- (d) provision of the evaluation to the parties.

- 19 Upon termination any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary

of the termination and its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to another dispute resolution process (unless such other process has already been commenced) within 28 days of termination, the claim shall be deemed to have been withdrawn.

**Exclusion of liability**

20 None of the Allocation Chair, the Secretary or any evaluator shall be liable to any party for any act or omission (including negligence) in connection with any ENE under these Rules unless the act or omission is shown to have been in bad faith.

**Jurisdiction and governing law**

21 ENEs shall take place in such location as the parties agree (or in default of agreement at such place as the evaluator specifies being appropriate for all parties and the evaluator). Unless otherwise agreed by the parties, evaluations shall be subject to English law.

**Evaluator barred from further proceedings**

22 The evaluator shall not be entitled to act in any capacity in relation to the subject matter of the ENE in which they acted as evaluator in any subsequent arbitration, legal or other similar proceedings.

## CHAPTER F - DETERMINATIVE PROCESS RULES - ARBITRATION

- 1 Arbitration under these Rules is a private determinative dispute resolution process subject to the Arbitration Acts in which a neutral arbitrator determines the dispute on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to the arbitrator.

### **Disputes to be decided by arbitration**

- 2 Any dispute which the parties to the dispute have agreed shall be submitted to arbitration under these Rules or which has otherwise been allocated to arbitration as a first, second or appeal stage dispute resolution process in accordance with these Rules, shall proceed according to the Rules of this Chapter F.

- 3 Any arbitration under these Rules shall proceed before a sole arbitrator.

### **Relationship with Non-Access Dispute Resolution Rules**

- 4 Where a dispute which would otherwise be arbitrated in accordance with this Chapter F is similar to or so closely connected with another dispute ((in either case whether involving the same parties or not) which is capable of being (or has been) referred to arbitration under the Non-Access Dispute Resolution Rules) that it is expedient for the two to be resolved in the same proceedings, the dispute shall be arbitrated or otherwise determined under the Non-Access Dispute Resolution Rules.

### **Beginning an arbitration and appointing the arbitrator**

- 5 Upon commencement of an arbitration (in accordance with the Procedure Agreement and Rule B16 or otherwise), the Secretary shall promptly approach all Dispute Parties and liaise with and assist the parties in identifying, choosing and retaining a suitable arbitrator, if not already done.
- 6 In the event that no arbitrator can be agreed by the parties within 21 days of the commencement of the arbitration, the Secretary shall propose an appropriate individual, from lists maintained by the Secretary and published on the access disputes website, or otherwise. That individual shall be appointed by the parties as arbitrator unless any party notifies the Secretary of a challenge to the appointment on the ground of (real or apparent or potential) bias, Conflict of Interest or a lack of competence within 5 days of notification of the Secretary's choice. If any challenge is made on the ground of bias, Conflict of Interest or lack of competence, the Allocation Chair shall consider the challenge and determine either to:
  - (a) uphold the proposed appointment; or
  - (b) remit the choice to the Secretary with directions concerning how a further choice should be made.

Nothing in this Rule F6 shall affect the power of an arbitrator to determine their own jurisdiction or appointment.

### *Notice of arbitration*

- 7 Upon the appointment of an arbitrator, the Secretary shall send to all the parties to the dispute a notice of the appointment of the arbitrator. The Secretary shall also send to the arbitrator a copy of:
  - (a) this Chapter F and Chapters A, B and C;
  - (b) any template terms for appointment of an arbitrator issued by the Committee;
  - (c) the Notice of Dispute;
  - (d) any statements from the parties made under Rule B8(d)(iii); and
  - (e) any correspondence from the Allocation Chair made under Rule B14

The Notice of Dispute shall stand as a notice of arbitration and no further notice of arbitration shall be required or served.

### *Change of arbitrator*

- 8 If any arbitrator acting or appointed to act under these Rules resigns, withdraws, dies or refuses to act, the Secretary shall, upon application by the arbitrator or any Dispute Party, on proof satisfactory to the Secretary, declare the position of arbitrator vacant.
- 9 If the arbitrator or any Dispute Party considers that the arbitrator is unable by reason of mental or physical infirmity to perform the duties of the arbitrator's position as arbitrator or is disqualified for any reason from performing those duties, or has delayed unreasonably in the conduct of the arbitration or in the making of any award, the Secretary may, at the request of the arbitrator or any Dispute Party, having heard the arbitrator and the parties if they or any of them wish to be heard, declare the position of arbitrator vacant.
- 10 Where the position of arbitrator shall have been declared to be vacant pursuant to Rule F8 or F9, then Rule F5 shall apply to the appointment of a replacement arbitrator.

### **Procedure**

#### *General*

- 11 The arbitrator shall act fairly and impartially as between the parties, giving each a reasonable opportunity of putting their case and dealing with facts raised by their opponent.
- 12 The arbitrator shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined in accordance with each party's rights at law to a fair trial. The arbitrator may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the arbitration. The directions shall be in accordance with the Principles.
- 13 Subject to Rule F14, an arbitration shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute.
- 14 The parties may agree that an arbitration shall be conducted on the basis of written representations only. In such a case, nothing in this Rule shall prevent the arbitrator from requiring one or more oral hearings if they consider it appropriate for the just and expeditious determination of the proceedings.
- 15 Unless the arbitrator rules otherwise (either on their own motion or upon the application of any party), the following timetable and procedure shall apply:
  - (a) within 21 days of the notice of appointment of the arbitrator, the claimant(s) shall serve upon the arbitrator and each other party a written statement of its claim. The statement of claim shall specify all relevant facts and matters and contentions of law (if any, and naming the principal authorities) on which the claimant relies (or admits or denies) and the relief and remedies sought;
  - (b) within 21 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon the arbitrator and the claimant(s) a written statement of its defence. The statement of defence shall specify the defence and all relevant facts and matters and contentions of law (if any, naming the principal authorities) on which the respondent relies (or admits or denies). The statement of defence may set out any counterclaim which the respondent wishes to make;
  - (c) the statements of case served pursuant to sub-paragraphs (a) and (b) above shall be accompanied by copies of any Documents referred to in them or upon which the party serving the statement wishes to rely. That party shall, if so requested, make the originals of such Documents available for inspection by the arbitrator or the other party;
  - (d) after service by the respondent of its statement of defence, the arbitrator may:
    - (i) allow the parties an adjustment period within which to adjust the written statements of case so that each material averment of the parties shall be answered (whether by admission, denial, explanation or otherwise). On the expiry of the adjustment period, the statements of case shall be finalised and

within seven days thereafter the claimant(s) shall reproduce the statements of case, as adjusted, into a single document and send 2 copies to each of the arbitrator and the other parties to the arbitration; or, alternatively; and/or

- (ii) within seven days of the service by the respondent of its statement of defence, allow a reply from the claimant(s) limited to responding to new matters and contentions of law raised in the statement of defence including any counterclaim raised;
- (e) within seven days after the statements of case have been finalised, the arbitrator shall (in consultation with the parties) set a hearing date and the estimated length of the hearing;
- (f) within 21 days after the statements of case have been finalised, each party shall serve upon the arbitrator and the other party signed statements of any factual witnesses upon whose evidence it wishes to rely, together with any copies of Documents referred to in them not already in the possession of the other party. That party shall, if requested to do so, make the originals of such Documents available for inspection by the arbitrator or the other party; and
- (g) at least seven days before the hearing, each party shall serve on the other and on the arbitrator its written submissions.

16 Unless ordered otherwise by the arbitrator, at the hearing:

- (a) there shall be no oral opening submissions, but the arbitrator may ask the parties questions arising out of their written submissions or statements of case;
- (b) subject to sub-paragraph (iii) below, the testimony of a witness may be presented in written form, either as a signed statement or as an affidavit duly sworn, provided Rule 15(f) has been complied with. Any party may apply to the arbitrator for an order that any witness whose written statement or affidavit is to be relied upon by a party should attend for oral examination at a hearing and the arbitrator shall make such order unless, having heard the parties, the arbitrator is satisfied that such oral examination is not likely to assist in making the award. If a witness is ordered to attend and fails to do so, the arbitrator may:
  - (i) place such weight on the written statement or affidavit as the arbitrator thinks fit;
  - (ii) exclude it altogether; or
  - (iii) apply to the court for an order for the citation or attendance of witnesses;
In addition, in making a determination on Costs the arbitrator may take any failure to attend into account;
- (c) factual or expert witnesses who give oral evidence will not be required to provide their evidence in full orally. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the arbitrator;
- (d) the parties may make oral closing submissions;
- (e) the parties may be legally represented; and
- (f) the arbitrator shall be entitled to receive such evidence as they shall consider relevant, whether or not such evidence would have been admissible in a court of law; and
- (g) the arbitrator shall deliver to the parties a reasoned award within 10 Working Days of the end of the hearing in accordance with Rule A15.

*Proposed amendments*

17 Immediately after their appointment, the arbitrator shall require each party to propose directions to the arbitrator or to inform them of any amendments to the procedure or the time limits set out in Rule F15 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall send promptly any proposed directions or amendments to the arbitrator and each other party. Before responding or ordering any amendments to the

procedure, the arbitrator may require the parties to meet with them.

*References to the ORR*

18 The arbitrator may, on the application of either party or on their own motion, elect to refer any issue or issues to which Rule C3 applies, to the ORR in accordance with Chapter C. Before making any such reference the arbitrator shall:

- (a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and
- (b) determine the wording of any reference to be made with due regard to such submissions.

*Supplemental*

19 If the arbitrator considers it appropriate for the just and expeditious determination of the proceedings, the arbitrator shall be entitled to appoint one or more advisers, assessors or experts on any matter (including matters of law) to report to the arbitrator on any specific issue. The costs of any such person shall be subject to the provisions of Rule F30. The arbitrator shall provide to the parties the terms of reference, qualifications and experience of any adviser or assessor appointed. Where the arbitrator receives a report from any such person, the report shall be disclosed to the parties and they will be afforded an opportunity to comment on it.

20 In relation to the production of Documents:

- (a) the arbitrator may, on the application of a Dispute Party, require the production of such specific identified Documents or class of Documents as are within the possession, custody or control of another Involved Party or any third party which the arbitrator considers relevant. The Dispute Parties shall be given the opportunity to inspect and to comment upon any Document so produced;
- (b) if any Document is not supplied to the arbitrator and the other party within such time as the arbitrator shall prescribe, the arbitrator may:
  - (i) proceed with the arbitration on the basis of the Documents already before them;
  - (ii) apply to the Court for an order to produce the Documents; or
  - (iii) strike out the part of the claim or defence to which the Document relates,and in making the award the arbitrator shall be entitled to draw inferences as they may think fit from the failure to supply the Document. In addition, in making a determination on Costs the arbitrator may take any failure to supply a Document at any stage in the proceedings into account;
- (c) no party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts;
- (d) unless otherwise ordered by the arbitrator, an application by a party to the arbitrator pursuant to sub-paragraph (a) above shall be made not later than 21 days before the date fixed for the hearing; a party in receipt of a request from the arbitrator to produce a Document shall comply with such a request within 14 days;

21 Without prejudice to the powers in Rule A16 and in addition to them, the arbitrator shall have power to strike out part or all of any claim or defence made in the proceedings on any one or more of the following grounds:

- (a) wilful breach of these Rules;
- (b) deliberate non-compliance by a party with any order of the arbitrator; or
- (c) inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the arbitrator, given rise to a substantial risk that a fair determination of the dispute will not be possible, or which is such as to cause or to have caused serious prejudice to the other party.

22 Without prejudice to the powers in Rule A16 and in addition to them, the arbitrator shall have power to strike out part or all of any claim or defence made in the proceedings if the arbitrator

is satisfied that the claim or defence or any part of it is scandalous, frivolous or vexatious.

23 Without prejudice to the powers in Rule A16 and in addition to them, if any Dispute Party fails to serve a Statement of Case within the period allowed under these Rules or by order of the arbitrator, and fails to remedy their default within 14 days after despatch to them by the arbitrator or any other party to the dispute of notice of that default, the arbitrator shall be entitled to rule that the party shall be treated as having abandoned their claim or defence (as the case may be) and, having made such a ruling, the arbitrator shall be entitled to proceed with the reference on a without notice basis.

24 Any party who becomes aware that any provision or requirement of these Rules has not been complied with and who fails to state an objection to that failure within a reasonable time shall be deemed to have waived the right to object.

### **Awards**

#### *Final and binding*

25 Awards shall be final and binding on the Dispute Parties subject to:

- (a) the provisions (including rights of appeal) of the Arbitration Acts and any other relevant law and
- (b) the provisions of any agreement between the parties to the dispute, the relevant Access Conditions, and any further right of appeal or reference to another dispute resolution process provided for in the Procedure Agreement.

26 If any further dispute resolution process is provided for in the Procedure Agreement then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the final award, the final award shall be deemed to have been accepted by all parties.

#### *Power to make orders*

27 Subject to any other provision of the Access Conditions and Underlying Contract, the arbitrator may make such orders in the award as the arbitrator considers necessary to resolve the dispute, including, without limitation, that:

- (a) one party shall pay an amount of money (including damages) to another party, whether that amount is specified in the determination or calculated in accordance with such procedure as the arbitrator shall specify;
- (b) one Dispute Party should take or not take specified action;
- (c) the meaning of an agreement or a party's obligations under that agreement are as stated in the determination; or
- (d) any principal sum the arbitrator may order one party to pay to another shall carry interest at such rate and over such period as the arbitrator shall determine.

#### *Issue of arbitration award*

28 The arbitrator shall send a copy of the award to the parties, the Allocation Chair and the Secretary.

### **Costs**

#### *Discretion to order payment of Costs*

29 Whether or not the arbitration reaches the stage of a final award, the arbitrator may order any party to pay some or a specified proportion of any party's Costs incurred in the arbitration, assessed in such manner as the arbitrator shall determine. The arbitrator may make such an order without limitation following any interim or final award.

#### *Joint and several liability of parties to arbitrators for fees and expenses*

30 The Dispute Parties are jointly and severally liable to pay the arbitrator's reasonable fees and expenses.

### **Confidentiality**

31 Subject to the provisions of Rule C and Rules F32, F33 and G68, all Documents produced or disclosed in the course of an arbitration including all awards shall be treated as confidential by the arbitrator, the Allocation Chair, the Secretary and all parties and shall not be published.

32 Unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an arbitration including all awards shall only be used:

- (a) for the purposes of the arbitration, including any appeal against the arbitration award, or for judicial review, in respect of the award or any subsequent stages of the determination procedure;
- (b) for enforcing the arbitration award; or
- (c) in support of a plea of estoppel in any subsequent proceedings.

33 The confidentiality obligations under Rule F31 shall not apply to Documents which are:

- (a) agreed in writing by all the Dispute Parties to be disclosed (including in any Underlying Contract between them);
- (b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
- (c) disclosed on a confidential basis to the ORR or the Secretary of State in the normal course of business; or
- (d) required to be disclosed pursuant to the order of a court of competent jurisdiction.

### **Communications**

34 Communications for the purposes of the arbitration may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

### **Exclusion of liability**

35 None of the Allocation Chair, the Secretary or any arbitrator shall be liable to any party for any act or omission (including negligence) in connection with any arbitration under these Rules unless the act or omission is shown to have been in bad faith.

### **Jurisdiction and governing law**

36 Arbitrations shall take place in England and be subject to English law.

## **CHAPTER G - DETERMINATIVE PROCESS RULES - ACCESS DISPUTE ADJUDICATION**

1 An Access Dispute Adjudication (ADA) under these Rules is a determinative dispute resolution process in which, with the benefit of advice from independent railway Industry Advisors, a Hearing Chair determines the dispute in a timely and efficient manner on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to the Hearing Chair.

### **Disputes to be decided by ADA**

2 Any dispute which is to be submitted to an ADA under these Rules shall proceed according to the Rules of this Chapter G.

3 Any ADA under these Rules shall proceed before a Hearing Chair and a number of Industry Advisors to be determined by the Hearing Chair in light of the issues in the dispute and/or its value or complexity. Unless otherwise ordered by the Hearing Chair the normal number of Industry Advisors shall be two.

4 An ADA shall:

- (a) provide determinations as an adjudication body with relevant railway expertise;
- (b) endeavour to reach fair, rapid and inexpensive determinations of disputes drawing on that expertise;
- (c) where appropriate, take the initiative in ascertaining the facts and law relating to the dispute; and
- (d) balance the formality required to achieve a fair and efficient process with the accessibility required so that the process is quick and easy to use.

5 It is an overriding objective of these Rules that disputes referred to an ADA shall be administered in a way which is proportionate to:

- (a) the objective importance of the dispute to the Dispute Parties;
- (b) the complexity of the issues;
- (c) the significance (if any) of the issues involved to the railway industry; and
- (d) the scale of any financial claims involved.

Accordingly having regard to Rule G16, the Hearing Chair shall (where appropriate) adapt the procedures adopted in respect of each dispute to reflect its specific requirements in terms of subject matter, timescales and value.

6 The ADA shall, in the case of unavoidable absence on the day of one Industry Advisor, be quorate to hear a dispute with all other selected Industry Advisors and the Hearing Chair present.

### **Relationship with Non-Access Dispute Resolution Rules**

7 Where a dispute which would otherwise be determined by ADA in accordance with this Chapter G is similar to or so closely connected with another dispute ((in either case whether involving the same parties or not) which is capable of being (or has been) referred to a panel under the Non-Access Dispute Resolution Rules) that it is expedient for the two to be resolved in the same proceedings, the dispute shall be arbitrated or otherwise determined under the Non-Access Dispute Resolution Rules.

### **Beginning an ADA**

8 An ADA shall commence upon the date identified in Rule B16.

9 The Secretary shall, on any occasion where the next dispute resolution process provided for in the Procedure Agreement is an ADA stage, appoint a Hearing Chair appropriate to the dispute.

10 The Hearing Chair:

- (a) has oversight of the effective case management of a dispute which has been referred to an ADA in light of the Principles;

- (b) has responsibility to ensure that all procedures of the ADA (at and before ADA hearings) are being implemented fairly and effectively in respect of each dispute;
- (c) will review each dispute following submission of statements of case to identify and to itemise in written form for consideration by the ADA all relevant issues of law raised by the dispute a copy which shall be provided promptly to the Dispute Parties;
- (d) will make a final determination of the dispute referred to the ADA and prepare a written determination which is legally sound, appropriate in form, and otherwise compliant with this Chapter G;
- (e) shall ensure that the final determination of the dispute is circulated promptly and (where applicable) in accordance with any mandatory time requirement; and
- (f) may, where reasonable to do so, delegate the performance of any of the Hearing Chair's functions (with the exception of making the determination of the dispute) in any dispute to the Secretary, however, such delegation shall not affect the obligations and responsibilities of the Hearing Chair set out in this Rule.

11 Upon appointment, the Hearing Chair shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined. The Hearing Chair may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the ADA. The directions shall be in accordance with the Principles.

12 The directions given under Rule G11 shall expressly require the parties to reconsider whether any third parties not already identified and notified to the Secretary, in accordance with Rule B3(b) or otherwise, may be directly affected by the outcome of the dispute and require the parties to notify the Secretary of the identity of any such parties.

13 Provided that such extension has no adverse effect upon the date fixed for an oral hearing, the Dispute Parties may agree an extension of any timescales of up to seven days in respect of any stage. For any period beyond that extension a party may seek an order from the Hearing Chair to provide an extension of time for any of the stages specified in the directions. The Hearing Chair shall make their decisions on any request for an extension of time based upon the Principles.

14 Subject to Rule G15, an ADA shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute.

15 The parties may agree that an ADA shall be conducted on the basis of written representations only. In such a case, nothing in this Rule shall prevent the Hearing Chair from requiring one or more oral hearings if the Hearing Chair considers it appropriate for the just and expeditious determination of the proceedings.

16 The ADA process is flexible and may be adapted by the Hearing Chair to accommodate disputes of differing complexity and size and requiring different levels of evidence. The Hearing Chair shall therefore actively consider whether variations on the standard directions (which are for a straightforward matter) set out in Rule G17 are appropriate or justified and will have regard to the submissions of the parties in this respect.

17 Subject to Rule G16, unless the Hearing Chair directs otherwise (and subject to any party's right to apply for alternative or revised directions at all stages), the following timetable and procedure shall apply:

- (a) within 14 days of the appointment of the Hearing Chair, the claimant(s) shall serve upon the Secretary and each other Involved Party, a written statement of its claim in accordance with the template format for a statement of claim (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute. The statement of claim shall include the following:
  - (i) names, registered address and any relevant correspondence address (including email address) of the Dispute Parties;

- (ii) the subject matter of the dispute;
- (iii) identification of the provision(s) of the Underlying Contract under which the reference is made;
- (iv) identification of any other provision(s) of the Underlying Contract or other contract(s) which the claimant believes are also relevant to the dispute;
- (v) a summary of the nature and circumstances of the dispute in sufficient detail for the other Dispute Party to identify the issues raised;
- (vi) the decision sought from the ADA;
- (vii) the remedy claimed;
- (viii) an authorised signature of the referring party; and
- (ix) copies of the following Documents which shall be annexed and cross referenced to the statement:
  - (A) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and
  - (B) any other Documents referred to in the reference.

(b) within 14 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon each other Involved Party a written statement of its defence. The statement of defence shall be in accordance with the template format for a statement of defence (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute and shall include the following:

- (i) a schedule identifying those parts of the statement of claim that it agrees with and those that it disagrees with;
- (ii) the reasons for any disagreement including any further references to provisions of the Underlying Contract or other contract(s) not dealt with in the reference;
- (iii) details of any other related claim;
- (iv) the decision (and, if relevant) any remedy sought from the ADA;
- (v) an authorised signature of the responding party; and
- (vi) copies of the following Documents which shall be annexed and cross referenced to the response if not dealt with in the statement of claim:
  - (A) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and
  - (B) any other Documents referred to in the defence.

(c) the claimant(s) may within seven days of the service by the respondent of its statement of defence, serve upon each Involved Party a reply limited to responding to new matters and contentions of law raised in the statement of defence and any counterclaim or related claim raised;

(d) following service of the reply, the Secretary shall write to all parties to inform them that a hearing date will be set in accordance with (e) below and to inquire whether any party intends to make an application for alternative or varied directions and/or a directions hearing at this stage;

(e) before the date 14 days after the statements of case referred to in paragraphs (a)-(c) have been finalised, the Secretary shall agree with the Hearing Chair and the parties a hearing date and the estimated length of the hearing. If a date cannot be agreed with one or more parties the Hearing Chair shall determine the hearing date. Unless the parties agree otherwise, or the Hearing Chair determines otherwise having due regard to Rule G16,

the hearing date shall be within 35 days of the date on which it is agreed or determined in accordance with this Rule. Upon agreement or determination of a hearing date, the Secretary shall write to all Involved Parties to confirm the date to them;

(f) the Hearing Chair may raise any questions relating to the dispute that they wish in advance of the hearing. In particular the Hearing Chair shall consider whether any additional third party should be or should have been notified of the dispute subsequent to Rule B3(b) or otherwise and may ask the parties to justify their decision not to notify any such party. If any Industry Advisor or assessor raises a question, the Hearing Chair may in their absolute discretion refer such question to the parties;

(g) at least seven days before the hearing, each Dispute Party shall serve on all other Involved Parties its written submissions for the hearing and any additional information or responses to questions requested by the Hearing Chair.

18 At any stage prior to the date on which the Secretary writes to inform the Involved Parties of the date of the hearing, in accordance with Rule G17(e) or otherwise, any third party made aware of the dispute subsequent to Rule B3(b) or otherwise can by notification to the Secretary request to become a claimant, defendant or an Involved Party in the dispute. Any person who would be an Involved Party but who has not requested to become a claimant, defendant or an Involved Party in the dispute by this point shall cease to be an Involved Party.

19 Any third party which has not been made aware of the dispute subsequent to Rule B3(b) or otherwise can by notification to the Secretary request to become a claimant, defendant or an Involved Party in the dispute at any stage prior to the final hearing. Unless the request seems to the Secretary vexatious or frivolous (in which case the Secretary shall request that the Hearing Chair determine appropriate directions) upon receiving such a request, the Secretary shall send copies of the Notice of Dispute and all statements of case to the third party making the request subject to a requirement that that party keep such Documents confidential.

20 Any request to become a claimant, defendant or third party in accordance with Rule G18 or 19 shall be considered and determined by the Hearing Chair having considered such submissions and evidence as the Hearing Chair shall request. In making their decision the Hearing Chair shall take into account the Principles, the wider interests of the industry, the balance of interests between all relevant parties and such other matters as appear to the Hearing Chair to be relevant.

*References to the ORR*

21 The Hearing Chair may, on the application of any party or on their own motion, elect to refer any issue or issues to which Rule C3 applies, to the ORR in accordance with Chapter C. Before making any such reference the Hearing Chair shall:

(a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and

(b) determine the wording of any reference to be made with due regard to such submissions.

**Length of References, Responses and Joint References and method of service**

22 The length of every Statement of Case shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Hearing Chair the maximum length of submissions shall be as follows:

(a) a statement of claim or defence shall be no longer than 20 pages; and

(b) a reply shall be no longer than 10 pages.

23 The normal method of service shall be electronic to the Secretary and other Involved Parties.

**Directions Hearing**

24 The Hearing Chair, if necessary, may at any time (on their own motion or that of any party) require the Dispute Parties to participate in a directions hearing to decide, after hearing representations from the Dispute Parties, any issues relating to the procedures adopted for the dispute including:

- (a) whether further or additional third parties should be notified of the dispute;
- (b) the procedures most appropriate to the dispute;
- (c) the nature of the issues in dispute;
- (d) whether any matters are to be referred to the ORR under Rule G21 or otherwise;
- (e) an outline timetable;
- (f) the process and details of the preparation, submission and amendments of statements of case;
- (g) whether any Document disclosure procedures shall take place;
- (h) whether the parties shall be permitted to bring expert evidence and if so the details of such expert evidence;
- (i) the basis and timings for which witness evidence (if any) is to be prepared and exchanged; and/or
- (j) the appointment by the ADA of assessors.

### **Documents**

25 Although Documents reasonably requested should be provided in compliance with the directions specified at Rule G17, disclosure will not ordinarily be ordered. However the Hearing Chair, whether or not on the application of any party and having due regard to Rule G16, has the power to:

- (a) order any Dispute Party to provide by way of formal disclosure and inspection, Documents which it controls and which are relevant to the dispute; and
- (b) specify the formalities, detail and timings involved.

The Hearing Chair shall exercise this power in accordance with the Principles.

26 No party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts.

27 Requests and applications to the Hearing Chair for disclosure may be made at any stage of the dispute but (whenever practicable) should be made at the time of or shortly following submission of the relevant Statement of Case giving rise to the request. The timing of any request (by reference to the date when it could first reasonably have been made) may be taken into account by the Hearing Chair when considering a request.

28 Without prejudice to any other action open to the Hearing Chair, the Hearing Chair shall be entitled to draw any inference they wish from any failure to provide adequate or full disclosure by any party or disclosure in accordance with the terms of directions given by the Hearing Chair.

29 When considering a request for disclosure, the Hearing Chair will consider the commercial sensitivity of the information requested and may exercise their discretion not to grant full disclosure.

### **Witness evidence**

30 Subject to any alternative direction from the Hearing Chair, a Dispute Party may rely on any witness evidence it believes to be relevant in its statements of case and at any ADA hearing provided that either a witness summary or a witness statement has been served on all other Involved Parties at least seven days before the hearing.

31 A witness summary shall identify in overview the issues on which the witness will give evidence and a summary of the evidence the Witness will give in respect of each such issue. Witness summaries shall be signed by the witness.

32 Written witness statements will not normally be required. However if the Hearing Chair permits or requires witness statements to be submitted the Hearing Chair he shall specify the formalities, detail and timings involved.

## **Experts**

33 A Dispute Party can rely, as of right, upon expert evidence completed prior to the date of the reference. Where a Dispute Party wishes to exercise this right it shall attach such evidence to its first Statement of Case and the other Dispute Parties shall be entitled to a direction that they may commission expert reports responding to the particular issues covered by such evidence.

34 When considering whether and to what extent to permit the Dispute Parties to commission further expert reports, the Hearing Chair shall consider what evidence is reasonably required to determine the dispute, the Principles and Rule G16.

35 The reports of experts shall state:

- (a) the full remit against which the report has been prepared;
- (b) the identity, qualifications and experience of the person(s) preparing the report;
- (c) the extent (if any) to which the expert has previously been involved in the subject matter of the dispute and current or recent professional connections with any of the Dispute Parties.

36 At any hearing the Hearing Chair, Industry Advisors, or any assessor appointed, may address questions directly to any experts.

37 The Hearing Chair shall determine in accordance with the specific requirements of the dispute whether the expert evidence is dealt with either by consideration of reports only or by the attendance and examination of one or more of the experts to answer questions upon their reports, by telephone, conferencing facilities or by any other means.

## **Assessors**

38 The Hearing Chair may appoint one or more assessors to facilitate the determination of a dispute. Any such assessor may be (without limitation):

- (a) a technical assessor with a specific area of expertise relevant to one or more issues in the dispute; and/or
- (b) a legal assessor.

39 Assessors may help undertake the procedural management of the dispute and prepare such report(s) and guidance on such issues as the Hearing Chair may direct.

40 The Hearing Chair shall provide to the Dispute Parties the terms of reference, qualifications and experience of any assessor appointed and a summary of their advice.

41 The Hearing Chair shall not be bound by the views of an assessor but shall be required to explain the Hearing Chair reasons for disagreeing with those views.

## **Hearing Conduct**

42 The hearing will be chaired by the Hearing Chair.

43 Subject to any contrary direction of the Hearing Chair with due regard to Rule G16, the following procedure will be adopted at hearings:

- (a) the Hearing Chair, Industry Advisors and any assessor will meet in the absence of the Dispute Parties to discuss issues arising from the papers submitted by the Dispute Parties;
- (b) the Hearing Chair, Industry Advisors and any assessor will confirm to the Dispute Parties the extent to which they have read the papers submitted by the Dispute Parties;
- (c) the claimant's representative will make an opening submission of its case of not longer than 10 minutes, referring if necessary to witness or expert evidence which the claimant wishes the Hearing Chair and Industry Advisors to consider;
- (d) the respondent's representative will also make any opening submission of its response and/or counterclaim of not longer than 10 minutes, referring if necessary to additional witness or expert evidence which the respondent wishes the ADA to consider;

- (e) if a written witness statement has been provided, the witness will not be required to read out their statement unless the Hearing Chair decides otherwise. If any witness summary has been provided the Hearing Chair shall direct how the evidence shall be admitted and may require the witness to provide their evidence in full orally before cross examination;
- (f) if expert evidence is used, the expert will not be required to read out their report unless the Hearing Chair decides otherwise;
- (g) the Hearing Chair and Industry Advisors and any assessor may put any relevant questions to the representatives, witness(es) and expert(s);
- (h) Dispute Parties may put questions to any witness(es) or expert(s) in their capacity as witnesses or experts, and when any representative is acting as a witness they shall make that clear; and
- (i) at the conclusion of questions, representatives may make closing submissions of not more than 10 minutes.

44 The hearing shall be conducted with the Dispute Parties present. Following conclusion of the submissions, the Dispute Parties will withdraw to allow the Hearing Chair and Industry Advisors to consider the evidence and arguments with any assessor. The Dispute Parties shall remain available to allow the Hearing Chair, Industry Advisors and any assessor to put any additional questions.

45 The Secretary will unless otherwise directed by the Hearing Chair make a full note of the evidence given to the ADA. The Hearing Chair may in their discretion direct in advance that a full transcript is taken.

46 The Hearing Chair may, subject to any specified requirements of the Access Conditions or Underlying Contract and legal requirement, reserve their determination until a later date.

**Determinations**

47 Having considered the submissions of the parties and the advice of the Industry Advisors and any assessor the Hearing Chair shall make a determination of the dispute in accordance with Rule G48.

48 Subject to any other provision of the Access Conditions and Underlying Contract, the Hearing Chair may make such orders in the determination as the Hearing Chair considers necessary to resolve the dispute including, without limitation, that:

- (a) one Dispute Party shall pay an amount of money (including damages) to another Dispute Party, whether that amount is specified in the determination or calculated in accordance with such procedure as the Hearing Chair shall specify;
- (b) one Dispute Party should take or not take specified action;
- (c) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination; or
- (d) any principal sum the Hearing Chair may order one party to pay to another shall carry interest at such rate and over such period as the Hearing Chair shall determine.

49 The Hearing Chair's determination of a dispute shall be in writing and comprise:

- (a) the date of the hearing;
- (b) the names of the Hearing Chair and Industry Advisors and any assessors present;
- (c) details of all Dispute Parties (including interested parties);
- (d) details of the attendance and status of all witnesses and interested parties;
- (e) a brief summary of the dispute;
- (f) an identification of the issues of fact and law considered by the Hearing Chair;
- (g) a summary of the evidence presented;

- (h) the findings of fact made by the Hearing Chair;
- (i) identification of any precedents considered;
- (j) the decisions and conclusions reached, distinguishing clearly between:
  - (i) decisions upon legal entitlement;
  - (ii) decisions upon remedy;
  - (iii) guidance to the Dispute Parties or other observations not forming part of a decision upon either legal entitlement or upon remedy;
- (k) the reasons for those decisions and conclusions (including any relevant legal principles or rules of law applied); and
- (l) the signed and dated confirmation of the Hearing Chair that the determination is legally sound and appropriate in form.

50 The Hearing Chair shall provide a copy of their written reasoned determination to all the Dispute Parties.

51 Except as otherwise provided in the Underlying Contract and without prejudice to Rule G67, the Dispute Parties shall comply with the terms of the determination within such period as shall be specified in the determination.

52 If a Dispute Party fails to comply with the terms of the determination, that failure will be dealt with by way of a new dispute through the appropriate mechanism.

### **Costs**

53 Any fees and expenses, including costs of any assessors and transcription services relating to the period up to and including the first day of any ADA Hearing, shall not be charged to the parties. The Dispute Parties at the time of the ADA hearing are jointly and severally liable to pay the reasonable fees and expenses connected with the ADA relating to the period after the first day of the hearing. Subject to Rule G54, the Dispute Parties shall pay such fees in equal proportions.

54 The Hearing Chair shall have power to order one or more Dispute Party to meet part or all of the Costs or expenses of the ADA and of any other Dispute Party assessed by such means as the Hearing Chair shall determine. Any such order shall be made with due regard to the Principles and to the provisions of these Rules including in particular Rule A16(d).

55 An order for costs shall only be made where the Hearing Chair is satisfied that either:

- (a) the case of the relevant Dispute Party shall have been so lacking in merit that the reference should not have been made (or defended); or
- (b) the conduct of the relevant Dispute Party before or during the references was such as to justify an award of costs being made against it (or them).

56 The Hearing Chair may make such an order at any stage including following any interim or final award.

### **Confidentiality**

57 Subject to Rules G58, G60 and G61, and unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an ADA including the determination shall be treated as confidential by the Hearing Chair, Panel Members, the Allocation Chair, the Secretary and all parties and shall only be used:

- (a) for the purposes of the ADA, including any appeal or further stage in the determination procedure;
- (b) for enforcing the ADA determination; or
- (c) in support of a plea of estoppel in any subsequent proceedings.

58 The confidentiality obligations under Rule G57 shall not apply to Documents which are:

- (a) agreed in writing by all Dispute Parties to be disclosed (including in any Underlying Contract between them);
- (b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
- (c) disclosed on a confidential basis to the ORR or the Secretary of State in the normal course of business;
- (d) disclosed pursuant to Rule G60 or 61; or
- (e) required to be disclosed pursuant to the order of a court of competent jurisdiction.

59 Within seven days of its receipt of the determination (or such longer period as the Hearing Chair shall allow), any party to the dispute may give notice to the Hearing Chair and the other parties to the dispute:

- (a) that it objects to the publishing of all or some of the Documents specified in Rule G60;
- (b) whether it considers that the Hearing Chair should exercise discretion to exclude from publication any part of the determination which relates to its affairs; and
- (c) if confidentiality is sought, its justification for considering that the grounds referred to in Rule G62 do not exist.

60 If no notice under Rule G59 is given within the time specified in that Rule, the Secretary shall publish the following Documents on the access disputes website:

- (a) each finalised Statement of Case (including all exhibits and attachments to such statements of case);
- (b) each request from the Hearing Chair for further information and all responses to such requests;
- (c) all written submissions from all parties; and
- (d) all awards and/or determinations from the Hearing Chair.

61 If any Dispute Party serves a notice in accordance with Rule G59, the Hearing Chair shall be entitled to hear the parties on the question of confidentiality and determine which Documents shall be published and/or whether any aspects of such Documents should be made illegible or excluded prior to publishing. If any such representations shall have been made, unless the parties to the dispute otherwise agree the Hearing Chair shall provide the parties to the dispute with their reasons for making a determination on confidentiality. Such reasons shall be given in writing but shall not be published on the access disputes website.

62 There is a presumption that the Documents identified in Rule G58 shall be published provided that:

- (a) publication will not, in the Hearing Chair's reasonable opinion, result in any material adverse effect on the party or parties objecting to publication; and
- (b) the determination contains a finding or findings of wider railway industry significance; and
- (c) it is just in all the circumstances to decline the objection from the objecting party.

**Communications**

63 Communications for the purposes of the ADA may be by telephone or email (or such other means as are appropriate) and where by telephone shall be confirmed in writing wherever possible.

**Exclusion of liability**

64 None of the Allocation Chair, the Secretary, the Hearing Chair or any Industry Advisor shall be liable to any party for any act or omission (including negligence) in connection with any ADA under these Rules unless the act or omission is shown to have been in bad faith.

**Jurisdiction and governing law**

65 ADAs shall take place in England and be subject to English law.

**Interlocutory relief granted by the Court**

66 In an appropriate case, a party to a dispute which has been or may be submitted to ADA may apply to the Court for interlocutory relief (whether negative or positive), notwithstanding that the relief sought may overlap with the relief which is, or may be, claimed in the ADA.

**Appeal**

67 Following a determination of a dispute by the Hearing Chair any Dispute Party is entitled to appeal in accordance with any relevant provisions in the Procedure Agreement. If the Procedure Agreement is silent in respect of a right of appeal then each party shall have a right of appeal to arbitration in accordance with these Rules.

68 Any further dispute resolution process to which an appeal is made in accordance with Rule G 67, shall be subject to the confidentiality provisions set out in Rules G57 - G62 as if all Documents disclosed and prepared in relation to that further dispute resolution process had been prepared in respect of an ADA.

69 If any further dispute resolution process is provided for in the Procedure Agreement or if a right to appeal to arbitration exists in accordance with Rule G67 then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the determination of the Hearing Chair, that determination shall be deemed to have been accepted by all parties.

## CHAPTER H - DETERMINATIVE PROCESS RULES - TIMETABLING PANEL

### Purpose

- 1 The purpose of a Timetabling Panel is to determine disputes referred to it by parties to an Access Contract which incorporates Part D of the HAL Network Code which arise out of or in connection with issues of timetabling, timetable change and the allocation of capacity including restrictions of use and train slots, in:
  - (a) such an access agreement; or
  - (b) the Access Conditions incorporated by reference in the Access Contract in question.

### The Timetabling Pool

- 2 HAL shall procure that the Committee establishes (and is administered by the Secretary) a pool of panel members for the TTP called the Timetabling Pool. The Timetabling Pool shall be primarily made up of individuals with expertise and experience in train services planning and the timetabling development process including the allocation of capacity which will allow them to understand and advise Hearing Chairs upon Timetabling Disputes.
- 3 Not used.
- 4 Individual members of the Timetabling Pool shall commit to:
  - (a) sit on any Timetabling Panel when requested to do so by the Secretary subject only to diary commitments;
  - (b) hear disputes impartially in accordance with the Principles.
  - (c) not sit on any Timetabling Panel where the operator involved is part of their own owning group.

### Relationship with Non-Access Dispute Resolution Rules

- 5 Where a dispute which would otherwise be determined by the TTP in accordance with this Chapter H is similar to or so closely connected with another dispute ((in either case whether involving the same parties or not) which is capable of being (or has been) referred to a panel under the Non-Access Dispute Resolution Rules) that it is expedient for the two to be resolved in the same proceedings, the dispute shall be arbitrated or otherwise determined under the Non-Access Dispute Resolution Rules.

### Disputes to be decided by a Timetabling Panel

- 6 Subject to Rule H7 and 8, any dispute which is to be submitted to a Timetabling Panel under these Rules, shall proceed according to this Chapter H.
- 7 Following service upon the Secretary of the Notice of Dispute in relation to a Timetabling Dispute in accordance with Rule B2, any Involved Party may apply to the Hearing Chair for a ruling that:
  - (a) the dispute is not a Timetabling Dispute and should be referred to allocation in accordance with Rule B8; and/or
  - (b) some aspects of the dispute or issues raised by the dispute are not matters of timetabling, timetable change and/or capacity allocation and are not properly resolved by a Timetabling Panel and consequently should be reserved for determination by another dispute resolution process.

Any such application shall give the reasons relied upon by the applicant in support of the application and be made as soon as possible after the applicant has become aware that a Timetabling Dispute has been notified to the Secretary.

- 8 Upon an application being made in accordance with Rule H7 the Hearing Chair may give such directions as the Hearing Chair determines are appropriate to resolve the application and, where appropriate, to remit the dispute or aspects of the dispute to allocation in accordance with Chapter B. Such directions may include, as appropriate, a direction on whether aspects of the dispute which are not referred to a Timetabling Panel should be resolved concurrently or sequentially with any TTP process.

9 In taking a decision in accordance with Rule H8 the Hearing Chair shall have regard to the following:

- (a) there is a presumption that disputes for which a Timetabling Panel is identified in the relevant provisions of the Underlying Contract as the body to determine disputes are Timetabling Disputes and should be resolved in accordance with this Chapter H. Consequently the Hearing Chair shall not allocate a dispute ostensibly falling within such a provision other than to a Timetabling Panel without first inviting written representations from the Involved Parties on the intention to do so and giving proper consideration to any representations made;
- (b) any determination which may affect the production of the railway operational timetable must be made within the necessary timescales to allow that timetable to be published; and
- (c) HAL may only make adjustments to a timetable which affects train slots allocated to a train operator who is not a party to a dispute, with the assent of all affected parties, or to give effect to a decision of a Timetabling Panel or the ORR.

### **TTP Process**

10 The TTP process in respect of a dispute shall commence upon the receipt by the Secretary of the Notice of Dispute in relation to a Timetabling Dispute in accordance with Rule B2.

11 Upon commencement of the TTP process in respect of any dispute, the Secretary shall appoint a Timetabling Panel in accordance with Rule H12 and send to all the parties to the dispute, and publish upon the access disputes website, a notice of the appointment of a Timetabling Panel. This notice shall contain sufficient information regarding the matter under dispute that any other Resolution Service Party will be able to determine whether or not it should seek to be recognised as a Dispute Party. The Secretary shall also give the parties notice of the Hearing Chair who has been appointed.

12 A Timetabling Panel shall:

- (a) be appointed by the Secretary; and
- (b) consist of a Hearing Chair and at least one member selected from the Timetabling Pool that is representative of an Infrastructure Manager and one member of the Timetabling Pool that is representative of an operator of passenger services.

13 The Secretary shall appoint each Timetabling Panel in a manner that:

- (a) is in accordance with the Principles as set out in Rule A 5 - A10 and this Chapter H.
- (b) over time rotates (as evenly as is reasonably achievable given inevitably differing levels of other commitments of individuals) the individuals from the Timetabling Pool hearing disputes subject to any preferences as to the utilisation of their own employees expressed by any organisation which employs two or more such individuals; and
- (c) is in accordance with any further guidance issued to the Secretary by the Committee.

14 A Timetabling Panel shall:

- (a) provide determinations on the basis of the expertise of a knowledgeable peer group with relevant railway expertise;
- (b) endeavour to reach fair, rapid and inexpensive determinations of disputes drawing on that expertise; and
- (c) where appropriate, take the initiative in ascertaining the facts and law relating to the dispute.

15 Members of the Timetabling Pool are chosen because of their particular railway expertise as described at Rule H2. They shall exercise their functions impartially and not on behalf of any specific organisation or type of railway operations.

16 It is an overriding objective of these Rules that disputes referred to a Timetabling Panel shall be administered in a way which is proportionate to:

- (a) the objective importance of the dispute to the Dispute Parties;
- (b) the complexity of the issues;
- (c) the significance (if any) of the issues involved to the railway industry; and
- (d) the need to ensure that the production processes for the railway operational timetable are not disrupted to the potential detriment of third parties.

Accordingly the Hearing Chair shall (where appropriate) adapt the procedures adopted in respect of each dispute to reflect its specific requirements in terms of subject matter, timescales and significance. All procedures adopted must reflect the Principles and this Chapter H.

17 The Timetabling Panel shall, in the case of absence on the day of one member (unless it is the Hearing Chair), be quorate to hear a dispute with any three of the four selected members of the Timetabling Pool present.

18 The Hearing Chair:

- (a) has oversight of the effective case management of a dispute which has been referred to a Timetabling Panel;
- (b) has responsibility to ensure that all procedures of the Timetabling Panel (at, before and after TTP hearings) are being implemented fairly and effectively in respect of each dispute;
- (c) will review each dispute following submission of statements of case to identify and to itemise in written form for consideration by the other Panel Members all relevant issues of law raised by the dispute a copy which shall be provided promptly to the Dispute Parties;
- (d) will make a final determination of the dispute referred to a Timetabling Panel and prepare a written determination which is legally sound, appropriate in form, and otherwise compliant with this Chapter H;
- (e) may, where reasonable to do so, delegate the performance of any of the Hearing Chair's functions (with the exception of making the determination of the dispute and acting as Hearing Chair at any hearing) in any dispute to the Secretary, however, such delegation shall not affect the obligations and responsibilities of the Hearing Chair set out in this Chapter H.

19 Any Resolution Service Party can by notification to the Secretary at any stage become a Dispute Party if it fulfils the definition of a Dispute Party, provided that the prior consent of the Hearing Chair is obtained in order for such a Resolution Service Party to become a Dispute Party if such notification is made after any directions hearing pursuant to Rule H25.

20 Upon appointment the Hearing Chair may give directions as to any or all aspects of the procedures to be followed. The Hearing Chair shall have the power at any time to make or amend the procedure to be followed by the parties in the TTP. The directions shall be in accordance with the Principles and this Chapter H and with any mandatory time requirements.

21 Unless the Hearing Chair directs otherwise (and subject to each party's right to apply for alternative or revised directions at all stages), the following timetable and procedure shall apply:

- (a) if the parties agree to submit a joint reference they shall, within 14 days of notification of the appointment of the Hearing Chair, submit a joint reference in accordance with the template format for a joint reference (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute;
- (b) if the parties do not agree to submit a joint reference in accordance with (a) above,
  - (i) each claimant shall within seven days of notification of the appointment of the Hearing Chair produce and serve upon all Involved Parties a sole reference which shall include:

- (A) names, registered address and any relevant correspondence address (including email address) of the Dispute Parties;
- (B) the subject matter of the dispute;
- (C) identification of the provision(s) of the Access Conditions or any Underlying Contract under which the reference is made;
- (D) identification of any other provision(s) of the Access Conditions or any Underlying Contract which the claimant believes are also relevant to the dispute;
- (E) a summary of the nature and circumstances of the dispute in sufficient detail for the other Dispute Party or Resolution Service Parties to identify the issues and whether they are likely to be materially affected;
- (F) the decision sought;
- (G) the remedy claimed;
- (H) an authorised signature of the referring party; and
- (I) copies of the following Documents which shall be annexed and cross referenced to the reference:
  - 1) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the Timetabling Panel arises and/or provision(s) associated with the substance of the dispute; and
  - 2) any other Documents referred to in the reference.

and which shall be in accordance with the template format for a sole reference (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute.

- (ii) each defendant shall within seven days of service on it of such sole reference produce and serve upon all Involved Parties a response which shall include:
  - (A) a schedule identifying those parts of the reference that it agrees with and those that it disagrees with;
  - (B) the reasons for any disagreement including any further references to provisions of the Access Conditions and Underlying Contracts not dealt with in the reference;
  - (C) details of any other related claim;
  - (D) the decision and, (if relevant) any remedy sought from the Hearing Chair;
  - (E) an authorised signature of the responding party; and
  - (F) copies of the following Documents which shall be annexed and cross referenced to the response if not dealt with in the reference:
    - 1) the relevant extracts of contractual Documents containing the provision(s) under which the referral to Timetabling Panel arises and/or provision(s) associated with the substance of the dispute; and
    - 2) any other Documents referred to in the response.

and which shall be in accordance with the template format for a response (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute.

- (c) the Dispute Parties shall send any additional information requested by the Hearing Chair, unless directed otherwise, to the Secretary not later than seven days prior to the hearing;

(d) an oral hearing lasting no more than one day shall be conducted.

22 Provided that such extension has no adverse effect upon the date fixed for an oral hearing, the parties may agree an extension of any timescales of up to seven days in respect of any stage. For any period beyond that extension a party may seek an order from the Hearing Chair for an extension of time for any of the stages specified in the directions. The Hearing Chair shall make their decisions on any request for an extension of time based upon the Principles and this Chapter H.

#### **Length of References, Responses and Joint References and method of service**

23 The length of every reference and response shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Hearing Chair, the maximum length of submissions shall be as follows:

- (a) a joint reference shall be no longer than 20 pages; and
- (b) a sole reference or response shall be no longer than 10 pages.

24 The normal method of service shall be electronic to the Secretary and other Dispute Parties.

#### **Directions Hearing**

25 The Hearing Chair, may at any time (on their own motion or that of any party) require the Dispute Parties to participate in a directions hearing to decide, after hearing representations from the Dispute Parties, any issues relating to the procedures adopted for the dispute including:

- (a) the procedures most appropriate to the dispute, subject to compliance with the Principles and this Chapter H;
- (b) the nature of the issues in dispute;
- (c) an outline timetable;
- (d) the process and details of the preparation, submission and amendments of statements of case;
- (e) whether any Document disclosure procedures shall be required to take place;
- (f) the basis and timing in which witness evidence, if any, is to be prepared and exchanged; and/or
- (g) the appointment by the Hearing Chair of assessors.

#### **Documents**

26 Although Documents reasonably requested should be provided in compliance with the directions specified at Rule H21, disclosure will not ordinarily be ordered. However, the Hearing Chair, whether or not on the application of any Dispute Party, has the power to:

- (a) order any Dispute Party to provide by way of formal disclosure and inspection, Documents which it controls and which are relevant to the dispute; and
- (b) specify the formalities, detail and timings involved.

27 The Hearing Chair shall exercise this power in accordance with the Principles and this Chapter H.

28 No party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts.

29 Requests and applications to the Hearing Chair for disclosure may be made at any stage of the dispute but (whenever practicable) should be made at the time of or shortly following submission of the relevant joint reference or sole reference or response giving rise to the request. The timing of any request (by reference to the date when it could first reasonably have been made) may be taken into account by the Hearing Chair when considering a request.

30 Without prejudice to any other action open to the Hearing Chair, the Hearing Chair shall be entitled to draw any inference they wish from any failure to provide adequate or full disclosure by any party or disclosure in accordance with the terms of directions given by the Hearing Chair.

31 When considering a request for disclosure, the Hearing Chair will consider the commercial sensitivity of the information requested and may exercise discretion not to grant full disclosure.

#### **Witness evidence**

32 Subject to any alternative direction from the Hearing Chair, a Dispute Party may rely on any witness evidence it believes to be relevant in its statements of case and at any TTP hearing provided that either a witness summary or a witness statement has been served on all other Involved Parties at least seven days before the hearing.

33 A witness summary shall identify in overview the issues on which the witness will give evidence and a summary of the evidence the witness he will give in respect of each such issue. Witness summaries shall be signed by the witness.

34 Written witness statements will not normally be required. However if the Hearing Chair permits or requires witness statements to be submitted the Hearing Chair shall specify the formalities, detail and timings involved.

#### **Assessors**

35 The Hearing Chair may appoint one or more assessors to facilitate the determination of a dispute. Any such assessor may be (without limitation):

- (a) a technical assessor with a specific area of expertise relevant to one or more issues in the dispute; and/or
- (b) a legal assessor.

36 Assessors may help undertake the procedural management of the dispute and prepare such report(s) and guidance on such issues as the Hearing Chair may direct.

37 The Hearing Chair shall provide to the Dispute Parties the terms of reference, qualifications and experience of any assessor appointed and a summary of their advice.

38 The Hearing Chair shall not be bound by the views of an assessor but shall be required to explain their reasons for disagreeing with those views.

#### **Experts**

39 A Dispute Party can rely, as of right, upon expert evidence completed prior to the date of the reference. Where a Dispute Party wishes to exercise this right it shall attach such evidence to its first Statement of Case and the other Dispute Parties shall be entitled to a direction that they may commission expert reports responding to the particular issues covered by such evidence.

40 When considering whether and to what extent to permit the Dispute Parties to commission further expert reports, the Hearing Chair shall consider what evidence is reasonably required to determine the dispute, the Principles and this Chapter H.

41 The reports of experts shall state:

- (a) the full remit against which the report has been prepared;
- (b) the identity, qualifications and experience of the person(s) preparing the report;
- (c) the extent (if any) to which the expert has previously been involved in the subject matter of the dispute and current or recent professional connections with any of the Dispute Parties.

42 At any hearing the Hearing Chair, other Panel Members, and/or any assessor appointed, may address questions directly to any experts.

43 The Hearing Chair shall determine in accordance with the specific requirements of the dispute whether the expert evidence is dealt with either by consideration of reports only or by the

attendance and examination of one or more of the experts to answer questions upon their reports, by telephone, conferencing facilities or by any other means.

### **Hearing Conduct**

44 The hearing will be chaired by the Hearing Chair who may, in their absolute discretion make any order in respect of procedure at the hearing which the Hearing Chair considers appropriate including whether to admit additional evidence (including oral evidence) from any party and the degree to which weight should be given to such additional evidence.

45 Subject to any contrary direction of the Hearing Chair, the following procedure shall be adopted at hearings:

- (a) the Timetabling Panel will meet in the absence of the Dispute Parties to discuss issues arising from the papers submitted by the Dispute Parties;
- (b) the Timetabling Panel will confirm to the Dispute Parties the extent to which it has read the papers submitted by the Dispute Parties;
- (c) the Hearing Chair, the other Panel Members and any assessors shall declare any relevant interests;
- (d) the claimant's representative will make an opening submission of its case of not longer than 10 minutes, referring if necessary to witness or expert evidence which the claimant wishes the Timetabling Panel to consider;
- (e) the respondent's representative will also make a brief opening submission of its response and/or counterclaim of not longer than 10 minutes, referring if necessary to additional witness or expert evidence which the respondent wishes the Timetabling Panel to consider;
- (f) if a written witness statement has been provided, the witness will not be required to read out their statement unless the Hearing Chair decides otherwise. If any witness summary has been provided the Hearing Chair shall direct how the evidence shall be admitted and may require the witness to provide their evidence in full orally before cross examination. The Hearing Chair shall direct whether any further witness evidence shall be allowed;
- (g) if expert evidence is used, the expert will not be required to read out their report unless the Hearing Chair decides otherwise. Whenever expert evidence is being given by any individual that individual shall state that they are giving expert evidence and the basis upon which the expert claims expertise in the relevant matter;
- (h) the Hearing Chair, other Panel Members and any assessor may put any relevant questions to the representatives, witness(es) and expert(s);
- (i) Dispute Parties may put questions to any witness(es) or expert(s) in their capacity as witnesses or experts, and when any representative is acting as a witness they shall make that clear; and
- (j) at the conclusion of questions, representatives may make closing submissions of not more than 10 minutes.

46 The hearing shall be conducted with the Dispute Parties present. Following conclusion of the submissions, the Dispute Parties will withdraw to allow the Timetabling Panel to consider the evidence and arguments (with any assessor). The Dispute Parties shall remain available to allow the Hearing Chair, other Panel Members and any assessor to put any additional questions.

47 The Secretary will, unless otherwise directed by the Hearing Chair, make a full note of the evidence given to the hearing. The Hearing Chair may in their discretion direct in advance that a full transcript is taken.

48 The Hearing Chair may, subject to any specified requirements of any Access Condition and legal requirement, reserve their determination from the hearing until a later date.

## **Determinations**

49 Having considered the submissions of the parties and the advice of the other Panel Members and any assessor, the Hearing Chair shall make a determination of the dispute in accordance with Rule H51.

50 Subject to any other provision of the Access Conditions and Underlying Contract, the Hearing Chair may make such orders in the determination as the Hearing Chair considers necessary to resolve the dispute including without limitation that:

- (a) one Dispute Party should take or not take specified action; or
- (b) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination.

51 The Hearing Chair's determination of a dispute shall be in writing and comprise:

- (a) the date of the determination;
- (b) the names of the Hearing Chair, other Panel Members and any assessors present;
- (c) details of all parties to the dispute;
- (d) details of the attendance and status of all experts, witnesses and interested parties;
- (e) a brief summary of the dispute;
- (f) an identification of the issues of fact and law considered by the Timetabling Panel;
- (g) a summary of the evidence presented;
- (h) the findings of fact made by the Hearing Chair;
- (i) identification of any precedents considered;
- (j) the decisions and conclusions reached, distinguishing clearly between:
  - (i) decisions upon legal entitlement;
  - (ii) decisions upon remedy;
  - (iii) guidance to the Dispute Parties or other observations not forming part of a decision upon either legal entitlement or upon remedy;
- (k) the reasons for those decisions and conclusions (including any relevant legal principles or rules of law applied); and
- (l) signed and dated confirmation of the Hearing Chair that the determination is legally sound and appropriate in form.

52 The Hearing Chair shall provide a copy of the written reasoned determination to all Dispute Parties and the Secretary. The Secretary shall send the determination to each Resolution Service Party and shall arrange for the determination to be immediately published on the access disputes website.

53 Subject to appeal in accordance with Rule H58, the Dispute Parties shall comply with the terms of the determination within such period as shall be specified in the determination.

54 If a Dispute Party fails to comply with the terms of the determination, that failure will be dealt with by way of a new dispute through the appropriate mechanism.

## **Confidentiality**

55 Except for anything published pursuant to Rule H56, unless otherwise agreed by all parties, all Documents produced or disclosed in the course of a TTP shall be treated as confidential by the Panel Members, assessors or others present, the Allocation Chair, the Secretary and all parties and shall only be used:

- (a) for the purposes of the TTP, including any appeal or further stage in the determination procedure;
- (b) for enforcing the Hearing Chair's determination in the TTP; or

(c) in support of a plea of estoppel in any subsequent proceedings.

56 Immediately upon receipt by the Secretary the following Documents shall be published on the access disputes website:

- (a) each finalised Statement of Case;
- (b) each request for further information from the Hearing Chair and all responses to such requests;
- (c) all written submissions from all parties; and
- (d) all awards and/or determinations from the Hearing Chair.

### **Communications**

57 Communications for the purposes of the TTP may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

### **Appeal**

58 Following a determination of a Timetabling Dispute by the Hearing Chair of a TTP any Dispute Party is entitled to appeal in accordance with the relevant part of the Access Conditions or Underlying Contract (including, as applicable, Part M of the HAL Network Code).

### **Costs**

59 The Hearing Chair shall have power to order one or more Dispute Parties to meet part or all of the Costs of the Timetabling Panel and of any other Dispute Party assessed by such means as the Hearing Chair shall determine.

60 An order for Costs shall only be made where the Hearing Chair is satisfied that either:

- (a) the case of the relevant Dispute Party shall have been so lacking in merit that the reference should not have been made (or defended); or
- (b) the conduct of the relevant Dispute Party before or during the reference was such as to justify an award of Costs being made against it (or them).

Any such order shall be made with due regard to the Principles and this Chapter H.

### **Exclusion of liability**

61 None of the Allocation Chair, the Secretary, the Hearing Chair or any other Panel Member shall be liable to any party for any act or omission (including negligence) in connection with any TTP under these Rules unless the act or omission is shown to have been in bad faith.

## CHAPTER I - DETERMINATIVE PROCESS RULES - EXPERT DETERMINATION

- 1 Expert determination under these Rules is a private determinative dispute resolution process in which a neutral expert (the determining expert) determines the dispute on the basis of the parties' respective legal rights, the information available to the determining expert and their own expertise.

### Disputes to be decided by expert determination

- 2 Any dispute which the Dispute Parties have agreed shall be submitted to expert determination under these Rules or which has otherwise been allocated to expert determination as a first or second stage or appeal stage dispute resolution process in accordance with these Rules, shall proceed according to the Rules of this Chapter I.
- 3 Any dispute which the parties have agreed should be referred to expert determination under these Rules shall be determined by a sole expert agreed between the parties or appointed by the Secretary in accordance with this Chapter I.

### Relationship with Non-Access Dispute Resolution Rules

- 4 Where a dispute which would otherwise be decided in accordance with this Chapter I is similar to or so closely connected with another dispute (in either case whether involving the same parties or not) which is capable of being (or has been) referred to a panel under the Non-Access Dispute Resolution Rules that it is expedient for the two to be resolved in the same proceedings, the dispute shall be arbitrated or otherwise determined under the Non-Access Dispute Resolution Rules.

### Beginning an expert determination and appointing the Determining Expert

- 5 Upon commencement of an expert determination (in accordance with the Procedure Agreement and Rule B16 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable determining expert, if not already done.
- 6 In the event that no determining expert can be agreed by the parties within 21 days of commencement of the expert determination, the Secretary shall propose an appropriate individual from lists maintained by them and published on the access disputes website, or otherwise. That individual shall be appointed by the parties as determining expert unless either or both parties notify the Secretary of a challenge to the appointment on the ground of (real or apparent or potential) bias, Conflict of Interest or a lack of competence within 3 days of notification of the Secretary's choice. If any challenge is made on the ground of bias, Conflict of Interest or lack of competence, the Allocation Chair shall consider the challenge and determine either to:
  - (a) uphold the proposed appointment; or
  - (b) remit the choice to the Secretary with directions concerning how a further choice should be made.

Nothing in this clause shall affect the power of a determining expert to determine their own jurisdiction or appointment.

### Notice of expert determination

- 7 Upon the appointment of a determining expert, the Secretary shall send to all the parties to the dispute a notice of the appointment of the determining expert. The Secretary shall also send to the determining expert a copy of:
  - (a) this Chapter I and Chapter A, B and C;
  - (b) any template terms for appointment of a determining expert issued by the Committee;
  - (c) the Notice of Dispute;
  - (d) any statements from the Dispute Parties made under Rule B8(d)(iii); and
  - (e) any correspondence from the Allocation Chair made under Rule B14

The Notice of Dispute shall stand as a notice of expert determination and no further notice of

expert determination shall be required or served.

*Change of Determining Expert*

- 8 If any determining expert acting or appointed to act under these Rules resigns, withdraws, dies or refuses to act, the Secretary shall, upon application by the determining expert or any party to the expert determination, on proof satisfactory to the Secretary, declare the office of determining expert vacant.
- 9 If the determining expert or any Dispute Party considers that the determining expert is unable by reason of mental or physical infirmity to perform the duties of their position or is disqualified for any reason from performing the duties of their position, or has delayed unreasonably in the conduct of the expert determination or in the making of any award, the Secretary may, at the request of the determining expert or any Dispute Party, having heard the determining expert and the parties if they or any of them wish to be heard, declare the position of determining expert vacant.
- 10 Where the position of determining expert shall have been declared to be vacant pursuant to Rule I8 or I9, then Rule I5 shall apply to the appointment of a replacement determining expert.

**Procedure**

*General*

- 11 The determining expert shall act fairly and impartially as between the parties, giving each a reasonable opportunity of putting their case and dealing with facts raised by their opponent.
- 12 The determining expert shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined in accordance with each party's rights at law to a fair trial. The determining expert may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the expert determination. The directions shall be in accordance with the Principles.
- 13 Subject to Rule I14, an expert determination shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute.
- 14 The parties may agree that an expert determination shall be conducted on the basis of written representations only. In such a case, nothing in this Rule shall prevent the determining expert from requiring one or more oral hearings if the determining expert considers it appropriate for the just and expeditious determination of the proceedings.
- 15 The determining expert may at any stage require one or more Dispute Parties to provide the determining expert with any information, data or computations which are within the control of that party or parties and reasonably accessible to them. The determining expert may further request one or more parties to produce further computations or analysis of data or information where such computations or analysis are reasonably necessary for the purposes of the fair resolution of the dispute and the necessary data, information and competence to prepare such computations or analysis is reasonably available to the relevant party or parties.
- 16 Unless the determining expert rules otherwise (either on their own motion or upon the application of any party), the following timetable and procedure shall apply:
  - (a) within 21 days of the notice of appointment of the determining expert, the claimant(s) shall serve upon the determining expert and each other party a written statement of its claim. The statement of claim shall specify all relevant facts and matters and contentions of law (if any, and naming the principal authorities) on which the claimant relies (or admits or denies) and the relief and remedies sought;
  - (b) within 21 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon the determining expert and the claimant(s) a written statement of its defence. The statement of defence shall specify the defence and all relevant facts and matters and contentions of law (if any, naming the principal authorities) on which the respondent relies (or admits or denies). The statement of defence may set out any

counterclaim which the respondent wishes to make;

(c) the claimant(s) may within seven days of the service by the respondent of its statement of defence, serve upon the determining expert and each other party a written reply limited to responding to new matters and contentions of law raised in the statement of defence and any counterclaim or related claim raised;

(d) the statements of case served pursuant to sub-paragraphs (a), (b) and (c) above shall be accompanied by copies of any Documents referred to in them or upon which the party serving the statement wishes to rely. In addition they shall be accompanied by (or, as appropriate refer to and identify) any computations, models, analysis or data prepared by or for that party upon which the party wishes to rely. That party shall, if so requested, make the originals of such Documents available for inspection by the determining expert or the other party(s) and shall as appropriate make available active electronic copies of such Documents for analysis by the determining expert or the other party(s);

(e) the determining expert may raise such questions as they consider necessary or appropriate and require responses from the parties within such time as the determining expert specifies;

(f) at least seven days before any hearing, each party shall serve on the other and on the determining expert its written submissions;

(g) unless ordered otherwise by the determining expert, at the hearing:

- (i) there shall be no oral opening submissions, but the determining expert may ask the parties questions arising out of their written submissions or statements of case;
- (ii) subject to sub-paragraph (iii) below, the testimony of a witness may be presented in written form, either as a signed statement or as an affidavit duly sworn. Any party may apply to the determining expert for an order that any witness whose written statement or affidavit is to be relied upon by a party should attend for oral examination at a hearing and the determining expert shall make such order unless, having heard the parties, the determining expert is satisfied that such oral examination is not likely to assist in making the award. If a witness is ordered to attend and fails to do so, the determining expert may:
  - (A) place such weight on the written statement or affidavit as the determining expert thinks fit;
  - (B) exclude it altogether; or
  - (C) apply to the Court for an order for the citation or attendance of witnesses.

In addition, in making a determination on Costs the determining expert may take any failure to attend into account;

- (iii) factual or expert witnesses who give oral evidence will not be required to provide their evidence in full orally. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the determining expert;
- (iv) the parties may make oral closing submissions;
- (v) the parties may be legally represented; and
- (vi) the determining expert shall be entitled to receive such evidence as they shall consider relevant, whether or not such evidence would have been admissible in a Court; and

(h) the determining expert shall deliver to the parties a reasoned award within 10 Working Days of the end of the hearing in accordance with Rule A15.

*Proposed amendments*

17 Immediately after their appointment, the determining expert shall require each Dispute Party to

propose directions to the determining expert or to inform them of any amendments to the procedure or the time limits set out in Rule I16 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall send promptly any proposed directions or amendments to the determining expert and each other party. Before responding and ordering any amendments, the determining expert may require the parties to meet with them.

*References to the ORR*

18 The determining expert may, on the application of any party or on their own motion, elect to refer any issue or issues to which Rule C3 applies, to the ORR in accordance with Chapter C. Before making any such reference the determining expert shall:

- (a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and
- (b) determine the wording of any reference to be made with due regard to such submissions.

*Supplemental*

19 If the determining expert considers it appropriate for the just and expeditious determination of the proceedings, the determining expert shall be entitled to appoint one or more advisers or assessors on any matter (including matters of law) to report to the determining expert on any specific issue. The costs of any such person shall be subject to the provisions of Rule I29. The determining expert shall provide to the parties the terms of reference, qualifications and experience of any adviser or assessor appointed. Where the determining expert receives a report from any such person, the report shall be disclosed to the parties and they will be afforded an opportunity to comment on it.

20 In relation to the production of Documents:

- (a) the determining expert may, on the application of a party, require the production of such specific identified Documents or class of Documents or data or information as are within the possession, custody or control of any other party or any third party which the determining expert considers relevant. The parties to the proceedings shall be given the opportunity to inspect and to comment upon any Document so produced;
- (b) if any Document is not supplied to the determining expert and all other Dispute Parties within such time as the determining expert shall prescribe, the determining expert may:
  - (i) proceed with the expert determination on the basis of the Documents already before them;
  - (ii) apply to the court for an order to produce the Documents; or
  - (iii) strike out the part of the claim or defence to which the Document relates,and in making the award the determining expert shall be entitled to draw such inferences as the determining expert may think fit for the failure to supply the Document. In addition, in making the determination on Costs the determining expert may take any failure to supply a Document at any stage in the proceedings into account;
- (c) no party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts; and
- (d) unless otherwise ordered by the determining expert, an application by a party to the determining expert pursuant to sub-paragraph (a) above shall be made not later than 35 days after the appointment of the determining expert; a party in receipt of a request from the determining expert to produce a Document shall comply with such a request within 14 days.

21 Without prejudice to the powers in Rule A16 and in addition to them, the determining expert shall have power to strike out part or all of any claim or defence made in the proceedings on any one or more of the following grounds:

- (a) wilful breach of these Rules;
- (b) deliberate non-compliance by a party with any order of the determining expert; or

- (c) inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the determining expert, given rise to a substantial risk that a fair determination of the dispute will not be possible, or which is such as to cause or to have caused serious prejudice to the other party.

22 Without prejudice to the powers in Rule A16 and in addition to them, the determining expert shall have power to strike out part or all of any claim or defence made in the proceedings if the determining expert is satisfied that the claim or defence or any part of it is scandalous, frivolous or vexatious.

23 Without prejudice to the powers in Rule A16 and in addition to them, if any party fails to serve a Statement of Case within the period allowed under these Rules or by order of the determining expert, and fails to remedy this default within 14 days after despatch to the party by the determining expert or any other Dispute Party to the dispute of notice of that default, the determining expert shall be entitled to rule that he shall be treated as having abandoned their claim or defence (as the case may be) and, having made such a ruling, the determining expert shall be entitled to proceed with the reference on a without notice basis.

24 Any party who becomes aware that any provision or requirement of these Rules has not been complied with and who fails to state an objection to that failure within a reasonable time shall be deemed to have waived the right to object.

### **Determination**

#### *Final and binding*

25 The determining expert's determination shall be final and binding save

- (a) where it is so clearly erroneous on its face that it would be unconscionable for it to stand; or
- (b) to the extent that a further right of appeal or reference to another dispute resolution process is provided for in the Underlying Contract, Access Conditions or Procedure Agreement.

26 If any further dispute resolution process is provided for in the Procedure Agreement then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the determining expert's determination, the determination shall be deemed to have been accepted by all parties.

#### *Power to make orders*

27 Subject to any other provision of the Access Conditions and Underlying Contract, the determining expert may make such orders in their determination as the determining expert considers necessary to resolve the dispute, including, without limitation, that:

- (a) one Dispute Party shall pay an amount of money (including damages) to another Dispute Party, whether that amount is specified in the determination or calculated in accordance with such procedure as the determining expert shall specify;
- (b) one Dispute Party should take or not take specified action;
- (c) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination;
- (d) any Document, certificate, invoice, report or record be amended or reissued in a manner specified in the determination; or
- (e) any principal sum the determining expert may order one party to pay to another shall carry interest at such rate and over such period as the determining expert shall determine.

#### *Issue of expert determination*

28 The determining expert shall send a copy of their determination to the parties, the Allocation Chair and the Secretary.

### **Costs**

#### *Discretion to order payment of Costs*

29 Whether or not the expert determination reaches the stage of a final determination, the determining expert may order any Dispute Party to pay some or a specified proportion of any Dispute Party's Costs incurred in the expert determination, assessed in such manner as the determining expert shall determine. The determining expert may make such an order without limitation following any interim or final determination.

#### *Joint and several liability of parties to Determining Experts for fees and expenses*

30 The Dispute Parties are jointly and severally liable to pay the determining expert's reasonable fees and expenses.

### **Confidentiality**

31 Subject to Rule C and Rules I32, I33 and G68, all Documents produced or disclosed in the course of an expert determination including all awards shall be treated as confidential by the determining expert, the Allocation Chair, the Secretary and all parties and shall not be published.

32 Unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an expert determination including all awards shall only be used:

- (a) for the purposes of the expert determination, including any appeal against the determination, or for judicial review, in respect of the award or any subsequent stages of the determination procedure;
- (b) for enforcing the determination; or
- (c) in support of a plea of estoppel in any subsequent proceedings.

33 The confidentiality obligations under Rule I31 shall not apply to Documents which are:

- (a) agreed in writing by all the Dispute Parties to be disclosed (including in any Underlying Contract between them);
- (b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
- (c) disclosed on a confidential basis to the ORR or the Secretary of State in the normal course of business; or
- (d) required to be disclosed pursuant to the order of a court of competent jurisdiction.

### **Communications**

34 Communications for the purposes of the expert determination may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

### **Exclusion of liability**

35 None of the Allocation Chair, the Secretary or any determining expert shall be liable to any party for any act or omission (including negligence) in connection with any expert determination under these Rules unless the act or omission is shown to have been in bad faith.

### **Jurisdiction and governing law**

36 Expert determinations shall take place in England and be subject to English law.

### **Interim relief granted by the Court**

37 In an appropriate case, a party to a dispute which has been or may be submitted to expert determination may apply to the Court for interim relief (whether negative or positive), notwithstanding that the relief sought may overlap with the interim relief which is, or may be, claimed in the expert determination.

## CHAPTER J - PROCUREMENT

1 This section establishes the Committee to oversee the operation of the disputes process set out in these Rules, handle funding and procure delivery of the disputes service and deal with appointment and termination of employees and consultants. It sets out the Committee's constitution and role as well as the roles of employees and consultants required by these Rules. It also deals with the funding arrangements for the Committee.

### Appointment of the Allocation Chair

2 HAL shall procure that the Committee appoints an Allocation Chair who shall:

- (a) preferably have suitable experience of the railway industry;
- (b) not, during their term of office, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise their impartiality;
- (c) preferably have qualified as a lawyer and mediator (or have experience as a mediator) and shall have extensive professional and practical experience (at a senior level) of significant commercial disputes and commercial disputes processes but shall not be required to hold a current practising certificate; and
- (d) not during his term of office be the Chair of the committee established pursuant to Rule A2 of the Non-Access Dispute Resolution Rules.

3 The appointment and any re-appointment of the Allocation Chair shall be by unanimous resolution of the Committee.

4 The Allocation Chair shall upon appointment, declare to the Secretary any relevant connection which they have or had with the railway industry, and, subject to Rule J2(b), shall during their term of office promptly disclose any new connection of that kind. The Secretary shall provide a copy of any disclosure made under this Rule to HAL and to any Resolution Service Party which requests it.

5 In the event that the Allocation Chair has or may have any Conflict of Interest in respect of any dispute the Allocation Chair shall identify such Conflict of Interest to the Secretary who shall nominate a Hearing Chair from the pool referred to in Rule J10 to act as Allocation Chair for that dispute.

6 The Allocation Chair shall hold office on such terms as the Committee shall determine. Where the terms on which the Allocation Chair holds office include provision for the payment to them of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Committee.

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

8 The Allocation Chair shall be an employee of the Committee. The Committee may only terminate the Allocation Chair's employment according to the terms of the employment contract between Allocation Chair and the Committee.

9 If, within 60 days of the termination (for whatever reason) of the employment of the Allocation Chair, the Committee shall have failed to appoint a new Allocation Chair pursuant to Rules J2 and 3, the Committee shall:

- (a) by unanimous resolution, determine a list of three candidates for the role of Allocation Chair;
- (b) send the list to the ORR and provide such information in relation to the candidates and the preferences of the Committee Members as the ORR may request; and

(c) be deemed to have appointed as Allocation Chair the candidate then selected by the ORR.

### **Hearing Chairs and Industry Advisors**

10 HAL shall procure that the Committee (in addition to the appointment of the Allocation Chair) appoints (as consultants) a pool of Hearing Chairs to sit on Timetabling Panels and ADAs and a pool of Industry Advisors to sit on ADAs as appropriate.

11 Hearing Chairs shall:

- (a) preferably have suitable experience of the railway industry;
- (b) not, during their terms of office, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise impartiality;
- (c) preferably have qualified as a lawyer or hold a similar professional background and shall have professional and practical experience (at a senior level) of significant commercial disputes and commercial disputes processes but shall not be required to hold a current practising certificate;
- (d) be appointed and be liable to termination of appointment in the same way as the Allocation Chair;
- (e) have such skills and experience as are deemed necessary by the Committee to discharge effectively the role for which the appointment is intended; and
- (f) chair TTP or ADA hearings or discharge any other function otherwise falling within these Rules as directed by the Allocation Chair or Secretary or under any Procedure Agreement under Chapter B.

12 In the event that any Hearing Chair is appointed in respect of any dispute and has or may have any Conflict of Interest in respect of that dispute they shall identify such Conflict of Interest to the Secretary who shall nominate an alternative Hearing Chair from the pool to act as Hearing Chair for that dispute.

13 Industry Advisors shall:

- (a) have such skills, experience and qualifications as are deemed necessary by the Committee to discharge effectively the role for which the appointment is intended;
- (b) not, during their terms of appointment, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise impartiality;
- (c) be appointed and be liable to termination of appointment in the same way as the Allocation Chair;
- (d) participate in ADA hearings or discharge any other function otherwise falling within these Rules as directed by the Allocation Chair.

14 In the event that any Industry Advisor is appointed in respect of any dispute and has or may have any Conflict of Interest in respect of that dispute he shall identify such Conflict of Interest to the Secretary who shall nominate an alternative Industry Advisor from the pool to take part in that dispute.

### **The Secretary**

15 HAL shall procure that the Committee employs the Secretary to discharge the following separate and distinct roles:

- (a) the Secretary for the purposes of these Rules;
- (b) secretary to an ADA;
- (c) secretary to a Timetabling Panel.

16 Subject to Rule J15 the Committee shall specify the Secretary's remit and terms of employment in such terms as it shall (from time to time) think fit but such remit shall include the following tasks:

- (a) running the Secretariat efficiently and cost effectively;
- (b) communicating with Dispute Parties conducting a dispute under these Rules and effecting the appointment of suitable and appropriately qualified mediators, evaluators, arbitrators or determining experts as required;
- (c) implementing efficiently any instruction given to the Secretary by the Allocation Chair or any Hearing Chair;
- (d) appointing an appropriate ADA and Timetabling Panel in each relevant dispute;
- (e) ensuring that the access disputes website is up to date, accurate and accessible;
- (f) maintaining a register of persons who are suitably qualified, willing and able to act as mediators, arbitrators, experts, evaluators, assessors and of organisations which are qualified to suggest such persons;
- (g) sourcing external legal advice as requested or directed by the Committee, the Committee Chair, the Allocation Chair or a Hearing Chair; and
- (h) liaising with the RIDR Secretary.

17 The Secretary may:

- (a) delegate the performance of any of their functions to any member of the Secretariat but such delegation shall not affect their responsibilities to ensure that all matters falling within their remit are properly discharged;
- (b) in the discharge of their tasks, duties and obligations under these Rules seek guidance from the Committee Chair or the Allocation Chair (as appropriate) at any time and in relation to any matter, issue or question, as the Secretary sees fit, prior to taking (or not taking) any relevant action;
- (c) be removed from office by the Committee in the same manner as the Allocation Chair.

18 The Secretary shall not be a Member of the Committee, the Allocation Chair, a Hearing Chair, an Industry Advisor, arbitrator, mediator, determining expert or evaluator or a member of any Timetabling Panel.

19 The Secretary shall be appointed upon such terms as the Committee shall determine. Where the terms on which the Secretary is appointed include provision for the payment of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Committee.

**The Secretariat**

20 The Committee may appoint additional consultants or employ additional staff members, to assist the Secretary to discharge the Secretary's duties (together, from time to time, the "Secretariat").

21 The Secretariat shall be appointed, or employed, upon such terms as the Committee shall determine.

22 The terms upon which the Secretariat are retained may, in addition to providing for remuneration, include provision for the payment of such pensions, allowances or gratuities or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Committee.

**Capacity of Committee to enter into Contracts**

23 In making any appointment or otherwise exercising the powers under this Chapter J, the Committee Members are authorised to act on behalf of the Resolution Service Parties.

24 None of the Allocation Chair, any Hearing Chair, any Industry Advisor, the Secretary or any member of the Secretariat shall by virtue of their office be an employee of the Committee, HAL, or any other Resolution Service Party.

## **Publication of Information**

25 HAL shall procure that the Committee requires the Secretary to ensure that the access disputes website shall be maintained. It shall be up to date at all times so as to contain, by means of conspicuous and easily accessible links:

- (a) the identity and telephone contact number for the Secretary, all Committee Members and members of the Timetabling Pool;
- (b) copies of the approved minutes of every meeting of the Committee;
- (c) copies of the annual report and any other reports of the Committee, and of all other general communications to Resolution Service Parties in relation to its affairs;
- (d) subject to determinations of commercial confidentiality, copies of every reference to the ORR under these Rules and all responses from the ORR; and
- (e) all other Documents including determinations and awards as specified for publication on the access disputes website in these Rules.

## **Liability of Committee Members, Panel Members and officers**

26 Subject to Rule J28, none of the ADC Co, Committee Members, the Panel Members (TTP or ADA), Committee Chair, the Allocation Chair, any Hearing Chair, Industry Advisors and the Secretary, any member of the Secretariat, or any employee of the Committee shall be liable in contract or tort or otherwise to any party for any act or omission (including negligence and vicarious liability for the negligence of any employee of the Committee) in connection with any Committee proceedings or dispute determined by a Timetabling Panel or by a Hearing Chair under these Rules except in respect of any act or omission shown to constitute bad faith and/or dishonest conduct.

27 The exclusion of liability in Rule J27 does not extend to the express obligations of the Committee Chair, the Allocation Chair, any Hearing Chair, Industry Advisors and the Secretary, any member of the Secretariat, or any employee of the Committee contained in any contract of appointment or employment.

## **Other Administrative Issues**

28 These Rules may be amended in accordance with the provisions of Part C of the HAL Network Code.

29 No amendment of these Rules shall have effect unless approved by the ORR.

30 Any dispute arising out of the operation or interpretation of these Rules including this Chapter J shall be referred to the ORR for determination in accordance with such process as the ORR shall specify. In the event that the ORR determines that a reference made to it under this Rule J31 does not relate to the operation or interpretation of these Rules, it shall decline to hear the reference.

31 These Rules are subject to English law.

32 These Rules form part of the HAL Network Code.

## **CHAPTER K - MIXED DISPUTES AND CONTESTED JURISDICTION**

- 1 If there is a disagreement as to whether a dispute is required by any of Rules D3, F4, G7, H1, H5 or I4 to be dealt with under the Non-Access Dispute Resolution Rules:
  - (a) each Dispute Party shall submit its argument in writing to the Allocation Chair and to the other Dispute Parties before the reference is served or within seven days of its service; and
  - (b) the Allocation Chair shall rule on the disagreement within seven days of receiving the submissions.

## Annex 2 - Availability Benchmarks

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Measured Service	Unit Quantity	Availability Benchmark	Unit Definition
Lifts	13	97.0%	Four each at CTA and T4, five at T5.
Escalators	14	97.0%	Six at CTA, four at T4 and five at T5.
CCTV	266	97.0%	Passenger areas at Heathrow that are not London Underground Limited related.
Train Information Displays (TIDs)	52	97.0%	Passenger areas at Heathrow that are not London Underground Limited related. Excludes next train indicators and general information displays.
Public Announcement Unit	3	97.0%	Broken down to 3 areas, i.e. CTA/T4/T5
Station Lighting	492	97.0%	The number of lighting circuits within CTA, T4 and T5, across all passenger areas.
Help Points	39	97.0%	Passenger areas at Heathrow that are not London Underground Limited related.
<b>TOTAL</b>	<b>407</b>	-	