



**Comparison of HS1 Network Code  
(October 2008 consultation version  
against June 2009 version)**

**Network Statement & Related Arrangements  
Consultation**

**June 2009**



**~~The High Speed 1 Railway~~**

**~~HS1 Network Code~~**

HIGH SPEED 1

HS1 NETWORK CODE

**~~3<sup>rd</sup> Consultation~~**

**~~October 2008~~**

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### ~~Part A – Organisation of the HS1 Network Code and Definitions~~

## PART A – ORGANISATION OF THE HS1 NETWORK CODE AND DEFINITIONS

### *Explanatory Note*

- A. *Part A sets out certain definitions and rules of interpretation which apply generally to the HS1 Network Code. Definitions which are specific to individual parts of the HS1 Network Code are contained in the relevant part.*
- B. *This Explanatory Note does not form part of the HS1 Network Code.*

## **1. 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 HS1 Network Code shall be interpreted or construed as compromising that objective.

In this HS1 Network Code, unless the context otherwise requires:

#### *1.1.1 The HS1 Network Code*

References to the HS1 Network Code means this HS1 Network Code as modified from time to time.

#### *1.1.2 Parts, Conditions and Paragraphs*

References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of this HS1 Network Code.

#### *1.1.3 Definitions in the Acts*

Terms and expressions defined in the Act and the CTRL Act shall, unless the contrary intention appears, have the same meaning in this HS1 Network Code.

#### *1.1.4 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).

#### *1.1.5 Interpretation Act*

Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this HS1 Network Code and the rules of interpretation contained in that Act shall apply to the interpretation of this HS1 Network Code.

#### *1.1.6 Include*

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

### 1.1.7 *Other Documents*

Any agreement, instrument, licence, standard (including any HS1 Standard), timetable, code or other document referred to in this HS1 Network Code or entered into, approved, authorised, accepted or issued by a person pursuant to this HS1 Network Code shall be construed, at the particular time, as a reference to that agreement, instrument, licence, standard (including any HS1 Standard), timetable, code or other document, as it may then have been amended, varied, supplemented or novated.

### ~~1.1.8 *Conflict*~~

~~In the event of any conflict of interpretation between this HS1 Network Code and an Access Agreement (not including this HS1 Network Code) the following order of precedence shall apply:~~

~~(1) this HS1 Network Code; and~~

~~(2) the Access Agreement.~~

### 1.1.8 ~~1.1.9~~ *Time Limits*

Where in this HS1 Network 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.

### 1.1.9 ~~1.1.10~~ *Headings*

The headings and references to headings shall be disregarded in construing this HS1 Network Code.

### 1.1.10 ~~1.1.11~~ *Ruling Language*

All notices served under this HS1 Network Code shall be in the English language.

### 1.1.11 ~~1.1.12~~ *References to Time*

References in this HS1 Network Code to a time or times shall be construed as references to London time.

## 1.2 **Definitions**

In this HS1 Network Code, unless the context otherwise requires:

"**Act**" means the Railways Act 1993;

"**Access Agreement**" means any particular access contract incorporating this HS1 Network Code;

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

~~(a) which is not a station or a light maintenance depot; and~~

	<del>(b) in respect of which the facility owner is HS1 Co;</del>
<b>"Access Parties"</b>	means, in respect of an Access Agreement, <del>the parties</del> <u>HS1 Co and the Train Operator who is a party</u> to that Access Agreement <u>and "Access Party" shall mean either of them;</u>
<b><u>"Applicable Laws"</u></b>	means any of the following:
	<u>(a) any treaty, enactment or legislative provision in England;</u>
	<u>(b) any regulation made by the Council or the Commission of the European Union; and</u>
	<u>(c) any common law, or any interpretation of law or finding contained in any judgement 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 requirements within paragraphs (a) or (b) above to have effect in a way which is different from that which it previously had effect;</u>
<b>"Arbitrator"</b>	means an arbitrator appointed pursuant to the Disputes Resolution Agreement;
<b>"Change of Law"</b>	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;
<b>"Channel Tunnel"</b>	means the existing fixed link under the English Channel between the southern portal at the Department of Pas-de-Calais in France and the northern portal in the County of Kent in England together with the terminal areas associated therewith;
<b><u>"Compatibility File"</u></b>	<u>means a document prepared in accordance with the applicable HS1 Standards which describes:</u>
	<u>(a) the Specified Equipment;</u>
	<u>(b) the proposed changes to the Specified Equipment;</u>
	<u>(c) the methods used to assess compatibility of the proposed changes to the Specified Equipment with the Network; and</u>

(d) the criteria used to assess compatibility and how those criteria have been derived;

**"Competent Authority"**

means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the Office of Rail Regulation and the Channel Tunnel safety authority) whether of the United Kingdom, ~~France, Belgium~~ or of the European Union, which has jurisdiction over either or both of the Access Parties in relation to the subject matter of, or in connection with, an Access Agreement provided that "Competent Authority" shall not include Her Majesty's Government (or any department, minister, official or nominee thereof) where acting as shareholder of the Access Party in question or other than pursuant to the Crown prerogative or a statutory function or power;

**"Concession Agreement"**

means ~~{~~ the agreement between the Secretary of State and HS1 Co granting HS1 Co the concession for the design, construction, financing, operation, repair and maintenance of the Network, as may be amended from time to time;

**"CTRL Act"**

means the Channel Tunnel Rail Link Act 1996;

**"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;

**"Disputes Resolution Agreement"**

means an agreement dated 18th February 1999 between ~~Agreement"~~ (inter alia) HS1 Co, London & Continental Railways Limited and the Secretary of State providing a procedure for the resolution of disputes and to which Train Operators shall accede on entering into an Access Agreement in accordance with Part I of this HS1 Network Code, as amended from time to time;

**"Disputes Resolution Procedure"**

means the procedure described in the Dispute Resolution ~~Procedure"~~ Agreement and Part I of this HS1 Network Code for the resolution of disputes;

**"Domestic 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 the Network pursuant to that Access Agreement for the operation of trains not involving travel through the Channel Tunnel;

**"European Freight Timetable"**

means the timetable for the passage of freight trains across national boundaries agreed between the national railways from time to time;

<b>"European Passenger"</b>	means the timetable for the passage of passenger trains "Timetable" across national boundaries agreed between the national railways from time to time;
<b>"Eurotunnel"</b>	means the Channel Tunnel Group Limited and France-Manche S.A.;
<b>"Eurotunnel Boundary"</b>	means the boundary of the Network and the <del>Eurotunnel concession at Castle Hill</del> <a href="#">Channel Tunnel portal at Cheriton, Folkestone, Kent</a> ;
<b>"Franchised Services"</b>	has the meaning given to that term in Condition A1.6;
<b>"Force Majeure Event"</b>	<p>means any of the following events (and any circumstances arising as a direct consequence of any of the following events):</p> <ul style="list-style-type: none"> <li>(a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;</li> <li>(b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;</li> <li>(c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);</li> <li>(d) nuclear, chemical or biological contamination;</li> <li>(e) pressure waves caused by devices travelling at supersonic speeds;</li> <li>(f) discovery of fossils, antiquities or unexploded bombs; and</li> <li>(g) strike or other industrial action which is a single circumstance and which also <u>is a</u> strike or industrial action in sectors of the economy other than the railway industry;</li> </ul>
<b>"HSE"</b>	means the Health and Safety Executive as referred to in the Health and Safety at Work etc Act 1974;
<b>"HS1 Co"</b>	means HS1 Limited, a company registered in England under number <del>3539665</del> <a href="#">03539665</a> having its registered office at 3rd Floor, Eversholt Street, London, NW1 1AY;
<b>"HS1 Standards"</b>	means: <a href="#"><u>technical standards and operating procedures contributing to safe railway system operation and inter-working issued by the Infrastructure Manager, which are identified as "CTRL Standards" and compliance with which is mandatory.</u></a>

	(i) <del>technical standards with which Network railway assets or equipment used on or as part of Network railway assets must conform; and</del>
	(ii) <del>operating procedures with which the operators of railway assets on the Network must comply;</del>
<b>"International Train Operator"</b>	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 the Network pursuant to that Access Agreement for the operation of trains involving travel through the Channel Tunnel;
<b>"Legal Requirement"</b>	means (for the purpose of the definition of Change of Law), in relation to any person, any of the following: <ul style="list-style-type: none"> <li>(a) any <u>treaty</u>, enactment or legislative provision in <del>the United Kingdom, France or Belgium</del><u>England</u> to the extent that it applies to that person;</li> <li>(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 Commission of the European Union which is binding on that person to the extent that it is so binding; and</li> <li>(c) any <u>common law, or any</u> 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 from that in which it previously had effect;</li> </ul>
<b>"Network"</b>	means the rail link between <del>London</del> <u>St Pancras and International and the boundary with the Channel Tunnel portal at Cheriton, Folkestone, Kent</u> previously known as the Channel Tunnel Rail Link (CTRL) (and for the purposes of this definition "rail link" shall have the same meaning as in section 56 of the CTRL Act);
<b>"Network Rail Infrastructure Ltd. or "NRIL"</b>	means Network Rail Infrastructure Limited, a company incorporated in England and Wales under number 2904587 and having its registered office at Kings Place, 90 York Way, London N1 9AG;
<b>"NR Network"</b>	means the network of which Network Rail Infrastructure Ltd. is the facility owner and which is situated in England, Wales and Scotland;
<b>"NR Network Boundary"</b>	means the boundary of the Network and the NR Network;
<b>"Network Change"</b>	has the meaning ascribed to it in Part G of this HS1 Network Code;

<b>"ORR"</b>	means the Office of Rail Regulation <a href="#"><u>(or any successor body)</u></a> ;
<b>"Panel"</b>	has the meaning ascribed to it in the Disputes Resolution Agreement;
<b>"Performance Regime"</b>	means the provisions which are included in Access Agreements which relate to performance of trains and infrastructure on the Network;
<del><b>"Rail Net Europe"</b></del>	<del>means the association of that name set up by European infrastructure managers to facilitate access to European rail networks;</del> <b>"Railways Regulations"</b> means <del>The</del> <a href="#"><u>the</u></a> Railways Infrastructure (Access and Management) Regulations 2005;
<b>"Routes"</b>	means, in respect of an Access Agreement, those parts of the Network which a Train Operator has permission to use pursuant to that Access Agreement;
<b>"Rules of the Plan"</b>	means in respect of the Network, rules regulating (for any part of the Network) the standard timings and other matters necessary to enable trains to be scheduled into the Working Timetable applicable to the Network, being rules which specify (amongst other matters): <ul style="list-style-type: none"> <li>(a) the timings (including specified allowances) allowed for travel between specified points on the Network for each type of train and for each type of traction used, taking into account any particular constraints imposed by railway vehicles which may form part of the train;</li> <li>(b) timing margins or allowances for stopping at junctions and other specified points;</li> <li>(c) minimum timing margins or headways between successive trains travelling on the same section of track;</li> <li>(d) minimum and maximum time periods for stopping at stations and other specified points;</li> <li>(e) restrictions as to the speed of railway vehicles on any section of track; and</li> <li>(f) any Priority Dates referred to in Part D of this HS1 Network Code;</li> </ul>
<b>"Rules of the Route"</b>	means rules regulating (for any part of the Network) each of the following matters: <ul style="list-style-type: none"> <li>(a) the location, number, timing and duration of any possessions of any track or section of track, which enable inspection, maintenance, renewal and repair thereof or of any other railway asset or any other</li> </ul>

works in relation thereto, and any restrictions regarding those possessions;

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

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

**"Secretary of State"**

means the Secretary of State for Transport;

**"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 Access Agreement;

**"Specified Information"** means any information, statement, proposal, draft, instrument or other document;

**"Statement of Compatibility"** means the written statement containing the information prescribed by the applicable HSI Standards, including:

- (a) the compatibility between the Specified Equipment and the Network;
- (b) the configuration of the Specified Equipment;
- (c) operational requirements and limitations;
- (d) route constraints; and
- (e) Network factors,

within which compatibility of the Specified Equipment and the Network has been assessed;

**"Technical Specification for Interoperability"** has the meaning ascribed to the term "TSI" in the Railways (Interoperability) Regulations 2006;

<b><u>"Timetable Period"</u></b>	<u>means the period of time between (and including) one Principal Change Date and (but excluding) the immediately succeeding Principal Change Date;</u>
<b>"Train Crew"</b>	means those persons on a train responsible for the operation of that train;
<b>"Train Operator"</b>	means an International Train Operator or a Domestic Train Operator as the context shall require;
<b>"working day"</b>	means a day other than a Saturday or Sunday on which banks are <del>open</del> generally <u>open</u> for business in the City of London; and
<b>"Working Timetable"</b>	means the timetable which HS1 Co is obliged to draw up in respect of the Network pursuant to Part D of this HS1 Network Code.

### 1.3 References to Train Operator

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

### 1.4 Notices

1.4.1 Wherever in this HS1 Network Code provision is made for the giving or issuing of any notice, consent or approval by any person that notice, consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the Access Agreement and the words "notify", "consent" or "approve" (and cognate expressions) shall be construed accordingly.

1.4.2 Where in Part C of this HS1 Network Code provision is made for the giving ~~or~~ issuing of any notice, consent or approval by any person, that notice, consent or approval may, unless otherwise specified, be sent by HS1 Co to the email address most recently notified to HS1 Co by the intended recipient (with confirmation copy by prepaid first class post) and the words "notify", "consent" or "approve" (and cognate expressions) shall be construed accordingly.

1.4.3 Any notice, consent or approval sent by email in accordance with Condition A1.4.2 shall be deemed to have given and received unless otherwise proven:

- (a) ~~(A)~~ if sent before 17:00 hours on a working day, upon sending; and
- (b) ~~(B)~~ in any other case, at 09:00 hours on the first working day following the day of transmission.

### 1.5 Good faith between Access Parties

The Access Parties shall, in exercising their respective rights and complying with their respective obligations under this HS1 Network Code (including when conducting any discussions or negotiations arising out of the application of this HS1 Network Code or exercising any discretion under it), at all times act in good faith.

## 1.6 Franchised services

References to Franchised Services include:

*1.6.1* railway passenger services which the appropriate designating authority has designated as eligible for provision under franchise agreements pursuant to section 23 of the Act;

*1.6.2* [railway passenger services provided by a person appointed as a concessionaire or concession operator by a railway funding authority](#); and

*1.6.3* ~~1.6.2~~ railway passenger services provided by the relevant franchising authority, or another person on behalf of the relevant franchising authority, under section 30 of the Act.

## 2. CONDITION A2 - STANDARDS OF DOCUMENTATION

Where in this HS1 Network Code any person is required to prepare, produce or publish any ~~specified information~~[Specified Information](#), that obligation is an obligation to ensure that the ~~specified information~~[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 HS1 Network Code which requires its preparation, production or publication, and this Condition A2 is without prejudice to any further or other requirements specified in this HS1 Network Code and/or the Access Agreement in relation to the ~~specified information~~[Specified Information](#).

## 3. CONDITION A3 - LIMITATION ON LIABILITY

### 3.1 General

If an Access Party fails to perform an obligation under this HS1 Network 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 HS1 Network Code; or
- (b) an express provision states otherwise in the relevant Access Agreement.

### 3.2 Saving

Condition A3.1 does not apply to an obligation to pay compensation under Condition F3, G2 or G4.

## 4. CONDITION A4 - CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

### 4.1 Application to third parties

Except as provided in this Condition A4, 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 HS1 Network Code.

#### 4.2 **Application to HS1 Network Code**

Where in this HS1 Network 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.

#### 4.3 **Vehicle Change and Network Change**

Condition A4.1 shall be without prejudice to the right of a Train Operator to recover sums due to it from another Train Operator pursuant to Part F or Part G of this HS1 Network Code.

### 5. **CONDITION A5 - CONSULTATION**

#### 5.1 **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.

### 6. **CONDITION A6 – PUBLICATIONS**

#### 6.1 **General Obligation**

6.1.1 Where in this code HS1 Co is required to publish any ~~specified information~~Specified Information, HS1 Co shall ~~satisfy~~have satisfied such obligation if the ~~specified information~~Specified Information is, subject to Condition A6.1.2, published on its website.

6.1.2 HS1 Co shall not be obliged to publish, and shall take reasonable steps to avoid publishing, any information which, if published is likely materially to compromise or otherwise prejudice the commercial interests of any Access Party or any of its Affiliates or may reasonably be expected seriously and prejudicially to affect the interests of any person.

6.1.3 Any Train Operator shall be entitled to a copy of any information published pursuant to Condition A6.1.1 subject to paying HS1 Co's reasonable copying and administration charges.

## **~~Part B – Performance Monitoring~~**

## PART B – PERFORMANCE MONITORING

### *Explanatory Note*

- A. *Part B provides for the establishment by HS1 Co 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 HS1 Co to determine and record the cause of any delay or cancellation. Provision is made for HS1 Co to notify and seek agreement from affected Train Operators having access to the Network as to the cause of any such delay or cancellation.*
- B. *Train ~~operators~~Operators are given the right to notify HS1 Co if the Performance Monitoring System is not fit for purpose and require HS1 Co to investigate the grounds for such notification and report on its findings.*
- C. *Both HS1 Co and the Train Operators are given the right to audit and inspect the records and monitoring equipment of the relevant Performance Monitoring System and to require tests of the Performance Monitoring System to be carried out in the presence of an independent expert.*
- D. *Condition B5.3 also makes it clear that the Access Parties can, however, agree a more onerous Performance Monitoring System than that contemplated by Part B. The model set out in Part B is therefore a minimum standard.*
- E. *Part B also incorporates the Performance Data Accuracy Code which encompasses defined standards of accuracy of performance data.*
- F. *This Explanatory Note does not form part of the HS1 Network Code.*

## **DEFINITIONS**

In this Part B, unless the context otherwise requires:

**"Delay Attribution Board"** means the industry body of that name which manages issues involving the attribution of delay on the NR Network;

**"Delay Attribution Guide"** means the industry document used on the NR Network for the attribution of delay as may be amended or replaced by HS1 Co from time to time;

**"Performance Data Accuracy Code"** means the code relating to the standards of performance data accuracy entitled HS1 Performance Data Accuracy Code, as amended from time to time;

**"Performance Monitoring System"** means the system operated by HS1 Co for monitoring train performance described in Condition B1.

## **1. CONDITION B1 - PROCEDURES FOR MONITORING PERFORMANCE**

1.1 HS1 Co shall operate a system for monitoring train performance in relation to the Network which accurately records:

*1.1.1* the times at which trains arrive at, depart from and pass specified points on the Network;

*1.1.2* 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 its Working Timetable;

*1.1.3* all cancelled trains and trains failing to pass any specified point;

*1.1.4* the cause of train delays and cancellations on the Network; and

*1.1.5* the times at which trains arrive at and pass specified interface points with the NR Network and the Eurotunnel Boundary.

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

The Performance Data Accuracy Code is incorporated into this HS1 Network Code. Each Access Party shall observe and perform its obligations, and shall have the benefit of its rights, under the Performance Data Accuracy Code. For the purpose of Condition B1.1 "accurately" shall be construed in accordance with the Performance Data Accuracy Code.

### **1.3 Delay Attribution Guide**

*1.3.1* A decision, ruling, finding, judgment, order or direction regarding the operation or interpretation of the Delay Attribution Guide in relation to the attribution of delay on the NR Network shall not be treated as binding and/or act as any precedent in relation to the attribution of delay on the Network;

*1.3.2* Subject to Condition B1.3.3 HS1 Co shall be entitled to:

(a) amend the Delay Attribution Guide in connection with the attribution of delay or cancellations on the Network; and

(b) replace the Delay Attribution Guide (in whole or in part) with an alternative guide to the attribution of delay on the Network.

*1.3.3* Part C of the HS1 Network Code shall apply to any proposal by HS1 Co to amend or replace the Delay Attribution Guide and any such proposal shall be treated as if it were a Proposal for Change (as defined in Part C of the HS1 Network Code).

## **2. CONDITION B2 - DIAGNOSIS OF DELAYS**

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

HS1 Co shall, in relation to any train delay or cancellation on the Network (subject to any thresholds agreed between HS1 Co and each Train Operator), determine and record the persons and causes which are responsible for the delay or cancellation and where more than one, so far as practicable, the extent to which each person or cause is so responsible. HS1 Co shall, in relation to any train delay in respect of a train joining the Network at a boundary with:

- 2.1.1 the NR Network; or
- 2.1.2 the Eurotunnel Boundary;

determine and record the delay.

## 2.2 Information relating to causes of delays or cancellations

HS1 Co shall, when determining and recording the causes of and persons responsible for train delays and cancellations, have due regard to all information which is relevant in the circumstances, including the following:

- 2.2.1 information from any computerised or other recording system which HS1 Co may, for the time being, be permitted to use for the purposes of a particular Access Agreement;
- 2.2.2 information supplied by signallers and other persons duly authorised to participate in the signalling of trains;
- 2.2.3 information supplied by any Train Operator, whether such information is within its knowledge or based on information supplied by other Train Operators;
- 2.2.4 information supplied by Network Rail, Eurotunnel or other providers of European railway networks whether such information is within that persons knowledge or based on information supplied by persons engaged or acting on behalf of or otherwise acting in accordance with or subject to the instructions of that person.

[2.2.5 information and guidance set out in the Delay Attribution Guide.](#)

## 2.3 Notification and agreement of delays

[2.3.1](#) HS1 Co shall, as soon as reasonably practicable following the occurrence on the Network of any train delay or cancellation affecting the train of a Train Operator, ~~or any other train operator which is attributed to the Train Operator~~ notify that Train Operator of the occurrence of that delay or cancellation and the responsibility, if any, for that delay or cancellation attributed by HS1 Co to that Train Operator, ~~which shall, unless disputed by that Train Operator within 2 clear working days of receipt of that notice, be deemed to be agreed by that Train Operator.~~ Any such notices shall be sent to such person as that Train Operator shall have nominated for the purposes of this ~~Part~~Condition B2.3.1.

[2.3.2](#) [A Train Operator shall consider each delay or cancellation attributed by HS1 Co to that Train Operator, and if the Train Operator wishes to refer the attribution for further investigation it shall do so within two clear working days of receipt of that notice, and at the same time give its reasons for doing so. Any notification of such referral shall be sent to such person as HS1 Co shall have nominated for the purposes of this Condition B2.3.2.](#)

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

## 2.4 Matters referred for further investigation

2.4.1 The representatives nominated, pursuant to Condition B2.3, by HS1 Co and the Train Operator shall, within the next two clear working days after receipt of notification pursuant to Condition B2.3.1, attempt to resolve the matter referred for further investigation. Such further investigation shall take into account all relevant circumstances of the case and the guidance set out in the Delay Attribution Guide.

2.4.2 If agreement has not been reached within the two clear working days referred to in Condition B2.4.1, the matter shall be referred for review by the designated senior manager appointed by the Train Operator and the designated senior manager appointed by HS1 Co for the purposes of this Condition B2.4.2.

2.4.3 If, within 60 days, or such other period as may be agreed by HS1 Co and the Train Operator, of the matter being referred for review pursuant to Condition B2.4.2, HS1 Co and the Train Operator are unable to agree on the attribution, either party may refer the matter to be determined in accordance with the Disputes Resolution Procedure.

## **3. CONDITION B3 - SYSTEM INVESTIGATION**

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

A Train Operator may, when it has reasonable grounds for considering that the Performance Monitoring System of HS1 Co is not satisfying the requirements set out in Condition B1, notify HS1 Co of the manner in which the Performance Monitoring System is alleged not to satisfy such requirements.

### **3.2 Investigation of system**

As soon as reasonably practicable following receipt of a notice from a Train Operator under Condition B3.1, HS1 Co shall investigate the matters complained of and shall, within the period of 28 working days following the date of receipt of that notice, prepare and deliver to that Train Operator a report of its investigations which shall include:

3.2.1 details of all relevant tests and checks carried out by HS1 Co;

3.2.2 the results of HS1 Co's investigations;

3.2.3 HS1 Co's conclusion as to whether the Performance Monitoring System failed to satisfy the requirements set out in Condition B1.1 in the manner alleged by that Train Operator or in any other respect;

3.2.4 HS1 Co's reasons for its conclusions and copies of all relevant data and documentation in respect thereof; and

3.2.5 any steps which HS1 Co 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 B1.1, the results obtained from the Performance Monitoring System for the period of 2 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 by HS1 Co in a manner which is fair and reasonable to HS1 Co and the Train Operators affected, in order to correct the results.

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

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

The Access Parties shall, for a period of not less than 6 years, keep summaries of all material information relating to the monitoring of train performance.

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

Any Access Party may, without prejudice to Condition B3.2 and on giving at least 5 working days prior notice to the other Access Party:

4.2.1 audit and inspect at any reasonable time all processes, systems and records of the Performance Monitoring System applicable to an Access Agreement to which ~~the Train Operator~~ is a party for any particular period and in relation to the Train Operator's Services [provided pursuant to such Access Agreement](#);

4.2.2 inspect at any reasonable time all such premises and equipment as are used in connection with such Performance Monitoring System to monitor train performance in respect of the Train Operator's Services [provided pursuant to such Access Agreement](#); and

4.2.3 require the other Access Party to carry out analysis, investigations and tests of the relevant Performance Monitoring System including the processes, systems and equipment used in connection with the Performance Monitoring System in the presence of an independent expert nominated by the first Access Party such tests to be as reasonably required by the first Access Party to determine its accuracy and suitability to monitor train performance in respect of the Train Operator's Services [provided pursuant to such Access Agreement](#).

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

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

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

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

~~5. — 6. —~~

#### **5. ~~7.~~ CONDITION B5 - COOPERATION**

##### **5.1 ~~7.1~~ Review of operations**

All Access Parties having access to the Network shall, not less than once every 6 months, meet together and review train performance and performance of the infrastructure comprised in the

Network and discuss alterations to their respective operations which will improve train and infrastructure performance and reduce train delays and cancellations.

5.2 ~~7.2~~ **Implementation of alterations**

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

5.3 ~~7.3~~ **Obligations in Access Agreement**

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

~~**Part C – Modifications to the HS1 Network Code**~~

## PART C – MODIFICATIONS TO THE HSI NETWORK CODE

### *Explanatory Notes*

- A. *Part C provides for a process by which the HSI Network Code ~~may be changed~~ and other operational arrangements such as the HSI Emergency Access Code, the HSI Performance Data Accuracy Code and the HSI Railway Systems Code 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 a Train Operator or HSI Co and is subject to a consultation process.*
- C. *~~A procedure is included whereby an affected Train Operator who is dissatisfied with the decision of HSI Co may refer the matter to the Disputes Resolution Procedure. The Office of Rail Regulation is required to approve any changes before they come into effect and is given certain rights to reject proposed changes. Any objection by HSI Co and/or a Train Operator to a Proposal for Change is notified to the Office of Rail Regulation and considered by it as part of its decision as to whether to approve a Proposal for Change. Accordingly there is no referral of objections to the Dispute Resolution Procedure as the procedure is not intended to resolve differences between Access Parties of this nature.~~*
- D. *This Explanatory Note does not form part of the HSI Network Code.*

## **DEFINITIONS**

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

- "affiliate" means, in relation to a company, ~~means~~:
- (a) a company which is either a holding company or a subsidiary of such a company; or
  - (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary;
- and for these purposes "holding company" and "subsidiary" shall have the meanings given to them in section 1159 of the Companies Act 2006;
- "Consultation Period" means the period for consultation described in Condition C1.2.2; ~~and~~
- "Proposal for Change" means any proposal to change the HSI Network Code (including this Part C); ~~or any other arrangement which contemplates being varied in accordance with this Part C together with any modification of that proposal;~~ and
- "Review Period" means the period of 14 days commencing on the date HSI Co notifies the ORR and each Train Operator of its decision in

respect of a Proposal for Change in accordance with Condition C1.5.3.

## **1. CONDITION C1 - RECEIPT AND NOTIFICATION OF PROPOSALS FOR CHANGE**

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

HS1 Co and each Train Operator shall be entitled to make a Proposal for Change for consideration. Any such Proposal for Change shall be sent to HS1 Co where the sponsor of the proposal is a Train Operator and to the Train Operators where the sponsor of the proposal is HS1 Co. The Proposal for Change shall:

*1.1.1* be in writing;

*1.1.2* contain reasonable particulars of the proposed change and, where appropriate, specify the wording of the change proposed; ~~and~~

*1.1.3* 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 C1.7; and

*1.1.4* ~~1.1.3~~ be supported by an explanation in reasonable detail of the reasons for the proposed change.

### **1.2 Notice of Proposal for Change**

HS1 Co shall, within 7 working days following receipt of a Proposal for Change from ~~any organisation entitled to make one~~ a Train Operator or within 7 working days of HS1 Co making a Proposal for Change (as appropriate) or, if later, within 7 working days following receipt of any clarification that HS1 Co may reasonably request from the ~~sponsor of that~~ Train Operator who has proposed the Proposal for Change:

*1.2.1* give notice of that proposal ~~to each Access Party with which it has an Access Agreement~~ (including a provisional timescale for the consultation on, and consideration by HS1 Co of, the Proposal for Change) to each Train Operator and to the ORR; and

*1.2.2* invite the submission to HS1 Co 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 C1.2.1 above.

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

*1.3.1* A modification to a Proposal for Change may be proposed by HS1 Co or a Train Operator at any time during the Consultation Period.

*1.3.2* If at any time a Proposal for Change is (with the consent of its sponsor) modified in a material way, HS1 Co shall treat the proposal as a new Proposal for Change.

### **1.4 Clarification**

The sponsor of a Proposal for Change shall promptly comply with all reasonable written requests of HS1 Co or of a Train Operator for further clarification of the Proposal for Change.

## 1.5 Consideration by HS1 Co

1.5.1 Within 21 days following the end of the Consultation Period, HS1 Co may call one or more meetings of all the Train Operators to discuss the Proposal for Change and any written representations it has received in respect of that Proposal for Change.

1.5.2 The ORR shall be entitled to attend or be represented at any meeting called by HS1 Co in accordance with Condition C1.5.1.

1.5.3 Following the conclusion of the Consultation Period, and, where applicable, following the conclusion of any meetings called by HS1 Co pursuant to Condition C1.5.1, HS1 Co shall consider and, if considered appropriate, shall approve the Proposal for Change and shall notify the sponsor of the Proposal for Change and each Access Party that (where the sponsor is not HS1 Co), the ORR and each Train Operator whether HS1 Co approves or objects to the Proposal for Change has been approved.

~~1.6~~ ~~Rejection of a proposal for change~~ ~~Where HS1 Co decides not to accept the Proposal for Change or to accept the Proposal for Change with modifications, the reasons for rejection or modification by HS1 Co must be clearly set out by HS1 Co and must be advised in writing to the sponsor of the Proposal for Change, together with an explanation in reasonable detail of the reasons for its decision.~~

## 1.6 ~~1.7~~ ~~Right of Referral to Disputes Resolution Procedure~~ Objection

1.6.1 ~~1.7.1~~ ~~If it is a Train Operator which is the sponsor of~~ affected by the Proposal for Change ~~and that Train Operator is dissatisfied with the decision of HS1 Co notified to it under Condition C1.6, the sponsor of the Proposal for Change may refer the matter to the Disputes Resolution Procedure within 21 days of the receipt of HS1 Co's decision~~ 1.5.3, that Train Operator may prior to the end of the Review Period notify HS1 Co of its objection together with an explanation, in reasonable detail, of the grounds for such objection.

## 1.7 Consideration by ORR

1.7.1 As soon as reasonably practicable following the end of the Review Period, HS1 Co shall submit the Proposal for Change to the ORR, together with a written memorandum:

- (a) explaining the reasons for the Proposal for Change;
- (b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition C1.2.2);
- (c) stating the reasons for any dissent from that decision by any Train Operator which has been notified to HS1 Co pursuant to Condition C1.6; and
- (d) stating the date or series of dates upon which it is considered that the proposal should take effect, the date being no earlier than 14 days after the date on which the ORR approves the proposal pursuant to Condition C1.8.3.

~~1.7.2~~ ~~If a Train Operator affected by the Proposal for Change is dissatisfied with the decision of HS1 Co notified to it under Condition C1.5, that Train Operator may refer the matter to the Disputes Resolution Procedure within 21 days of the receipt of HS1 Co's decision. The sponsor of the Proposal for Change shall use its reasonable~~

endeavours to provide any further information required in relation to the consideration of a Proposal for Change by the ORR.

~~1.7.3 In relation to any matter which is referred to the Disputes Resolution Procedure pursuant to this Condition C1.7, the Panel and/or the Arbitrator (as the case may be) shall have the power to make any interim order as to the conduct or the positions of the parties pending final determination pursuant to the Disputes Resolution Procedure.~~  
The ORR shall notify HS1 Co as soon as reasonably practicable of its approval or objection of a Proposal for Change submitted to it pursuant to Condition C1.7.1.

1.7.4 Where HS1 Co approves a Proposal for Change and has not received a notice from any Train Operator pursuant to Condition C1.6.1 objecting to such proposal, the ORR shall approve the Proposal for Change unless such proposal contravenes any Applicable Law.

1.7.5 Where HS1 Co approves a Proposal for Change and has received a notice from one or more Train Operators pursuant to Condition C1.6.1 objecting to such proposal the ORR shall approve the Proposal for Change unless:

- (a) such Proposal for Change if implemented could unfairly prejudice the interests of any affected person; and
- (b) such unfair prejudice is not outweighed or is unlikely to be outweighed by any prejudice which would be or is likely to be suffered by any other person or persons if the change is not made, having due regard to (in equal priority):
  - (i) the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance;
  - (ii) the financial position of HS1 Co; and
  - (iii) the obligations of HS1 Co under the Concession Agreement;

1.7.6 Where HS1 Co objects to a Proposal for Change the ORR shall not approve such change unless the Proposal for Change does not affect (directly or indirectly):

- (a) the rights and obligations of HS1 Co under any Access Agreement;
- (b) the ability of HS1 Co to perform its obligations under the Concession Agreement; or
- (c) the financial position of HS1 Co.

## **2. CONDITION C2 - NOTIFICATION OF CHANGE**

### **2.1 Notification and effective date**

~~HS1 Co shall notify any~~If the ORR approves the proposed change to the HS1 Network Code made in accordance with this Part C to all Access Parties~~in accordance with Condition C1.7, HS1 Co shall ensure that all Train Operators shall be notified of the change and the date when such change will take effect.~~  
The change in question shall have effect on~~the expiry of 21 days from the date on which HS1 Co has given the required notification.;~~

- (a) the date or dates specified by HS1 Co in the notice given by it in accordance with Condition C1.1.3; and

- (b) save where Condition C2.1(a) applies the expiry of 14 days from the date of notification made pursuant to this Condition C2.1.

## 2.2 Provision of revised texts

HS1 Co shall, as soon as reasonably practicable following approval of a Proposal for Change, supply to all ~~Access Parties~~ Train Operators a revised version of the HS1 Network Code incorporating the change and publish a copy of the revised HS1 Network Code on its website.

## 2.3 Maintenance of records

HS1 Co shall keep and retain, for a period of 6 years following receipt, records of all:

2.3.1 representations made in respect of any Proposal for Change; and

~~2.3.2 written material prepared by or on behalf of HS1 Co and submitted as part of the Disputes Resolution Procedure; and~~

2.3.2 ~~2.3.3~~ any other material prepared or received pursuant to Conditions C1.1 and C1.2.

## ~~Part D – Timetable Change~~

## PART D – TIMETABLE CHANGE

### *Explanatory Note*

- A. *Part D sets out the procedures by which the Working Timetable, Rules of the Route and Rules of the Plan may be changed. Although changes may be made to the Working Timetable at any time, significant changes in the Passenger Timetable may be made only twice a year, namely at the dates referred to as the Principal Change Date (in December) and the Subsidiary Change Date (in May).*
- B. *The development of a robust timetable demands dialogue between HSI Co and Bidders (i.e. Train Operators and others entitled to take part in the process), between the Bidders themselves, and also between Bidders and their customers or customers' representative bodies.*
- C. *Significant timetable change may require discussion between Bidders and HSI Co over a period of several years; provision is therefore made for this in Condition D1.5 headed 'Major Changes to the Timetable'. At least two years before each Principal Change Date, HSI Co, in collaboration with potential Bidders, will commence preparation of a Base Timetable for that year which will incorporate anticipated changes into a single unified timetable plan.*
- D. *HSI Co has the role of managing the Working Timetable. It is responsible for accommodating within the timetable the contractual service specification of each Train Operator. Such specification will normally allow a degree of flexibility to both HSI Co and the Train Operator, both in terms of the timing and other characteristics of the services. Subject to the application of the Railways Regulations, a Train Operator's Train Slots are protected insofar as they are based on Firm Rights which are not inconsistent with the applicable Rules of the Route and/or applicable Rules of the Plan, provided that the Firm Rights have been asserted no later than the Priority Date. Any such flexibility will operate within the confines of the applicable Rules of the Route and applicable Rules of the Plan which, like the service specification, will constrain HSI Co's ability to flex the timetable.*
- E. *Each year, at the start of the timetable development process, HSI Co is obliged to review the applicable Rules of the Route and applicable Rules of the Plan and decide if any amendments should be made in respect of the period of the annual timetable commencing on the next Principal Change Date. In addition, each year, at the start of the process for development of the timetable changes applying from the Subsidiary Change Date, HSI Co is obliged to undertake a more limited review of the applicable Rules of the Route and the applicable Rules of the Plan. Bidders are consulted on each review, and there is a right to refer disputes to the Dispute Resolution Procedure.*
- F. *Each year at or before the start of the timetable development process there will be dialogue between HSI Co and Bidders regarding the Base Timetable content and any variations to those train services which the Bidder aspires to run in that timetable year. Each Bidder will notify HSI Co of any changes in the contractual rights (as set out in the Bidder's Access Agreement with HSI Co) that the Bidder will wish to exercise in support of these services, giving reasons for such changes, and will also notify HSI Co of any changes to the Base Timetable Train Slots which will be sought. The notification must be made on or before the Priority Date.*
- G. *Following the issue of the Base Timetable, HSI Co shall consult with Bidders to establish their aspirations for development of their services in the relevant Timetable Development Periods. Bidders shall, on or before the Priority Date, notify HSI Co the Firm Rights they wish to exercise, in respect of the Timetable Periods commencing on the next following Principal Change Date and the next following Subsidiary Change Date. Taking into account the*

notifications made by the Bidders and the Decision Criteria in Condition D8, HSI Co will prepare and issue a Draft Timetable on or before the last day of the Drafting Period.

- H. Following issue of the Draft Timetable, HSI Co will continue to work with Bidders to further refine the timetable plan to include any new aspirations of the Bidders. It is not intended that significant service changes should be introduced at this stage but changes may be introduced to the extent that it is reasonably practicable to do so in the available time. HSI Co will make a formal offer of its proposed First Working Timetable and Bidders will have a right of appeal against HSI Co's decisions reflected in that Timetable.
- I. In respect of each Timetable Week, where HSI Co requires possessions or other restrictions of use in order to undertake engineering work on the Network, HSI Co will notify Bidders of the changes it proposes to make to the allocation of capacity and timetable structure in the relevant week and whether it requires Train Operators to submit Revised Bids for timetable slots for that week. HSI Co, in consultation with Bidders, will then compile a revised timetable taking into account any Revised Bids and any Spot Bids received in the same timescale.
- J. Spot Bids may be made during the period of operation of a Working Timetable or during the preceding Supplemental Period. As a general rule, Spot Bids are given priority over other Spot Bids on a first in time basis; however, HSI Co may exercise its Flexing Right to resolve conflicts between Spot Bids and may reject Spot Bids where they would otherwise cause congestion.
- K. If a Spot Bid is received by HSI Co in relation to a sporting or other public event which, if accepted, would conflict with any Train Slot in the Working Timetable, HSI Co must consult with the Train Operator entitled to the Train Slot with a view to obtaining its consent to HSI Co exercising its Flexing Right to accommodate the Spot Bid. A Train Operator may not unreasonably withhold or delay its consent to a request from HSI Co in such circumstances if the Spot Bid relates to a Train Slot for the carriage of passengers in numbers which are materially greater than are usually carried on trains on the route and on the days and times of day in question. If as a result of accommodating a Spot Bid HSI Co is obliged to make payment to a Train Operator whose Train Slot is flexed by HSI Co, the Train Operator whose Spot Bid was accommodated must reimburse HSI Co the amount of such payment.
- L. In its capacity as manager of the Working Timetable, HSI Co is required to make a number of decisions, including whether to accept Bids for new or different timetable slots, how to reconcile competing or conflicting Bids and how to exercise any right it may have to flex a particular Train Operator's Bids (to the extent that the Train Operator's service specification allows it). HSI Co must have due regard to the [Railways](#) Regulations and to specified Decision Criteria when making decisions regarding proposed changes to the Working Timetable and to any applicable Rules of the Route and applicable Rules of the Plan. These criteria are to be weighed and balanced by HSI Co in the light of the particular circumstances surrounding each decision and in certain circumstances HSI Co must also consider whether it is reasonably practicable for proposed amendments to the Working Timetable to be developed and implemented in the time available.
- M. ~~In the event of a series of engineering, maintenance or renewal works requiring restrictions of use of one or more sections of track extending over a period of more than one year or a period containing a Principal Change Date and a Subsidiary Change Date, HSI Co may give notice to Train Operators affected by the works in order to consult, and if possible agree, with the relevant Train Operator a strategy for implementation of the works. HSI Co is obliged to have due regard to the Decision Criteria in deciding its proposed method of implementation and its decision is subject to appeal in accordance with the procedure referred to in paragraph N below.~~ It is expected that the normal means of resolving timetable disputes between

*HS1 Co and each Bidder will be by negotiation and agreement. However, to deal with those cases where agreement cannot be reached, provision is made for Bidders to appeal against any relevant HS1 Co decision in accordance with the Dispute Resolution Procedure.*

~~EN~~. This Explanatory Note does not form part of the [HS1 Network Code](#).

## DEFINITIONS

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

- "Ancillary Movements"** means train movements which are not an express part of any Services but which are necessary or reasonably required for giving full effect to the train movements which are an express part of the Services and shall include any such train movement as is referred to in paragraph (c) of the definition of "Services" to the extent that it is not expressly provided for in the relevant Access Agreement;
- "Appeal Period"** means a period, to be notified by HS1 Co in accordance with Condition D1.4, normally of 6 weeks commencing on the first Working Day following the end of the Finalisation Period and forming part of the Supplemental Period;
- "Base Timetable"** means, in respect of any Timetable Period, the timetable issued by HS1 Co in accordance with Condition D2.3 showing those Train Slots which HS1 Co expects to include in the Working Timetable applicable to that Timetable Period;
- "Base Timetable Initial Date"** means, in respect of any Timetable Period, the date to be notified by HS1 Co pursuant to Condition D1.4 and normally falling one calendar year before the Priority Date in respect of such Timetable Period;
- "Base Timetable Notification Date"** means, in respect of any Timetable Period, the date to be notified by HS1 Co pursuant to Condition D1.4 and normally falling 8 weeks prior to the Priority Date in respect of such Timetable Period;
- "Bid"** means any Train Slot included in the Base Timetable (to the extent not varied or withdrawn by any subsequent Bid), or any bid made to HS1 Co for one or more Train Slots (comprising, as the case may be, the notifications (if any) made in accordance with Conditions D5.2.1, D5.2.4 and D5.2.6, any Spot Bid or any Revised Bid);
- "Bidder"** means each Train Operator, ~~each Access Option Holder~~ and each other person who has been allowed to participate in the procedure set out in this Part D pursuant to Condition D1.2;
- "Capacity Request Deadline"** means the last day on which a Bidder may propose changes to the content of the Draft Timetable and which shall be no more than 4 weeks before the end of the Drafting Period;

**"Contingent Rights"** has, in relation to a Train Operator, the meaning given to it in that Train Operator's Access Agreement;

**"Decision Criteria"** means those decision criteria set out in Condition D8;

**"Development Commencement Date"** ~~means the first day of a Timetable~~~~Date" Development Period;~~  
Development Period;

**"Domestic Path"** means any Train Slot, other than an International Path, which is contiguous with a train movement on the NR Network or any combination of Train Slots which are contiguous with each other and of which at least one is contiguous with a planned train movement on the NR Network;

**"Draft Timetable"** means the version of the Working Timetable which HS1 Co provides in accordance with Condition D5.2.5;

**"Drafting Period"** means a period, to be notified by HS1 Co in accordance with Condition D1.4, normally of 16 weeks and commencing on the first Working Day following the end of the Preliminary Period;

**"Finalisation Period"** means a period, to be notified by HS1 Co in accordance with Condition D1.4, normally of 6 weeks and commencing on the first Working Day following the end of the Drafting Period;

**"Firm Right"** means:

- (a) in the case of a Bidder, a right under its Access Agreement in respect of the quantum, ~~timing~~ or any other characteristic of a train movement; and
- (b) in the case of HS1 Co, a right under the applicable Rules of the Route or the applicable Rules of the Plan,

which is not expressed to be subject to any contingency outside the control of the holder of the right, except, in a case within paragraph (a) above, the applicable Rules of the Route or the applicable Rules of the Plan, ~~and any reference in an Access Agreement to "Firm Contractual Right" shall be deemed to be a reference to "Firm Right" and this Part D;~~

**"First Working Timetable"** means the version of the Working Timetable in respect of which HS1 Co gives notice pursuant to Condition D5.2.7, as that version may be amended in accordance with Condition D5.2.9;

**"Flexing Right"** means a right, exercisable by HS1 Co, either

- (a) pursuant to Condition D5.4.1 or D6.4.1, to vary a Bid or to define in detail the content of a Train Slot or series of Train Slots in any way within and consistent with the Firm Rights (if any) of the Bidder; or

- (b) pursuant to Condition D5.4.2 or D6.4.2, to vary a Train Slot previously scheduled in the relevant Working Timetable or a Bid as the case may be;

**"International Operator"** means each Bidder who has rights to train movements through the Channel Tunnel;

**"International Path"** means any Train Slot which is contiguous with a train movement through the Channel Tunnel or any combination of Train Slots which are contiguous with each other and of which at least one is contiguous with a planned train movement through the Channel Tunnel;

**"Major Timetable Changes"** means any change of more than 4% in the number of timetabled train movements on the Network in any Timetable Period excluding any change arising as a consequences of the London Olympic Games 2012 or the Paralympic Games 2012;

**-"Passenger Change Date"** means the Principal Change Date or, as the case may be, the Subsidiary Change Date;

**"Passenger Timetable"** means any timetable of railway passenger services published or procured to be published to the public by HS1 Co;

**"Preliminary Period"** means a period, to be notified by HS1 Co in accordance with Condition D1.4, normally of 10 weeks and commencing on the first Working Day of the Timetable Development Period;

**"Preliminary Rules of the Route/ Plan Proposal"** means an initial proposal made by HS1 Co in respect of the applicable Rules of the Route or the applicable Rules of the Plan pursuant to Condition D3.1.3;

**"Principal Change Date"** means the date, to be notified by HS1 Co in accordance with Condition D1.4 and normally falling on the Sunday next following the second Saturday in December in any calendar year, or such alternative dates as may be notified by HS1 Co in accordance with the provisions of the Railways Regulations;

**"Priority Date"** means the date, notified under Condition D1.4 and in any event occurring not more than five Working Days after the commencement of the Drafting Period relating to a Timetable Development Period ending on a Principal Change Date, by which Bidders, in accordance with Condition D5.2.1, must notify to HS1 Co those rights which they intend or, as the case may be, do not intend to exercise in either or both of the Timetable Period commencing on that Principal Change Date and the Timetable Period commencing on the next following Subsidiary Change Date;

**"Qualified Person"** means a person whose business comprises or includes the provision, to operators of trains, ~~Access Option Holders~~ and persons who intend to apply for (i) a European licence and/or a statement of national regulatory provisions granted by the

[ORR under the Railway \(Licensing of Railway Undertakings\) Regulations 2005 or \(ii\)](#) a licence under section 8 of the Act, of services in relation to the acquisition of permission to use the Network;

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

**"Revised Bid"** means any Spot Bid seeking to revise a Train Slot scheduled in the relevant Working Timetable, as submitted to HS1 Co by a Train Operator in accordance with Condition D6.8.3;

**"Revision Bid Date"** means, in respect of any Supplemental Timetable Revision Period, a date to be specified by HS1 Co in accordance with Condition D6.8.1, being the last date for submission by a Bidder of its Revised Bids for the Timetable Week to which that Revision Bid Date relates;

**-"Revision Finalisation Date"** means, in respect of any Supplemental Timetable Revision Period, a date to be specified by HS1 Co in accordance with Condition D6.8.1, occurring 10 Working Days prior to the relevant Revision Period End Date, or, when Christmas Day falls no more than 10 Working Days prior to the relevant Revision Period End Date, the date occurring 15 Working Days prior to the relevant Revision Period End Date, being the last date for notification by HS1 Co of its decisions in respect of the Timetable Week to which that Revision Finalisation Date relates;

**"Revision Period Commencement Date"** means, in respect of any Supplemental Timetable Revision Period, a date to be specified by HS1 Co in accordance with Condition D6.8.1, normally occurring between 14 and 17 weeks prior to the relevant Revision Period End Date for the Supplemental Timetable Revision Period in question;

~~"Revision Period Commencement Date" means, in respect of any Supplemental Timetable Revision Period, a date to be specified by HS1 Co in accordance with Condition D6.8.1, normally occurring between 14 and 17 weeks prior to the relevant Revision Period End Date for the Supplemental Timetable Revision Period in question;~~ **"End Date"** means, in respect of any Supplemental Timetable Revision Period, the date occurring 12 weeks prior to the commencement of the Timetable Week to which that period relates;

**"Revision Response Date"** means, in respect of any Supplemental Timetable Revision Period, the date occurring one week after the relevant Revision Finalisation Date;

**"Short Notice Spot Bid"** means a Spot Bid for a Train Slot made to HS1 Co by 1000 hours on day A which would, if the Spot Bid were accepted, be planned to operate between 1000 hours on day A and 0001 hours on day C, where day A is the first day, day B is the second day (excluding, in the case of day A, Saturdays and

Sundays and, in the case of day B, Sundays), and day C is the third day of any 3 consecutive days from (and including) the day on which the Spot Bid is made;

**"Spot Bid"**

means any Bid (other than a Revised Bid) made during the Timetable Period to which that Bid relates or during the Supplemental Period immediately prior to that Timetable Period;

**"Subsidiary Change Date"**

means the date to be notified by HS1 Co in accordance with Condition D1.4 and normally falling on the Sunday which is eight days before the last Monday in May in any calendar year, or such alternative dates as may be notified by HS1 Co in accordance with the [Railways](#) Regulations;

**"Subsidiary Rules Revision"**

means, in respect of any Timetable Period commencing on a Subsidiary Change Date, any revision to the applicable Rules of the Route or the applicable Rules of the Plan that either:

- (a) is not material in nature and makes no material adjustment to or correction of detail set out in the applicable Rules of the Route or applicable Rules of the Plan; or
- (b) is material in nature but the need for which was not reasonably foreseeable when the applicable Rules of the Route or applicable Rules of the Plan were previously revised;

**"Supplemental Period"**

means the period, to be notified by HS1 Co in accordance with Condition D1.4, normally of 22 weeks, commencing on the first Working Day following the end of the Finalisation Period and ending on the day before the relevant Passenger Change Date;

**"Supplemental Timetable Revision Period"**

means, in respect of any Timetable Week, the period commencing on the relevant Revision Period Commencement Date and ending on the relevant Revision Period End Date;

**"Timetable Development Period"**

means, in respect of any Passenger Change Date, the period of development of the Working Timetable to be implemented on that date, being a period, to be notified by HS1 Co in accordance with Condition D1.4, normally of 55 weeks, ending on the day before that date and comprising, in chronological order:

- (a) a Preliminary Period;
- (b) a Drafting Period;
- (c) a Finalisation Period; and
- (d) a Supplemental Period;

~~"Timetable Period" means the period of operation of a Working Timetable;~~

<b>"Timetable Week"</b>	means, in respect of a Timetable Period, any week (or, in the case of the first and last such week of such period, part thereof) occurring during that period and commencing at 0001 hours on any Saturday and ending at 2400 hours on the next following Friday;
<b>"Timetable Week Slot"</b>	means, in respect of any Timetable Week, any Train Slot that is scheduled in the Working Timetable to leave its point of origin during that week;
<b>- "Train Slot"</b>	means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement; and
<b>"Working Day"</b>	means each of Monday to Friday (inclusive) excluding common law and statutory public holidays. When <del>Christmas Day, or where</del> Christmas Day falls on a Saturday or a Sunday, the public holiday which is established in lieu of Christmas Day occurs in any of the Appeal Period, Drafting Period, Finalisation Period, Preliminary Period, or Supplemental Period, HS1 Co shall be entitled to extend the duration of the relevant period by one week and shall notify such extension to each Bidder at the same time as details of the dates of each of the periods comprised in the relevant Timetable Development Period are notified to Bidders pursuant to Condition D1.4.

## 1.     **CONDITION D1 – GENERAL**

### 1.1     **Establishment of systems**

HS1 Co shall establish and manage the systems necessary to implement the procedures described in this Part D.

### 1.2     **Rights of potential Access Parties**

Any person who proposes in good faith to enter into an Access Agreement, ~~or become an Access Option Holder,~~ or any person as is referred to in paragraph (c) in the definition of "applicant" in the Railways Regulations acting on behalf of such person, shall be entitled to participate in the procedure set out in this Part D, provided that such person has first undertaken to HS1 Co to be bound (as a Bidder) by the provisions of Parts A and D of this HS1 Network Code.

### 1.3     **Confidentiality**

HS1 Co shall not, in relation to the operation of any part of the procedures set out in this Part D, be obliged to keep confidential:

- (a)     the identity of any Bidder; or
- (b)     any information provided to HS1 Co by a Bidder.

#### 1.4 Notification of relevant dates

HS1 Co shall, at least 12 weeks prior to the Base Timetable Initial Date relating to a Principal Change Date and having consulted with each Bidder, give notice to each Bidder of the dates of each of the periods comprised in the Timetable Development Periods commencing on the relevant Development Commencement Date and the next following Development Commencement Date. The dates in such notice shall include each Passenger Change Date and the Base Timetable Initial Date, Base Timetable Notification Date and the Priority Date applicable to those change dates.

#### 1.5 Major changes to the timetable

*1.5.1* In order to facilitate effective development of the Draft Timetable where HS1 Co considers that ~~major timetable changes~~ Major Timetable Changes may be required, for example to accommodate growth in demand for railway services, HS1 Co may decide to invoke a consultation process at an earlier stage than would otherwise be the case with a view to increasing the period for consultation and ensuring that the timetable changes are implemented in a co-ordinated fashion.

*1.5.2* In such circumstances HS1 Co shall notify each Bidder in writing of all relevant information about any such ~~major changes~~ Major Timetable Changes and of the Timetable Development Periods likely to be affected by such changes, and shall give notice to all Bidders of the date it proposes to commence the pre-bidding consultation process in respect of the affected Timetable Development Periods.

*1.5.3* Any Train Operator wishing to propose significant alterations to its services or any Bidder wishing to introduce significant new services shall consult with HS1 Co at the earliest opportunity to assist HS1 Co in deciding whether or not to invoke an early start to a pre-bidding consultation process and, if so, in deciding when that process should begin.

#### 1.6 Working Timetable

1.6.1 ~~2.3.1~~ HS1 Co shall draw up a timetable showing, so far as reasonably practicable, every train movement on the Network, including:

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

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

1.6.2 ~~2.3.1~~ Movements of trains operated by a Train Operator which are not made in the exercise of access rights shall not be entered in the Working Timetable. In this Condition D1.6.2, "access rights" means permission, under an Access Agreement, to use track for the purpose of or in connection with the operation of railway assets by a Train Operator.

1.6.3 ~~2.3.1~~ HS1 Co shall not be obliged to publish details of any Spot Bid which it accepts in any Passenger Timetable.

## **1.7 Accreditation**

~~HS1 Co may from time to time establish procedures for:~~

~~(A) accrediting planners employed or engaged by Train Operators for the purposes of those planners carrying out work in relation to the preparation of the Working Timetable on behalf of HS1 Co; and~~

~~(B) allowing such planners to undertake such work in relation to the preparation of the Working Timetable.~~

~~Any such procedures shall be notified by HS1 Co to all Train Operators.~~

## **2. CONDITION D2 – BASE TIMETABLE**

### **2.1 Consultation**

2.1.1 HS1 Co shall consult with Bidders before the Base Timetable Initial Date to establish their aspirations for development of their services during the Timetable Development Periods to which such Base Timetable Initial Date relates. HS1 Co shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to the development of the Bidder's services.

2.1.2 Bidders shall hold appropriate consultation regarding proposals for development of services with the Secretary of State and any other parties with the right to be so consulted.

2.1.3 HS1 Co shall facilitate and co-ordinate dialogue with all Bidders in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections, complementary service patterns and efficiency of operation.

### **2.2 Development of Base Timetable**

2.2.1 Following the consultation referred to in Condition D2.1.1, HS1 Co shall lead the development of a Base Timetable.

2.2.2 In developing such Base Timetable HS1 Co shall take account of any aspirations of Bidders for changes to the most recently issued Base Timetable which are notified to HS1 Co on or before the Base Timetable Initial Date relating to the Timetable Development Period in question. HS1 Co shall not be entitled to disregard such aspirations by reason solely of their complexity or the available time before the end of the Finalisation Period. HS1 Co shall also take account of the views of Bidders who do not wish changes to be made to the most recently issued Base Timetable, if such views are notified to HS1 Co on or before the Base Timetable Initial Date.

2.2.3 Following the Base Timetable Initial Date and at any time before the Base Timetable Notification Date, each Bidder shall have the right to notify to HS1 Co new aspirations (if any) which amend, delete or add to those aspirations (if any) which it notified in accordance with Condition D2.1.1. HS1 Co shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the matters set out in Condition D2.2.4, incorporate each new aspiration into the Base Timetable. If HS1 Co decides that it is unable to incorporate any new aspiration into

the Base Timetable it shall notify the relevant Bidder as soon as reasonably practicable.

2.2.4 HS1 Co, in consultation with Bidders, shall compile a Base Timetable which takes due account of:

- (a) the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of HS1 Co in respect of the Rules of the Route and the Rules of the Plan;
- (b) the rights or expectations of rights of each Bidder and of HS1 Co; and
- (c) the Decision Criteria.

### 2.3 Issue of the Base Timetable

2.3.1 HS1 Co shall, on or before the Base Timetable Notification Date, provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of HS1 Co in providing that information, the Base Timetable which shall show:

- (a) in respect of the relevant Principal Change Date, those Train Slots which HS1 Co expects to include in the Working Timetable commencing on that Principal Change Date;
- (b) in respect of the relevant Subsidiary Change Date, those Train Slots which HS1 Co expects to include in the Working Timetable commencing on that Subsidiary Change Date.

HS1 Co shall indicate any major aspects of the Base Timetable which are not capable of being brought into operation without further development work.

### 2.4 Right of appeal

2.4.1 *Referral to ~~DRP~~ [Dispute Resolution Procedure](#)*

Following the provision of the Base Timetable in accordance with Condition D2.3, a Bidder may refer any decision by HS1 Co in respect of the Base Timetable to the Dispute Resolution Procedure for determination, provided that such referral is made within the period specified in Condition D7.1.

2.4.2 *Implementation pending outcome of determination*

If any aspect of the Base Timetable has been referred for determination pursuant to Condition D2.4.1, HS1 Co shall be entitled (notwithstanding such Condition) to treat such aspect as accepted for the purposes of developing the Working Timetable for the Timetable Periods to which such Base Timetable relates, pending the outcome of that determination.

## **3. CONDITION D3 - CONSULTATION PROCESS TO ESTABLISH THE RULES ~~of~~ [the OF THE ROUTE/PLAN](#)**

### 3.1 Review of the Rules of Route/Rules of Plan

3.1.1 *Consultation*

At least 8 weeks prior to the Development Commencement Date HS1 Co shall consult with each Bidder in respect of HS1 Co's anticipated requirements for Restrictions of Use needed to undertake maintenance, renewal and enhancement works on the Network during the Timetable Period to which such Development Commencement Date relates and the next following Timetable Period.

### 3.1.2 *Review by HS1 Co*

Following the consultation referred to in Condition D3.1.1, HS1 Co shall, before the Development Commencement Date:

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

In conducting its review in accordance with this Condition D3.1.2 HS1 Co shall consult with:

- (i) each Bidder which is likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan; and
- (ii) each International Operator to ascertain the provisional International Paths that it wishes to have scheduled in the relevant Working Timetable and HS1 Co shall incorporate that information in the Preliminary Rules of the Route/Plan Proposal.

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

HS1 Co shall, on or before each Development Commencement Date, serve a notice ("Preliminary Rules of the Route/Plan Proposal") on each Bidder specifying:

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

and, in either case, its reasons.

### 3.1.4 *Consultation with Bidders*

Each Bidder shall:

- (a) consider the notice served on it by HS1 Co in accordance with Condition D3.1.3 and discuss with HS1 Co any concerns it may have in respect of the Preliminary Rules of the Route/Plan Proposal;
- (b) within 3 weeks of receipt of the Preliminary Rules of the Route/Plan Proposal give notice to HS1 Co of any representations or objections it wishes to make in relation to that Preliminary Rules of the Route/Plan Proposal and any alternative proposals it may have; and
- (c) ~~(b) within 3 weeks of receipt of the Preliminary Rules of the Route/Plan Proposal give notice to HS1 Co of any representations or objections it wishes to make in relation to that Preliminary Rules of the Route/Plan Proposal and any alternative proposals it may have; and~~(e) in respect of any Subsidiary Rules Revision, within 3 weeks of receipt of the Subsidiary Rules Revision, give notice to HS1 Co of any representations or objections it wishes to make in relation to that Subsidiary Rules Revision and any alternative proposals it may have.

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

- (a) HS1 Co shall, following consideration of any representations, objections and alternative proposals made by affected Bidders in accordance with Condition D3.1.4, review the Preliminary Rules of the Route/Plan Proposal or, as appropriate, the Subsidiary Rules Revision and, having due regard to the Decision Criteria, decide what amendments if any should be made to the applicable Rules of the Route and the applicable Rules of the Plan.
- (b) HS1 Co shall, no later than 4 weeks after the issue of the Preliminary Rules of the Route/Plan Proposal or, as appropriate, the Subsidiary Rules Revision, notify each Bidder which is likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan of the amendments it has decided to make pursuant to Condition D3.1.5(a) or, where no amendments are proposed, that fact.

### 3.1.6 *Optimisation of the Draft Timetable*

Notwithstanding the provisions of ~~D2.1.4~~D3.1.4 and ~~D2.1.5~~3.1.5, HS1 Co shall have the right having consulted with affected Bidders to make further modifications to the applicable Rules of the Route and the applicable Rules of the Plan, having due regard to the Decision Criteria, to facilitate optimisation of the Working Timetable, and HS1 Co shall promptly notify the Bidders thus affected.

### 3.1.7 *Referral to the Dispute Resolution Procedure*

Following notification of HS1 Co's decisions in accordance with Condition D3.1.5(b) or D3.1.6, a Bidder may refer any aspect of those decisions (including any decision of HS1 Co not to make an amendment or any decision by HS1 Co as to whether or not a revision is a Subsidiary Rules Revision) for determination pursuant to the Dispute Resolution Procedure under Condition D7, provided that such referral is made within the period specified in Condition D7.1.

### 3.1.8 *Implementation pending outcome of determination*

Notwithstanding the provisions of Condition D3.1.7, but subject to Condition D3.1.9, HS1 Co shall be entitled to implement (in particular for the purposes of developing the Working Timetable to be implemented on the next succeeding Passenger Change Date) any aspect of the applicable Rules of the Route or the applicable Rules of the Plan which has been referred for determination pursuant to that Condition, pending the outcome of that determination.

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

HS1 Co shall include within the Rules of the Plan a procedure to enable amendment of the Rules of the Route and the Rules of the Plan and consequential amendment of scheduled Train Slots other than as provided for in the foregoing provisions of this Condition D3.1. Notwithstanding the provisions of Condition D3.1.8, HS1 Co shall not be entitled to implement any change to that procedure until any appeal against any such change has been determined pursuant to Condition D7.

*3.1.10 Contents of amendment procedure*

Each of the procedures proposed by HS1 Co pursuant to Condition D3.1.9:

- (a) shall provide that no amendment shall be made to the applicable Rules of the Plan or the applicable Rules of the Route or that no revision shall be made to an accepted Bid (as the case may be) unless:
  - (i) HS1 Co shall have consulted, to the extent reasonably practicable, with each Bidder likely to be affected by the amendment or revision (as the case may be); and
  - (ii) due regard shall have been had to the Decision Criteria; and
- (b) shall be deemed to have been accepted by each such Bidder unless any such Bidder shall, within five Working Days of the relevant procedure being sent to it, have referred any aspect of it for determination pursuant to the Dispute Resolution Procedure in accordance with Condition D7.

**4. CONDITION D4 - AGREEMENT AND ESTABLISHMENT OF INTERNATIONAL AND DOMESTIC PATHS**

**4.1 Agreement on International Paths**

*4.1.1* Before consulting on the relevant Working Timetable as provided in Condition D5.1.1, HS1 Co shall agree with other relevant infrastructure managers which International Paths are to be included in the relevant Working Timetable.

*4.1.2* The International Paths referred to in Condition D4.1.1 may only be adjusted if absolutely necessary.

*4.1.3* HS1 Co shall assess the need for and, where necessary, propose and organise International Paths in such a way as to enable *ad hoc* capacity for freight services to be granted in accordance with regulation 21 of the [Railways](#) Regulations.

**4.2 Provisional International Paths**

*4.2.1* HS1 Co shall ensure that, no later than eleven months before the relevant Passenger Change Date, provisional International Paths have been established in co-operation

with other relevant infrastructure managers or allocation bodies (as case may be), in accordance with regulation 17 of the [Railways Regulations](#).

- 4.2.2 HS1 Co shall ensure that so far as possible, provisional International Paths established in accordance with Condition D4.2.1 are adhered to during the relevant subsequent allocation process.

#### 4.3 **Provisional Domestic Paths**

4.3.1 HS1 Co shall use reasonable endeavours to ensure that, no later than eleven months before the relevant Passenger Charge Date, provisional Domestic Paths have been established in cooperation with NRIL.

4.3.2 HS1 Co shall ensure that, so far as possible, provisional ~~Train Slots which are contiguous with train movements on the NR Network are~~ Domestic Paths established ~~and~~ in accordance with Condition D4.3.1 are adhered to during the relevant allocation process.

### 5. **CONDITION D5 - CONSULTATION PROCESS TO ESTABLISH THE FIRST WORKING TIMETABLE**

#### **5.1 Consultation**

5.1.1 Following the issue of the Base Timetable:

- (a) Bidders shall hold appropriate consultation regarding proposals for development of services with the Secretary of State and other parties with the right to be so consulted;
- (b) HS1 Co shall consult with Bidders before the Priority Date to establish their aspirations for development of their services in the relevant Timetable Development Periods. HS1 Co shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to development of the Bidder's services; and
- (c) HS1 Co shall facilitate and co-ordinate dialogue with all Bidders in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections and complementary service patterns.

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

5.2.1 *Notification of rights to be exercised*

Bidders shall, on or before the Priority Date, notify HS1 Co in respect of the Timetable Periods commencing on the next following Principal Change Date and the next following Subsidiary Change Date of:

- (a) those Firm Rights which they intend to exercise together with (to the extent such Firm Rights are being exercised to obtain the Train Slots which are different from those in the Base Timetable), an explanation of why they wish to exercise such Firm Rights in a manner different from the Base Timetable;
- (b) those Firm Rights which they have previously exercised to obtain the Train Slots in the Base Timetable but which they do not intend to exercise;

- (c) any other rights ([including any Contingent Rights](#)) which they intend to exercise or wish to negotiate; and
- (d) an indication of any amendments, additions or deletions they wish to make in respect of the Train Slots in the Base Timetable (pursuant to the notifications under paragraph (a), (b) or (c) above), which indication shall include the extent of their requirements (if any) as to the matters set out in Condition D5.3 in respect of each amended or additional Train Slot requested;

and:

- (i) in the case of paragraph (b) above, shall identify any Train Slots in the Base Timetable to which such Firm Rights relate and which they do not wish to operate;
- (ii) in the case of paragraph (c) above, shall distinguish between
  - (A) Train Slots (whether or not included within the Base Timetable) for which they would be seeking priority in the Draft Timetable in accordance with Condition D5.2.3(b);
  - (B) Train Slots (whether or not included within the Base Timetable) for which they would be seeking priority in the Draft Timetable in accordance with Condition D5.2.3(c); and
  - (C) other Train Slots (whether or not included within the Base Timetable); and
- (iii) in the case of paragraph (d) above, shall identify the rights, if any, applicable to each of the amended or additional Train Slots requested.

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

HS1 Co, in consultation with Bidders, will compile a Working Timetable which is in accordance with the following provisions of this Condition D5.2 and which:

- (a) in HS1 Co's opinion is capable of being brought into operation;
- (b) takes account of the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of HS1 Co as expressed in the applicable Rules of the Route and the applicable Rules of the Plan; and
- (c) includes, in respect of the relevant Timetable Period, the Train Slots shown in the Base Timetable, together with the additions, amendments and deletions requested by Bidders in accordance with Condition D5.2.1 so far as reasonably practicable taking into account the complexity of those changes, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the Decision Criteria.

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

Without prejudice to the exercise by HS1 Co of a Flexing Right, HS1 Co shall, in determining the order of priority for inclusion of Train Slots in the First Working Timetable, [having due regard to the Decision Criteria](#), accord priority:

- (a) first, to the satisfaction of any Firm Rights which:
  - (i) a Bidder may have, provided that

- (A) the rights have been notified to HS1 Co on or prior to the Priority Date in accordance with Condition D5.2.1(a) and constitute Firm Rights on the intended dates of the operation of those Train Slots; or
  - (B) the rights were exercised in the corresponding timetable prior to the timetable that is being prepared but have not been notified to HS1 Co on or prior to the Priority Date in accordance with Condition D5.2.1(a). In such case only those rights which relate to quantum and which have been notified to HS1 Co prior to the Capacity Request Deadline shall have force; or
- (ii) HS1 Co may have including those contained in the applicable Rules of the Route or the applicable Rules of the Plan,
- each of paragraphs (i) and (ii) above having equal priority;
- (b) second, to the satisfaction of any rights or expectations of rights which:
- (i) have been notified by a Bidder to HS1 Co on or prior to the Priority Date in accordance with Condition D5.2.1(c); and
  - (ii) correspond to Firm Rights held by that Bidder at the Priority Date under an Access Agreement in force on that date but which at the Priority Date are prevented from constituting Firm Rights only because any or all of the intended dates of operation of those Train Slots fall after the expiry of the Access Agreement, or fall after the expiry of the Firm Rights from which those Train Slots are derived, and provided that HS1 Co reasonably expects that an Access Agreement containing corresponding Firm Rights will be in force on the intended dates of operation of those Train Slots;
- (c) third, ~~having due regard to the Decision Criteria,~~ to the satisfaction of any other rights (including any Contingent Rights) or expectations of rights which:
- (i) a Bidder has notified to HS1 Co on or prior to the Priority Date in accordance with Condition D5.2.1(c); or
  - (ii) HS1 Co may have including those contained in the applicable Rules of the Route or the applicable Rules of the Plan, and which (in any such case), do not fall within Condition D5.2.3(a)(ii),
- each of paragraphs (i) and (ii) above having equal priority; and
- (d) thereafter, ~~having due regard to the Decision Criteria,~~ to the satisfaction of any rights (including any Contingent Rights) or expectations of rights which a Bidder has not notified to HS1 Co on or prior to the Priority Date in accordance with Condition D5.2.1(c) but which are notified to HS1 Co in accordance with Condition D5.2.4 or D5.2.6

provided that HS1 Co shall only accord priority pursuant to paragraph (a), (b) or (c) above if the Train Slots to which the relevant Firm Rights, rights or expectations of rights relate have been notified to HS1 Co on or before the Priority Date in accordance with Condition ~~D5.2.1(d)~~5.2 or included in the Base Timetable.

#### 5.2.4 *Development of the Draft Timetable*

- (a) Following the Priority Date and at any time before the Capacity Request Deadline each Bidder shall have the right to notify to HS1 Co new aspirations (if any) which amend, delete or add to those requests for changes which it notified in accordance with Condition D5.2.1.
- (b) HS1 Co shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the Capacity Request Deadline, and having due regard to the Decision Criteria, incorporate each new aspiration into the Draft Timetable in accordance with the priorities set out in Condition D5.2.3.

#### 5.2.5 *Issue of the Draft Timetable*

HS1 Co shall, on or before the last day of the Drafting Period, provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of HS1 Co in providing that information, the Draft Timetable which, as a result of notifications made to HS1 Co under Condition D5.2.1 and/or the operation of Conditions D5.2.3 and D5.2.4, shall show:

- (a) in respect of a Principal Change Date, those Train Slots which HS1 Co expects to include in the Working Timetable commencing on that Principal Change Date; and
- (b) in respect of a Subsidiary Change Date, those Train Slots which HS1 Co expects to include in the Working Timetable commencing on that Subsidiary Change Date.

#### 5.2.6 *Finalisation of the First Working Timetable offer*

- (a) Following the issue of the Draft Timetable in accordance with Condition D5.2.5 and up to the end of the Finalisation Period, each Bidder shall have the right to notify to HS1 Co new aspirations (if any) which amend, delete or add to those Train Slots shown in the Draft Timetable.
- (b) HS1 Co shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the Decision Criteria, incorporate each new aspiration into the First Working Timetable in accordance with the priorities set out in Condition D5.2.3.

#### 5.2.7 *Offer of the First Working Timetable*

HS1 Co shall, on or before the last day of the Finalisation Period, provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of HS1 Co in providing that information:

- (a) the Working Timetable which shall show:
  - (i) in respect of a Principal Change Date, those Train Slots which HS1 Co has decided to include in the Working Timetable commencing on that Principal Change Date; and

- (ii) in respect of a Subsidiary Change Date, those Train Slots which HS1 Co has decided to include in the Working Timetable commencing on that Subsidiary Change Date; and
- (b) details of those Train Slots which HS1 Co has decided not to include in the Working Timetable.

#### 5.2.8 *Acceptance of the First Working Timetable*

A Bidder shall, in respect of

- (a) the Working Timetable notified in accordance with Condition D5.2.7(a); or
- (b) the Train Slots notified in accordance with Condition D5.2.7(b) and any other Train Slots which the Bidder believes should have been notified in accordance with Condition D5.2.7,

within 10 Working Days of receipt of the notification advise HS1 Co of any Train Slots which it disputes and will be the subject of a reference to the Dispute Resolution Procedure. HS1 Co's decisions in respect of those Train Slots not so advised by the Bidder shall be deemed to have been accepted by the Bidder and may not be the subject of a reference to the Dispute Resolution Procedure.

#### 5.2.9 *Notification of Working Timetable*

As soon as possible after the expiry of the Appeal Period, HS1 Co shall give notice to each Bidder of the changes (if any) to the version of the Working Timetable provided under Condition D5.2.7 which it has made as a result of appeals determined pursuant to Condition D7.

### **5.3 Contents of a Bid**

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

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

- (k) the maximum train speed, maximum train weight and maximum train length.

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

5.4.1 HS1 Co may, in relation to

- (a) any Train Slot included in the Base Timetable;
- (b) any request for change notified to HS1 Co in accordance with Condition D5.2.1; or
- (c) any aspiration notified to HS1 Co in accordance with Condition D5.2.4 or D5.2.6;

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

- (i) HS1 Co shall have first consulted with each person materially affected by the exercise of such Flexing Right;
- (ii) HS1 Co shall, in exercising that Flexing Right, have had due regard to the Decision Criteria; and
- (iii) HS1 Co shall notify the Bidder of the exercise of its Flexing Right as soon as practicable thereafter.

5.4.2 HS1 Co shall exercise a Flexing Right at any time in order to give effect to a decision issued pursuant to the Dispute Resolution Procedure as provided for in Condition D7.

## **6. CONDITION D6 - SPOT BIDDING, VARIATION ~~of~~OF SCHEDULED TRAIN SLOTS ~~and the~~AND THE SUPPLEMENTAL TIMETABLE REVISION PROCESS**

### **6.1 Making of Spot Bids**

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

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

6.1.3 HS1 Co shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to a Spot Bid by that Bidder.

### **6.2 Contents of a Spot Bid**

A Bidder shall, in making a Spot Bid, indicate in respect of the Train Slots for which the Spot Bid is being made the extent of its requirements (if any) as to the matters listed in Condition D5.3.

### **6.3 Priorities in considering Spot Bids**

Without prejudice to the exercise by HS1 Co of a Flexing Right, HS1 Co shall, in relation to any Spot Bid which falls to be considered under Condition D6.8, deal with such Spot Bid as provided for in that Condition, and in all other cases shall accord priority to Spot Bids in the order in which they are received by HS1 Co.

## 6.4 Flexing rights – Spot Bids

### 6.4.1 *Time of exercise*

HS1 Co may, in relation to any Spot Bid, exercise a Flexing Right at any time prior to the acceptance of that Spot Bid, provided that:

- (a) HS1 Co shall have first consulted with each person materially affected by the exercise of such Flexing Right;
- (b) HS1 Co shall, in exercising that Flexing Right, have had due regard to the Decision Criteria; and
- (c) HS1 Co shall notify the Bidder of the exercise of its Flexing Right as soon as practicable thereafter.

### 6.4.2 *Requirement to exercise*

HS1 Co shall exercise a Flexing Right at any time:

- (a) in the circumstances referred to in Condition D6.5.3 or Condition D6.8.6; or
- (b) in order to give effect to a decision issued pursuant to the Dispute Resolution Procedure as provided for in Condition D7.

## 6.5 Timing of acceptance, modification or rejection of Spot Bids

6.5.1 Without prejudice to Conditions D3.1 and D6.4, HS1 Co shall in relation to any Spot Bid give notice (subject to Conditions D6.5.3, D6.5.4 and D6.8) to the Bidder of its acceptance, modification or rejection of it:

- (a) in relation to a Spot Bid received by HS1 Co no later than five weeks prior to the applicable Revision Finalisation Date, no later than five Working Days after receipt of that Spot Bid;
- (b) in relation to a Spot Bid not falling within paragraph (a), by the later of:
  - (i) five Working Days after the Revision Finalisation Date in respect of the Timetable Week during which that Spot Bid would, if accepted, be planned to operate; and
  - (ii) five Working Days after receipt of that Spot Bid; or
- (c) by 10.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on the day preceding day A which, if accepted, would be planned to operate on day C; or
- (d) by 15.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on day A which, if accepted, would be planned to operate on day C,

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

- (e) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by HS1 Co of the Spot Bid,

provided that, in determining whether to accept, modify or reject a Spot Bid, HS1 Co shall:

- (i) not accept such Bid if to do so would give rise to any conflict with any Train Slot already scheduled in the Working Timetable or with the applicable Rules of the Route or applicable Rules of the Plan or otherwise cause congestion; and
- (ii) otherwise have due regard to the Decision Criteria and, subject thereto and to the extent that the Spot Bid does not fall to be considered under Condition D6.8, give priority to that Spot Bid which is received first in time;

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

6.5.2 HS1 Co shall, where it fails to notify the Bidder in accordance with Condition D6.5.1, be deemed to have accepted the Bidder's Spot Bid.

6.5.3 If a Spot Bid for a Train Slot which is to be used for the carriage of passengers in connection with a sporting or other public event would, if accepted, conflict with any Train Slot already scheduled in the Working Timetable, HS1 Co shall:

- (a) consult with the Train Operator who is entitled to that Train Slot with a view to obtaining its consent to the exercise by HS1 Co of its Flexing Right to accommodate the relevant Spot Bid; and
- (b) if that Train Operator gives its consent, exercise such Flexing Right.

6.5.4 A Train Operator which is consulted by HS1 Co pursuant to Condition D6.5.3 shall not unreasonably withhold or delay its consent to the exercise by HS1 Co of its Flexing Right if the relevant Spot Bid is for a Train Slot to be used for the carriage of passengers in numbers which are materially greater than are usually carried on trains on the relevant part of the Network and on the days and times of day in question.

6.5.5 If, as a result of exercising its Flexing Right pursuant to Condition D6.5.3, HS1 Co is required to make any payment to a Train Operator under that Train Operator's Access Agreement, the Train Operator whose Spot Bid was accommodated by the exercise of that Flexing Right shall reimburse to HS1 Co the amount of that payment.

## 6.6 Decisions in relation to Spot Bids

6.6.1 A Bidder shall, in respect of any Spot Bid, following notice given by HS1 Co of the rejection of that Spot Bid, or the exercise of a Flexing Right by HS1 Co, notify HS1 Co if it disputes that decision of HS1 Co:

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

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

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

6.6.2 A Bidder shall, where it fails to notify HS1 Co in accordance with Condition D6.6.1, be deemed to have accepted the decision of HS1 Co and shall not, in respect of that decision, be entitled to make a reference to the Dispute Resolution Procedure pursuant to Condition D7.

6.6.3 Upon acceptance or deemed acceptance of a Spot Bid or upon a final determination pursuant to Condition D7, HS1 Co shall enter the Train Slots in question in the Working Timetable.

## 6.7 Variation of scheduled Train Slot

6.7.1 Once a Bidder is deemed to have accepted a decision of HS1 Co under Condition D5.2.8 or D6.6.2 or HS1 Co has accepted a Bidder's Bid in accordance with Condition D5.2.7 or D6.5, both the Bidder and HS1 Co shall, subject to Conditions D5.4.2, D6.4.2 and D6.7.2, be bound by that decision.

6.7.2 A Train Slot scheduled in the Working Timetable may be varied by HS1 Co:

- (a) in accordance with the procedures provided for in Condition D3.1.9, D6.5.3 or D6.8; or
- (b) by agreement between HS1 Co and the Bidder (provided that every other affected party has also agreed in writing); or
- (c) in order to give effect to a decision issued pursuant to the Dispute Resolution Procedure as provided for in Condition D7.

## 6.8 Supplemental Timetable Revision Process

6.8.1 HS1 Co shall, at least 26 weeks prior to any Passenger Change Date (and having previously consulted with each affected Bidder), provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of HS1 Co in providing that information, its specific proposals as to the Revision Period Commencement Dates, Revision Bid Dates and Revision Finalisation Dates applicable to the Timetable Period commencing on that Passenger Change Date.

6.8.2 HS1 Co shall:

- (a) on or before each Revision Period Commencement Date, provide to each Bidder its outline proposals for revision of the allocation of capacity in respect of the Timetable Week to which such Revision Period Commencement Date relates in order to enable HS1 Co to take the Restrictions of Use contained in the Rules of the Route and/or Rules of the Plan applicable to that Timetable Week;
- (b) in consultation with Bidders, develop the structure of the amended train plan for the relevant Timetable Week, including any revision of the allocation of capacity, in accordance with agreed criteria, on Routes directly affected by Restrictions of Use included in the applicable Rules of the Route and/or Rules of the Plan and on diversionary routes; and
- (c) within 4 weeks of each Revision Period Commencement Date, notify each affected Bidder:

- (i) of its capacity allocation decisions and proposed structure for the amended train plan for the relevant Timetable Week; and
    - (ii) whether HS1 Co requires any Bidder to prepare a Revised Bid in respect of any Timetable Week Slot in that Timetable Week.
- 6.8.3 Each Bidder shall, following receipt of notification from HS1 Co under Condition D6.8.2(c)(ii) in respect of a particular Timetable Week Slot, submit:
- (a) a Revised Bid in respect of that Timetable Week Slot; and
  - (b) a Revised Bid in respect of any other Timetable Week Slot, if any, which is materially affected by the revision of the Timetable Week Slot to which that notification relates;
- in each case no later than 4 weeks prior to the applicable Revision Finalisation Date.
- 6.8.4 HS1 Co in consultation with Bidders, will compile an amended timetable in respect of each Timetable Week, which is in accordance with its decisions notified under Condition D6.8.2(c)(i) and which:
- (a) in HS1 Co's opinion is capable of being brought into operation;
  - (b) subject to Condition D6.8.5, takes account of any Revised Bids submitted in accordance with Condition D6.8.3; and
  - (c) takes account of any Spot Bids received no later than 4 weeks prior to the applicable Revision Finalisation Date.
- 6.8.5 HS1 Co shall, where it is in receipt of a Revised Bid which it considers to have been properly submitted to it in accordance with the provisions of this Condition D6.8.3, in determining whether to accept, modify or reject that Revised Bid:
- (a) not accept such Revised Bid if to do so would give rise to any conflict with any Train Slot already scheduled in the Working Timetable or with the applicable Rules of the Route or applicable Rules of the Plan; and
  - (b) otherwise have due regard to the Decision Criteria,
- and any notice of modification or rejection of a Revised Bid shall include a concise explanation therefore.
- 6.8.6 HS1 Co shall be entitled as reasonably necessary to amend any Timetable Week Slot notified in accordance with Condition D6.8.2(c)(ii) and in relation to which no Revised Bid has been submitted to HS1 Co by a Bidder in accordance with Condition D6.8.3 in order to enable HS1 Co to take Restrictions of Use for the purpose of carrying out work included in the Rules of the Route and / or Rules of the Plan applicable to that Timetable Week Slot and that Bidder shall not, in respect of that decision, be entitled to make a reference to the Dispute Resolution Procedure pursuant to Condition D7.
- 6.8.7 HS1 Co shall, by no later than the Revision Finalisation Date in respect of each Timetable Week, notify each Bidder of its decisions regarding additional, amended and deleted Timetable Week Slots, including its decisions to accept, reject or modify any Revised Bid or any Spot Bid which has been submitted to it not less than 4 weeks prior to the Revision Finalisation Date in respect of the relevant Timetable Week.

- 6.8.8 The Bidder shall, following the receipt by it of notice of any decision by HS1 Co pursuant to Condition D6.8.2(c) or Condition D6.8.7, notify HS1 Co whether it accepts or disputes that decision of HS1 Co, in each case prior to the relevant Revision Response Date, and the provisions of Conditions D6.6.2, D6.6.3 and D6.7.1 shall apply, *mutatis mutandis*.
- 6.8.9 Without prejudice to Conditions D6.4 and D6.7, nothing in this Condition D6.8 shall entitle HS1 Co to amend any Train Slot already scheduled in the relevant Working Timetable except:
- (a) in order to take Restrictions of Use in accordance with the applicable Rules of the Route and the applicable Rules of the Plan; or
  - (b) by way of revision of the allocation of capacity on Routes directly affected by such Restrictions of Use and on diversionary routes in accordance with this Condition D6.8.

## 7. **CONDITION D7 -TIMETABLE APPEAL PROCEDURE**

### 7.1 **Right of appeal**

#### 7.1.1 *Grounds for making an appeal*

Without prejudice to Conditions D6.6.2, D6.7.1 and D6.8.6, if any Bidder is dissatisfied with any decision of HS1 Co made under this Part D, including:

- (a) the application by HS1 Co of the Decision Criteria;
- (b) the acceptance or rejection by HS1 Co of any Bid; and
- (c) the exercise by HS1 Co of a Flexing Right,

it may refer the matter to the Dispute Resolution Procedure for determination.

#### 7.1.2 *Timescales for making an appeal to the Dispute Resolution Procedure*

- (a) A reference to the Dispute Resolution Procedure under Condition D7.1.1 shall, save as shown in paragraph (b) below, be made within five Working Days of receipt of the relevant decision from HS1 Co. If Christmas Day occurs within such period of five Working Days then the period shall be lengthened to 10 Working Days.
- (b) A reference to the Dispute Resolution Procedure in respect of a decision by HS1 Co regarding Train Slots notified to Bidders in accordance with Condition D2.3 or Condition D5.2.7 shall be made within 10 Working Days of receipt of the relevant decision.

### 7.2 **Power of dispute bodies**

In relation to a reference to it made pursuant to Condition D7.1, any dispute panel shall, in determining the matter in question, have the power:

#### 7.2.1 in determining the matter in question:

- (a) to direct HS1 Co to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions");

- (b) to direct the parties to accept any submissions made by HS1 Co as to any Train Slots; and/or
- (c) to specify the Train Slots and other matters which HS1 Co should have determined in its decision made pursuant to this Part D,

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

- 7.2.2 having given general directions, on the application of HS1 Co within ~~five Working Days (or 10 Working Days if Christmas Day falls within such period of five Working Days)~~ the period referred to in Condition D7.1.2 of the determination of the matter in question (or such longer period as the dispute panel shall allow), to make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

### 7.3 **Liability of HS1 Co**

HS1 Co shall not be liable for the consequences of any decision made by it which is implemented in a Working Timetable where, as a result of a reference under this Condition D7 in respect of that decision, that decision is subsequently overturned, unless that decision is unreasonable or has been made in bad faith, in which case the making of that decision shall be deemed to have been a breach of HS1 Co's obligations under this Part D.

## 8. **CONDITION D8 - DECISION CRITERIA**

The Decision Criteria consist of the necessity or desirability of the following (paragraph (a) having priority over paragraphs (b) to (n) and paragraphs (b) to (n) having equal priority):

- (a) reflecting the priority given to specified types of rail service consistent with the declaration of specialised infrastructure made in respect of the Network in accordance with regulation 22 of the Railways Regulations;
- (b) enabling a Bidder to comply with any contract to which it is party (including any contracts with their customers and, in the case of a Bidder who is a franchisee or franchise operator, including the franchise agreement to which it is a party), in each case to the extent that HS1 Co is aware or has been informed of such contracts;
- (c) maintaining and improving the levels of service reliability;
- (d) maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (e) maintaining and improving connections between railway passenger services;
- (f) enabling operators of trains to utilise their railway assets efficiently and avoiding having to increase the numbers of railway assets which the operators require to maintain their service patterns;
- (g) avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria;

- (h) ensuring that, where the demand of passengers to travel between two points is evenly spread over a given period, the overall pattern of rail services should be similarly spread over that period;
- (i) ensuring that where practicable appropriate provision is made for reservation of capacity to meet the needs of Bidders whose businesses require short term flexibility where there is a reasonable likelihood that this capacity will be utilised during the currency of the timetable in question;
- (j) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;
- (k) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services;
- (l) encouraging the efficient use of capacity by considering a Bidder's previous level of utilisation of Train Slots;
- (m) avoiding, unless absolutely necessary, changes to provisional International Paths following issue of the applicable Rules of the Plan; and
- (n) taking into account the commercial interests of HS1 Co and existing and potential operators of trains in a manner compatible with the foregoing.

## **9. CONDITION D9 – THE ~~REGULATION~~ RAILWAYS REGULATIONS**

**9.1** Where compliance by HS1 Co with this Part D would be inconsistent with any ~~law~~ Applicable Law (including the Railways Regulations) HS1 Co shall: ~~comply with such law and shall be relieved from its failure to comply with this Part D to that extent.~~

## **~~Part E – Environmental Protection~~**

**9.1.1** comply with such Applicable Law and shall be relieved from its failure to comply with this Part D but only to the extent that it could not act in a manner compliant with this Part D in complying with such Applicable Law; and

**9.1.2** as soon as reasonably practicable develop and submit a Proposal for Change in accordance with Part C, which would modify this Part D so that it is compliant with all Applicable Laws.

## PART E - ENVIRONMENTAL PROTECTION

### Explanatory Note

- A. *Part E is concerned with environmental protection. HS1 Co and Train Operators must each develop and update at least once a year an environmental policy which amongst other things, is consistent with good industry practice. Train Operators are also required to develop and implement an environmental management system. Such system must be reviewed at least once a year and kept up to date.*
- B. *HS1 Co is entitled to carry out environmental audits of a Train Operator to assess the extent to which the Train Operator is complying with its environmental policy and environmental management system and its obligation under this Part E.*
- C. *Train Operators are required to notify HSI Co 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 HSI Co with a copy of any relevant authority for their carriage (such as a licence or certificate of registration).*
- ~~B~~D. *HS1 Co and Train Operators must promptly notify each other of any circumstances which are reasonably foreseeable as likely to give rise to Environmental Damage.*
- ~~C~~E. *Where HSI Co 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 HSI Co and the Train Operators using of the Network is or are the most appropriate persons to take such action.*
- ~~D~~F. *In making its assessment, HSI Co is obliged to have due regard to certain specified criteria. HSI Co is further obliged to give notice to affected Train Operators within specified time limits of its decision and the reasons therefor. If an affected Train Operator disagrees with HSI Co's assessment, it may refer the matter to the Disputes Resolution Procedure for determination.*
- ~~E~~G. *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 HSI Co or otherwise in cases of urgency, provisions exist for HSI Co to take the necessary action.*
- ~~F~~H. *Subject to HSI Co having complied with conditions F4 and G5 (respectively Vehicle Change and Network Change imposed by Competent Authorities) and to having given to all affected Train Operators ~~with which it has an access agreement~~ as much notice as shall be reasonably practicable, HSI Co 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.*
- I. *HS1 Co may through the process in Condition E3 change or introduce new environmental requirements which apply to Train Operators' use of the Network. Such environmental requirements may include matters such as minimising waste and energy consumption.*
- ~~G~~I. *This Explanatory Note does not form part of the HSI Network Code.*

## DEFINITIONS

In this Part E, unless the context otherwise requires:

"ECR Proposal" means a proposal by HS1 Co for an Environmental Requirements Change;

"Environmental Condition" means:

- (a) any Environmental Damage; or
- (b) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage,

which (in either case) in HS1 Co's reasonable opinion could result in HS1 Co 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;

"Environmental Policy" means a written policy regarding environmental protection and sustainability which complies with all Applicable Laws and HS1 Standards and reflects good industry practice;

"Environmental Requirements Change" or "ERC" means a change to the existing requirements under an Access Agreement and/or the introduction of new requirements under an Access Agreement relating to:

- (a) the handling and/or treatment of waste;
- (b) minimising:
  - (i) the creation of waste;
  - (ii) energy consumption; and/or
  - (iii) emission of carbon dioxide and/or other greenhouse gases.

in each case arising from a Train Operator's operation of passenger services and/or freight services on the Network;

- (c) incentivising a Train Operator to achieve the objectives described in paragraph (b) above including through the setting of binding or non-binding targets; and
- (d) monitoring the extent to which a Train Operator complies with the requirements described in paragraph (a) to (c) above.

"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).

## 1. CONDITION E1 - ENVIRONMENTAL INFORMATION REQUIREMENTS

### 1.1 ~~Train Operator's compliance~~ General environmental obligations

1.1.1 HS1 Co shall establish an Environmental Policy and, where HS1 Co considers it appropriate, publish such policy and any revisions thereto on its website. HS1 Co shall review its Environmental Policy from time to time and at least once every calendar year and, where applicable, update its Environmental Policy so as to ensure that it continues to comply with all Applicable Laws and HS1 Standards and reflects good industry practice.

1.1.2 Each Train Operator shall ~~provide HS1 Co with a copy of its written environmental protection policy and operational objectives and management arrangements and relevant procedures giving effect to that policy prior to permission to use the Routes is granted under the relevant Access Agreement.~~

### ~~1.2~~ HS1 Co's compliance:

- (a) develop and comply with an Environmental Policy which is consistent with the Environmental Policy of HS1 Co, as may be amended from time to time pursuant to Condition E1.1.1;
- (b) develop and operate an environmental management system giving effect to its Environmental Policy, which is consistent with the requirements of ISO 14001 (or any successor standard);
- (c) ~~HS1 Co shall provide each Train Operator~~ HS1 Co with a copy of its ~~written current~~ current environmental ~~protection policy and operational objectives and management arrangements giving effect to that policy.~~ policy and environmental management system (together the "Train Operator Environmental Documentation") prior to permission to use the Network is granted under the relevant Access Agreement; and
- (d) review its Train Operator Environmental Documentation from time to time and at least once every calendar year commencing from the date of the Access Agreement and, where appropriate, update such Train Operator Environmental Documentation so as to ensure that it:
  - (i) complies with all Applicable Laws and HS1 Standards;
  - (ii) reflects good industry practice; and
  - (iii) continues to be consistent with the Environmental Policy of HS1 Co.

1.1.3 Each Train Operator shall, prior to permission to use the Network is granted under the relevant Access Agreement, notify HS1 Co of the member of its staff

who is responsible for managing environmental issues arising from that Train Operator's use of the Network. Each Train Operator shall ensure that all of its staff (including its contractors, agents and employees) are aware of the environmental requirements that are relevant to activities carried out by them on the Network.

1.1.4 HS1 Co shall be entitled to carry out environmental management audits of a Train Operator from time to time so as to assess the extent to which that Train Operator is complying with its Train Operator Environmental Documentation and its obligations under this Part E.

## 1.2 ~~1.3~~ **Information as to materials to be transported**

Each Train Operator shall prior to commencement of the Services on the Network and from time to time, within a reasonable time of being requested to do so by HS1 Co, provide HS1 Co 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 or the type of train be likely to give rise to Environmental Damage if those materials were to be discharged or emitted or to escape or migrate; and
- (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.

## 1.3 ~~1.4~~ **Information following Environmental Damage**

1.3.1 Following the occurrence of any Environmental Damage, each Train Operator shall promptly provide HS1 Co access to the Train Operator's train maintenance records, environmental incidents records or other records as are, in the reasonable opinion of HS1 Co, relevant in connection with such Environmental Damage.

1.3.2 Following the occurrence of any Environmental Damage, HS1 Co shall on request of a Train Operator, provide to such Train Operator access to HS1 Co's environmental incidents records as are, in the reasonable opinion of HS1 Co, relevant in connection with such Environmental Damage.

## 1.4 ~~1.5~~ **General information - Train Operator**

Each Train Operator shall promptly notify HS1 Co (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 ~~1.6~~ **General information - HS1 Co**

HS1 Co 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 HS1 Co is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage which may affect the Train Operator. HS1 Co shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

## **2. CONDITION E2 - REMEDIAL ACTION**

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

#### *2.1.1 HS1 Co's assessment*

Where:

- (a) HS1 Co becomes aware that, as a direct or indirect result of the activities of a Train Operator, an Environmental Condition exists or has occurred and HS1 Co reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
- (b) HS1 Co 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,

HS1 Co shall make an assessment, on the best information available to it at the relevant time, as to which of HS1 Co and the Train Operator 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, HS1 Co 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 HS1 Co's assessment*

Within 60 days of making its assessment, HS1 Co 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 HS1 Co shall have used in making the assessment; and
- (e) the steps HS1 Co reasonably considers:

- (i) will be necessary to prevent, mitigate or remedy the Environmental Condition or the events or circumstances giving rise to the Direction of the Competent Authority in question, or to comply with the Direction in question; and
- (ii) should be taken by the Train Operator in question.

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

HS1 Co shall comply with any reasonable request of an affected Train Operator for additional information in relation to the relevant liability or HS1 Co's assessment, within a reasonable time of the request.

*2.1.5 Disagreement with HS1 Co's assessment*

If an affected Train Operator is dissatisfied with the assessment of HS1 Co or with any other statement or information provided by HS1 Co pursuant to Condition E2.1.3, it shall be entitled to refer the matter to the Disputes Resolution Procedure for determination. 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 HS1 Co'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 HS1 Co gives it notice pursuant to Condition E2.1.3(e), provided that HS1 Co shall have given it a reasonable opportunity to do so; and
- (b) bear the costs of taking those steps.

*2.2.2 HS1 Co's 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, HS1 Co shall provide the Train Operator with such assistance and co-operation as shall be reasonable and/or necessary in that respect.

**2.3 HS1 Co'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 HS1 Co; or
- (b) in HS1 Co'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,

HS1 Co shall be entitled to take the step in question and to be reimbursed by the Train Operator for the reasonable costs of doing so. HS1 Co shall give notice to the Train Operator in question of any step taken pursuant to this Condition E2.3.

## 2.4 **Liability of HS1 Co**

Where HS1 Co 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 HS1 Co, or any person acting on behalf of or on the instructions of HS1 Co, 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 HS1 Co 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 HS1 Co 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, HS1 Co 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, HS1 Co 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 HS1 Co 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 Train Operator's right to recover the whole or any part of the amounts in question from HS1 Co 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 to claim that any other person has the relevant liability.

# **~~Part F – Vehicle Change~~**

## **3. [CONDITION E3 – ENVIRONMENTAL REQUIREMENTS CHANGE](#)**

### **3.1 [Submission of Proposal](#)**

**3.1.1 [HS1 Co shall be entitled at any time to propose an Environmental Requirements Change](#)**

3.1.2 If HS1 Co wishes to make an Environmental Requirements Change, HS1 Co shall submit an ECR Proposal to each Train Operator that may be affected by the implementation of the proposed change.

### 3.2 **Content of ECR Proposal**

An ECR Proposal given by HS1 Co under Condition E3.1.2 shall:

3.2.1 be in writing;

3.2.2 contain reasonable particulars of the proposed Environmental Requirements Change and, where appropriate, specify the wording of the proposed Environmental Requirements Change;

3.2.3 specify the date or series of dates on which it is proposed that the Environmental Requirements Change come into effect, if other than 14 days after any approval notified by the ORR pursuant to Condition E3.5;

3.2.4 be supported by an explanation in reasonable detail of the reasons for the proposed Environmental Requirements Change;

3.2.5 invite the submission to HS1 Co of written representation in respect of the proposed Environmental Requirements 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 E3.1.2; and

3.2.6 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 HS1 Co and other Train Operators to enable them to assess the likely effect of the proposed Environmental Requirements Change.

### 3.3 **Clarification**

HS1 Co shall promptly comply with all reasonable written requests of a Train Operator for further clarification of an ERC Proposal.

### 3.4 **Consultation**

3.4.1 Each Train Operator who receives an ERC Proposal shall act in good faith and seek to agree the terms of the Environmental Requirements Change with HS1 Co.

3.4.2 HS1 Co shall consult with each affected Train Operator in relation to a proposed Environmental Requirements Change and shall take into account any reasonable comments made by a Train Operator in relation to the proposed Environmental Requirements Change.

3.4.3 Within 21 days following the end of the Consultation Period, HS1 Co may call one or more meetings of the affected Train Operators to discuss the ERC Proposal and any written representations it has received in respect of that proposal.

3.4.4 The ORR shall be entitled to attend or be represented at any meeting called by HS1 Co in accordance with Condition E3.4.3.

### 3.5     **Modifications and Withdrawal of ERC Proposals**

3.5.1     HS1 Co may withdraw an ERC Proposal at any time by giving written notice to all Train Operators who were notified of the ERC Proposal in accordance with Condition E3.1.2

3.5.2     HS1 Co may modify an ERC Proposal may at any time by giving written notice of the modification to all Train Operators who were notified of the ERC Proposal in accordance with Condition E3.1.2

### 3.6     **ORR Approval**

#### 3.6.1     Unanimous Agreement on ECR Proposal

- (a)     If the affected Train Operators and HS1 Co agree the terms of an Environmental Requirements Change, HS1 Co shall no later than 14 days from the date of such agreement submit the Environmental Requirements Change to the ORR together with a written memorandum:
  - (i)     explaining the reasons for the Environmental Requirements Change;
  - (ii)     containing details of the results of the consultation process (including copies of any representations made pursuant to Condition E3.4.2);
  - (iii)     stating the date or series of dates upon which the ECR should take effect, the date being no earlier than 14 days after the date on which the ORR approves the proposal pursuant to Condition.E3.6.1(b).
- (b)     Where HS1 Co notifies the ORR in accordance with Condition E3.6.1(a) the ORR shall approve the ECR Proposal unless such proposal contravenes any Applicable Law or HS1 Standard.

#### 3.6.2     Disagreement on ECR Proposal

- (a)     If after 45 days from the date on which the ERC Proposal was issued pursuant to Condition E3.1 HS1 Co and the affected Train Operator(s) have been unable to agree the terms of the proposed Environmental Requirements Change, HS1 Co may submit the Environmental Requirements Change to the ORR together with a written memorandum:
  - (i)     containing the information described in Condition E3.6.1(a)(i)-(iii); and
  - (ii)     explaining the reasons for disagreement between HS1 Co and the affected Train Operator(s)
- (b)     Where HS1 Co notifies the ORR in accordance with Condition E3.6.2(a) the ORR shall approve the ECR Proposal unless such proposal would:
  - (i)     contravene any Applicable Law.
  - (ii)     be inconsistent with good industry practice;
  - (iii)     result in the affected Train Operator(s) being in breach of the terms of any Access Agreement; and

- (iv) result in
  - (1) the affected Train Operator(s) being unfairly prejudiced by the proposed Environmental Requirements Change and
  - (2) such unfair prejudice is not outweighed or is unlikely to be outweighed by any prejudice which would be or is likely to be suffered by any other person or persons if the change is not made, having due regard to (in equal priority):
    - (A) the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance;
    - (B) the financial position of HS1 Co; and
    - (C) the obligations of HS1 Co under the Concession Agreement;

### 3.7 Notification and effective date

If the ORR approves the proposed change in accordance with Condition E3.6 HS1 Co shall ensure that all affected Train Operators shall be notified of the change and the date when such change will take effect. The change in question shall have effect on the:

- (a) date or dates specified by HS1 Co in the notice given by it in accordance with Condition C1.1.3; and
- (b) save where Condition C2.1(a) applies the expiry of 14 days from the date of notification made pursuant to this Condition C2.1.

## PART F - VEHICLE CHANGE

### *Explanatory Note*

- A. *Part F provides a procedure by which changes to railway vehicles, the use of which is permitted in an Access Agreement ~~and associated safety documentation~~ may be assessed and implemented. Vehicle Change includes any alteration to the physical characteristics of the vehicles, any increase in the length of any trains beyond that specified in the relevant Access Agreement and supporting operational documentation and any introduction of different vehicles on to the relevant routes which, in any case, is likely materially to affect the maintenance or operation of the Network or the operation of trains on the Network.*
- B. *Vehicle Changes may be initiated by a Train Operator who is termed the 'Sponsor' for that Vehicle Change.*
- C. *A Train Operator wishing to make a Vehicle Change must submit a proposal to HSI Co who must consult with affected parties ~~and~~. In some circumstances, HSI Co must give ~~the~~that Train Operator ~~an initial~~a preliminary response within 28 days. Although there is no charge for such a preliminary response, HSI Co is entitled to reimbursement of all of its costs necessary for HSI Co to carry out the investigation.*
- D. *A ~~Train Operator~~Sponsor is entitled to implement a proposed Vehicle Charge except in certain specified circumstances, including where compensation is an inadequate remedy or where it would result in HSI Co breaking any other Access Agreement.*
- E. *A ~~Train Operator~~Sponsor may have to pay compensation to HSI Co or one or more Train Operators in respect of any costs, losses or expenses incurred by HSI Co, any Train Operator or any other ~~operator~~operators of railway assets as a result of a Vehicle Change. The benefit of the Vehicle Change and the chances of recouping costs will be taken into account in determining the amount of such compensation.*
- F. *It is expected that the normal means of resolving differences between HSI Co and a Train Operator regarding proposed Vehicle Changes, will be by negotiation and agreement, possibly involving some element of financial compensation. However, in order to deal with those cases where agreement cannot be reached, provision is made for a matter to be referred to the Disputes Resolution Procedure.*
- G. *This Explanatory Note does not form part of the ~~Access Conditions~~HSI Network Code.*

## **DEFINITIONS**

In this Part F, unless the context otherwise requires:

- "**Authorised Variation**" means a Variation to an Established Vehicle Change, where:
- (a) the terms and conditions on which the Vehicle Change in question was established contain a Variation Procedure;
  - (b) that Variation Procedure has been followed in accordance with its terms; and

- (c) the result of the operation of that Variation Procedure is that the Established Vehicle Change has been varied;

~~"Compatibility File" means a document prepared by a Sponsor in accordance with the applicable HS1 Standards which describes:~~

- ~~(a) the Specified Equipment;~~
- ~~(B) the proposed changes to the Specified Equipment;~~
- ~~(c) the methods used to assess compatibility of the proposed changes to the Specified Equipment with the Network; and~~
- ~~(d) the criteria used to assess compatibility and how those criteria have been derived;~~

**"Compatibility Review Forum"** means a meeting convened by the Sponsor with affected parties to exchange information and review the proposal for Vehicle Change;

**"Established Vehicle Change"** means a Vehicle Change which a Sponsor is entitled by this Part F to carry out;

**"Relevant Response Date"** means, in relation to a proposal for a Vehicle Change ~~under this Part F~~, the ~~later of such dates as are~~date reasonably specified by HS1 Co under Condition F2.5.1(b)~~(i)~~ as the date on or before which HS1 Co ~~is~~intends to give notice of its response to that proposal under Condition F3.1, having regard to:

- (a) the size and complexity of the Vehicle Change; and
- (b) the likely impact of the Vehicle Change on the operation of the Network, other Train Operators and the operators of other railway assets,

and which shall not be:

- ~~(A)~~i) less than ~~60~~75 days; or
- ~~(B)~~ii) unless HS1 Co and the Sponsor agree otherwise in writing, more than 90 days,

from the date on which:

~~(x)~~ HS1 Co's notice under Condition F2.4.1~~(e)~~2.5.1(b) is given; or

(y) notice given by HS1 Co, the affected Train Operator or the affected operator of railway assets (as the case may be) under Condition F2.3.2,

[whichever is the later.](#)

- "Specified Equipment"** means, in respect of an Access Agreement, any railway vehicle the use of which is permitted on all or part of the Network pursuant to that Access Agreement;
- "Sponsor"** means a Train Operator who wishes to implement a Vehicle Change;
- ~~"Statement of Compatibility" means the written statement prepared by a Sponsor containing the information prescribed by the applicable HS1 Standards, including:~~
- ~~(a) the compatibility between the Specified Equipment and the Network;~~
  - ~~(b) the configuration of the Specified Equipment;~~
  - ~~(c) operational requirements and limitations;~~
  - ~~(d) route constraints; and~~
  - ~~(E) Network factors;~~
- ~~within which compatibility of the Specified Equipment and the Network has been assessed;~~
- ~~"Technical Specification for Interoperability" has the meaning ascribed to the term "TSI" in the Railways (Interoperability) Regulations 2006 (as may be amended, repealed, re-instated and/or replaced from time to time);~~**"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 a procedure which:
- (a) forms part of the terms and conditions on which Vehicle Change is established; and
  - (b) provides for an Established Vehicle Change itself to be varied after it has been first established;
- "Vehicle Change"** means, in respect of a Train Operator:
- (a) any change to the Specified Equipment including by way of:
    - (i) any alteration (not being a change within paragraph (b) or (c) below) to the physical characteristics of the Specified Equipment;

- (ii) any increase in the length of any trains beyond that specified in the Access Agreement to which it is a party; or
  - (iii) the inclusion in the Specified Equipment of any railway vehicle which is not so included,
- (b) any change to the Specified Equipment (not being a change within paragraph (c) below) which is likely to materially affect the operation of trains operated or anticipated as being operated in accordance with the terms of any Access Agreement; or
- (c) any material variation to an Established Vehicle Change which has yet to be implemented, other than an Authorised Variation;

which, in ~~any case~~ respect of any of the preceding paragraphs, is likely materially to affect the maintenance or operation of the Network or operation of trains on the Network, but excluding Authorised Variations.

**1. CONDITION F1 – FACILITATION AND COMPLIANCE WITH APPLICABLE LAW AND STANDARDS**

**1.1 HS1 Standards**

The obligation to comply with the requirements of this Part F shall be without prejudice to the obligations of HS1 Co and all Train Operators ~~with which it has an Access Agreement~~ to comply with the HS1 Standards and, to the extent applicable, Technical Specifications for Interoperability.

**1.2 Applicable Law/Laws**

The obligation to comply with the requirements of this Part F shall be without prejudice to the obligations of HS1 Co and all Train Operators ~~with which it has an Access Agreement~~ to comply with all ~~applicable laws~~ Applicable Laws, including:

*1.2.1* the Railways and Other Guided Transport Systems (Safety) Regulations 2006; and

*1.2.2* the Railways (Interoperability) Regulations 2006,

~~in each case as such regulations may be amended, repealed, re-instated and/or replaced from time to time.~~

**1.3 Obligation to facilitate Vehicle Change**

HS1 Co shall take all reasonable steps to facilitate the development, establishment and implementation of any proposal for Vehicle Change by a Train Operator.

**1.4 Facilitation**

The obligation of HS1 Co under Condition F1.3 means:

*1.4.1* the provision to a Train Operator of such information concerning the condition, capacity and/or capability of the Network as:

(a) HS1 Co may possess in a reasonably accessible form; and

(b) that Train Operator may reasonably request in connection with the development of a proposal for Vehicle Change by that Train Operator;

*1.4.2* where HS1 Co considers it appropriate, the publication on its website (subject to Condition A6 of the HS1 Network Code) of:

(a) every proposal for Vehicle Change made under Condition F2.1;

(b) every response to a proposal for Vehicle Change made by HS1 Co under Condition F3.1;

(c) every Authorised Variation;

*1.4.3* the provision of a preliminary response to a proposal for Vehicle Change by a Train Operator under Condition F2.6;

1.4.4 such consultation before a notice of a proposal for a Vehicle Change is submitted by a Train Operator as may reasonably be expected to enable that Train Operator to assess the feasibility and affordability of the proposed change; and

1.4.5 if requested, provision of the names and contact details of each Train Operator which HS1 Co considers may be affected by the implementation of a proposed Vehicle Change.

## 2. **CONDITION F2 - INITIATION OF VEHICLE CHANGE PROCEDURE**

### 2.1 **Submission ~~Notice~~ of proposal**

If a Train Operator ~~which has an Access Agreement~~ wishes to make a Vehicle Change ~~it~~, that Train Operator shall as soon as reasonably possible:

2.1.1 submit to HS1 Co and each Train Operator and other operator of railway assets that may be affected by the implementation of the proposed Vehicle Change; a proposal for such Vehicle Change;

2.1.2 provide details to HS1 Co of all Train Operators and other operators of railway assets to which the proposal for Vehicle Change has been submitted under Condition F2.1.1; and

2.1.3 permit HS1 Co to consult with the persons specified in Condition F2.1.1 to the extent provided for under Condition F2.5 subject to such requirements as to confidentiality as are reasonable.

### 2.2 **Content of Sponsor~~2~~'s notice of proposal**

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

2.2.1 state:

(i) the reasons why it proposes to make the Vehicle Change;

(ii) the nature of the Vehicle Change, including:

(a) any material change which the Sponsor proposes to make to the physical characteristics of any vehicle which is already included within the Specified Equipment; and

(b) a description of any vehicle which is not already included within the Specified Equipment, but which the Sponsor proposes to include within the Specified Equipment;

(iii) in the case of any vehicle of the kind referred to in Condition F ~~2.1.1~~ 2.2.1(ii)(a):

(c) whether it is proposed ~~to operate it~~ that such vehicle will be operated on any part of the Network on which it ~~does~~ is not already ~~operate~~ operated; and

(d) whether it is proposed ~~to operate it~~ that such vehicle will be operated at higher speeds or tonnages or to a larger gauge than it has previously been operated over any part of the Network on which such a vehicle already operates;

- (iv) in the case of any vehicle of the kind referred to in Condition F2.2.1(ii)(b), over what parts of the Network, and at what speeds, it proposes ~~to operate that~~ such ~~vehicles~~vehicle will be operated;
- (v) the proposed timetable for the implementation of the Vehicle Change;
- (vi) the Sponsor's proposals (if any) for the division of the costs of carrying out the Vehicle Change, including any proposals in relation to the calculation or payment of compensation to HS1 Co, any Train Operator and/or any other operator of railway assets in respect of the Vehicle Change;
- (vii) any additional terms and conditions which the Sponsor proposes should apply to the Vehicle Change, including any proposed variation procedure;
- (viii) whether the Sponsor intends to convene a Compatibility Review Forum in accordance with Condition F2.3.1 ~~and if so the proposed date and location of such forum; and~~

~~(iv) — a draft Statement of Compatibility; and~~

2.2.2 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 HS1 Co and other Train Operators to enable them to assess the likely effect of the proposed Vehicle Change on their business, assets and performance of any obligations or the exercise of any rights or discretions which they have in relation to railway services.

## 2.3 Compatibility Review Forum

2.3.1 A Sponsor shall be entitled to convene a Compatibility Review Forum, if it reasonably considers that such forum would be an appropriate means of assisting HS1 Co ~~and/or~~ the affected Train Operators and/or affected operators of railway assets in understanding and assessing a proposal for Vehicle Change, by notifying each of the affected parties described in Condition F2.1 of the date and location of the Compatibility Review Forum no later than 14 days from the date on which HS1 Co's notice under Condition F2.5.1(b) is given.

2.3.2 If the Sponsor does not propose to convene a Compatibility Review Forum but HS1 Co, an affected Train Operator and/or an affected ~~Train Operator~~operator of railway assets reasonably considers that such a forum is the most appropriate forum to understand a proposal for Vehicle Change, HS1 Co, the affected Train Operator or the affected ~~Train Operator~~operator of railway assets shall be entitled to request, by giving written notice to the Sponsor and HS1 Co (unless HS1 Co is the Sponsor or is giving the notice) no later than ~~30 days following receipt of the proposal for Vehicle Change given by the Sponsor in accordance with Condition F2.1,~~7 days from the date on which HS1 Co's notice under Condition F2.5.1(b) is given, that a Compatibility Review Forum be convened.

2.3.3 Where HS1 Co ~~or~~ an affected Train Operator or the affected operator of railway assets gives notice to a Sponsor in accordance with Condition F2.3.2, the Sponsor shall no later than ~~14~~7 days from receipt of such notice, notify each of the affected parties described in Condition F2.1 of the date and location of the Compatibility Review Forum.

2.3.4 The date of any Compatibility Review Forum notified pursuant to this Condition F2.3 shall not be earlier than 37, or later than 30 days before the date specified in HS1 Co's notice under Condition F2.5.1(b) for submission of comments to HS1 Co.

2.3.5 ~~2.3.4~~—A Compatibility Review Forum convened in accordance with this ~~Part~~Condition F2.3 shall be ~~held in accordance with the requirements set out in the applicable HS1 Standard~~chaired by HS1 Co. The Sponsor shall assist all participants in understanding the proposed Vehicle Change. HS1 Co shall produce formal minutes of the Compatibility Review Forum and, subject to Condition A6, publish them on its website.

## 2.4 **Statement of Compatibility Information**

In assessing a proposal for Vehicle Change, HS1 Co and/or an affected Train Operator shall be entitled to request a copy of the Statement of Compatibility and/or any information comprised in the Compatibility File prepared by the Sponsor in accordance with the applicable HS1 Standards. The Sponsor shall provide any requested information within 5 days following receipt by it of such a request.

## 2.5 **Evaluation of proposal for Vehicle Change**

2.5.1 HS1 Co shall, following receipt of any proposal for Vehicle Change ~~from the Sponsor~~pursuant to Condition F2.1:

(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~~ the Network, other Train Operators and other operators of railway assets; and

(b) within 30 days of the date on which the Sponsor's notice under Condition F2.1 was given, give a notice to the persons specified in Condition F2.1.1 (with the exception of HS1 Co), with a copy to the Sponsor, inviting them to submit comments to HS1 Co on the proposed Vehicle Change by a specified date, which shall not be earlier than ~~10, 15,~~ or later than 7 days before the Relevant Response Date. The notice given by HS1 Co pursuant to this Condition F2.5.1(b) shall state:

(i) the Relevant Response Date and the obligations of Train Operators and other operators of ~~railways~~railway assets under Conditions F2 and F3;

(ii) so far as reasonably practicable HS1 Co's estimate of the likely impact of the Vehicle Change on the operation and performance of the Network including the operation of trains on the Network (such estimate not to be binding on HS1 Co); and

(iii) HS1 Co's own proposals (if any) as to:

(A) the arrangements for, and any proposed terms applicable to, the implementation of the Vehicle Change;

~~(A)~~ (B) the arrangements for determining and paying any compensation in respect of the Vehicle Change;

~~(A)~~ (C) the timetable for implementation of the Vehicle Change;

~~(A)-(D)~~ the division of the costs of carrying out the Vehicle Change; ~~and~~

~~(A)-(E)~~ the additional terms and conditions (if any) which should apply to the Vehicle Change, including any variation procedure; ~~and~~

(F) any changes which will need to be made to any Access Agreements as a consequence of the implementation of the Vehicle Change.

- (c) send the proposal for Vehicle Change to any Train Operator and/or other operators of railway assets that may be affected by the implementation of the proposed Vehicle Change if the Sponsor has not already done so in accordance with Condition F2.1.1; and
- (d) provide details to the Sponsor of all Train Operators and/or other operators of railway assets (if any) to which HS1 Co has sent the proposal for Vehicle Change under Condition ~~F2.3.1~~2.5.1(c).

2.5.2 In preparing a notice under Condition ~~F2.3.1~~2.5.1(b), HS1 Co:

(a) shall comply with the ~~standards~~standard specified in Condition F2.2.2; and

(b) in respect of each of the matters specified in Condition F2.5.1(b)(iii) (if applicable):

~~(i) shall have regard to:~~

(i) ~~(A) shall have regard to~~ any relevant statements and proposals contained in the Sponsor's notice under Condition F2.1; ~~and~~

~~(A) the outcome of any Compatibility Review Forum convened in respect of the proposal for Vehicle Change;~~

(ii) shall give reasons for any differences between those statements and proposals and its own proposals under Condition F2.5.1(b)(iii) ~~and/or any conclusions reached at the Compatibility Review Forum~~; 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.

2.5.3 If a Train Operator or other operator of railway assets receives a proposal for Vehicle Change under Condition F2.1 or Condition F2.5.1(c), without prejudice to its rights to request the convening of, and to participate in, a Compatibility Review Forum in accordance with Condition ~~F2.3.2~~2.3.2, it shall:

(a) evaluate and discuss the proposal with HS1 Co for such period as is reasonable having due regard to the likely impact of the proposed Vehicle Change on that Train Operator; and

~~(b) within 60 days of receipt of the proposal for Vehicle Change notify:~~

~~(i) HS1 Co and the Sponsor of any comments it has on the draft Statement of Compatibility forming part of the proposal for Vehicle Change; and~~

(b) ~~(ii)~~ within 10 days of receipt of a request from HS1 Co notify HS1 Co of whether it considers that it is entitled to compensation from the Sponsor in relation to the implementation of the Vehicle Change and an estimate (which shall not be binding on that Train Operator) of the amount of such compensation determined in accordance with Condition F3.2, together with all information reasonably necessary to show how such estimate has been calculated.

## 2.6 Obligation to provide preliminary response

2.6.1 HS1 Co shall, if requested to do so in writing by the Sponsor, provide at no cost to the Sponsor, ~~a preliminary written response in respect of the proposed Vehicle Change (which shall not be binding on it) to the Sponsor~~ as soon as practicable and in any event within ~~the~~ a period of 28 days commencing on the date of the request for a preliminary response:

(a) ~~the date of first notification to it in writing of the proposal for Vehicle Change made by the Sponsor; or (if later)~~ a preliminary estimate (which shall not be binding on HS1 Co) of any compensation which HS1 Co considers that it is entitled to in relation to the implementation of the proposed Vehicle Change, determined in accordance with Condition F3.2, together with all information reasonably necessary to show how such estimate has been calculated; and

~~(b) the date of the request for a preliminary response;~~

(a) ~~and any~~ preliminary written response in respect of the proposed Vehicle Change (which shall not be binding on HS1 Co) and if such preliminary response, if is negative, shall include the reasons therefor.

2.6.2 HS1 Co shall not be obliged to comply with a request from the Sponsor under Condition F2.6.1:

(a) unless:

(i) the Relevant Response Date is 90 or more days after the date on which HS1 Co's notice under Condition F2.5.1(b) was given; and

(ii) the request is made within 7 days of the Sponsor receiving HS1 Co's notice under Condition F2.5.1(b); or

(b) to the extent that HS1 Co is unable to comply with such a request, having regard to the information reasonably available to it.

2.6.3 After consultation with the Sponsor HS1 Co may notify a later Relevant Response Date to the Sponsor and the persons to whom it gave its notice under Condition F2.5.1(b).

## 2.7 Reimbursement of costs

Subject to Conditions F2.4 and F3, HS1 Co and all Train Operators and other operators of railway assets who received a proposal for Vehicle Change under Condition F2.1 or

Condition F2.5.1(c) shall be entitled to reimbursement by the Sponsor of all of its costs incurred by it in assessing and responding to any Vehicle Change proposed by the Sponsor-in accordance with Condition F2.1. Those costs shall be the minimum reasonably necessary for HS1 Co or the affected Train Operator or other operator of railway assets (as the case may be) to carry out that assessment and response (excluding any loss of revenue, any consequential loss and any costs and expenses incurred in providing a preliminary response pursuant to Condition F2.6).

## 2.8 Provision of estimate of costs

HS1 Co and each Train Operator and other operator of railway assets who would be entitled to receive or who has received a proposal for Vehicle Change under Condition F2.1 or Condition F2.5.1(c) shall:

- (a) upon request from the Sponsor, provide the Sponsor and HS1 Co (save where HS1 Co is providing the written estimate) with a written estimate of the costs it would incur in assessing and responding to a proposal for Vehicle Change submitted by the Sponsor including its estimated costs of the work to be carried out;
- (b) be entitled to require from the Sponsor 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
- (c) 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.

## 2.9 Accuracy of estimates

HS1 Co and/or each affected Train Operator and/or other operator of ~~other~~ railway assets requested by a Sponsor to provide a written estimate of costs in accordance with Condition F2.8 shall ensure that :

- (a) any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it; and
- (b) so far as reasonably practicable, each type of cost comprised in the estimate is separately identified.

## 2.10 Obligation to incur no further costs

HS1 Co and/or each affected Train Operator and/or other operator of ~~other~~ railway assets requested by a Sponsor to provide a written estimate of costs in accordance with Condition F2.8 shall:

- (a) if requested at any time by the Sponsor, incur no further costs (except any costs that cannot reasonably be avoided) ; and
- (b) unless otherwise agreed by the Sponsor, incur no costs in excess of the estimate provided pursuant to Condition F2.8,

in respect of any proposal for Vehicle Change made by the Sponsor.

## 2.11 Relationship with Network Change

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

## 2.12 Vehicle Change for safety reasons

To the extent that a Vehicle Change is required to be made by a Train Operator for safety reasons, the Train Operator 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 Train Operator's Access Agreement). Upon expiry of the relevant period, the Train Operator shall promptly commence implementing and thereafter comply with the procedure set out in this Part F as if the relevant change were a Vehicle Change proposed by the Train Operator~~ within 5 days of being notified by HS1 Co or the relevant Competent Authority that the requirement has come into full force and effect.

## 3. CONDITION F3 - ~~RESPONSE BY HS1~~ TO VEHICLE CHANGE PROPOSAL

### 3.1 Obligation to give notice of response

HS1 Co shall give notice to the Sponsor of a Vehicle Change ~~within the earlier of: 90 days of the date of first notification to it in writing of the proposal for Vehicle Change submitted in accordance with condition F2 and 60 days following the convening of a Compatibility Review Forum~~ on or before the Relevant Response Date if:

- (a) it considers that one or more of the following conditions has been satisfied:
  - (i) the implementation of the Vehicle Change would necessarily result in HS1 Co breaching any Access Agreement;
  - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition F2.2 provided that HS1 Co shall first have given the Sponsor a reasonable opportunity to remedy that failure; or
  - (iii) the implementation of that Vehicle Change would result in a material adverse effect on the maintenance or operation of the Network or operation of trains on the Network, which in any such case cannot adequately be compensated under this Condition F3; and/or
- (b) any Train Operator or other operator of railway assets shall have given notice to HS1 Co that it considers that any of the conditions specified in paragraph (a) above has been satisfied; and/or
- (c) it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the Vehicle Change:
  - (i) in accordance with the compensation terms proposed under Condition F2.2;  
or
  - (ii) on terms other than those proposed (if any) under Condition F2.2; and/or

- (d) any Train Operator or other operator of railway assets shall have given notice to HS1 Co that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the Vehicle Change:
  - (i) in accordance with the compensation terms proposed under Condition F2.2;  
or
  - (ii) on terms other than those proposed (if any) under Condition F2.2.

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 Conditions F2.5.3(b)(~~ii~~) and F3.1 shall be an amount equal to the amount of the costs, direct losses and expenses (~~including~~excluding any loss of revenue and consequential loss) which can reasonably be expected to be incurred by HS1 Co or other Train Operators and other operators of railway assets (as the case may be), as a consequence of the implementation of the proposed Vehicle Change other than any such costs, losses or expenses which are attributable to the Sponsor improving its ability to compete with other Train Operators.

### 3.3 Benefits to be taken into account

There shall be taken into account in determining the amount of compensation referred to in Conditions F2.5.3(b)(~~ii~~) and F3.1:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by HS1 Co, and/or other Train Operators and/or other operators of railway assets, as a result of the proposed Vehicle Change; and
- (b) the ability or likely future ability of HS1 Co, and/or other Train Operators and/or other operators of railway assets to recoup any costs, losses and expenses from third parties including passengers and customers.

## 4. CONDITION F4 - CHANGES IMPOSED BY COMPETENT AUTHORITIES

4.1 Where a Train Operator or other operator of railway ~~asset~~assets is required (other than at the request or instigation of another Train Operator) to implement a Vehicle Change as a result of any Change of Law or any Direction of any Competent Authority:

- (a) each Train Operator or operator of railway assets (as the case may be) shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1, F2.2 and F2.5 (other than Conditions F2.2.1(vi) and F2.5.1(b)(iii)(B) and (D)) in respect of that Vehicle Change;
- (b) HS1 Co shall make such alterations (if any) to the Network as are reasonably necessary to accommodate that Vehicle Change and each Train Operator or operator of railway assets (as the case may be) shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 (other than Condition G1.2(d)(iv)); and

- (c) each Train Operator or operator of railway assets (as the case may be) shall bear its own costs and losses arising out of the implementation of the Vehicle Change or the consequences thereof.

## **5. CONDITION F5 - APPEAL PROCEDURE**

### **5.1 Right of reference to the Disputes Resolution Procedure**

If HS1 Co, any Train Operator or other operator of railway assets is dissatisfied as to:

- 5.1.1 any matter concerning the operation of the procedure set out in this Part F;
- 5.1.2 the contents of any notice given by HS1 Co under Condition F3.1 (and, in particular, the amount of any compensation referred to in the relevant Condition);
- 5.1.3 any estimate as referred to in Condition F2.6; or
- 5.1.4 in relation to a Train Operator, or other operator of railway assets, that its comments have not been taken into account by HS1 Co in its response to the Sponsor making the proposal for Vehicle Change,

it may refer the matter to the Disputes Resolution Procedure.

### **5.2 In relation to any matter which is referred to the Disputes Resolution Procedure pursuant to this Condition F5, the Panel and/or the Arbitrator (as the case may be) shall have the power:**

- 5.2.1 to make any interim order as to the conduct or the positions of the parties pending final determination of the matter;
- 5.2.2 in determining the matter in question:
  - (a) to direct the parties to the dispute to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions");
  - (b) to direct the parties to accept any submissions made by HS1 Co, a Train Operator or other operator of railway assets (as the case may be) as to the relevant Vehicle Change; and
  - (c) to specify the matters which HS1 Co should have determined in giving any notice pursuant to Condition F3.1,  
  
any such directions being either by interim order or final determination; and
- 5.2.3 having given general directions, on the application of any party to the dispute within 7 days of the determination of the matter in question (or such longer period as the Panel and/or the Arbitrator shall allow), to make such further orders as they/he shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

## 6. CONDITION F6 - ESTABLISHMENT AND IMPLEMENTATION

### 6.1 Implementation of a proposed Vehicle Change

6.1.1 With the exception of any Vehicle Change implemented under Conditions F2.12, the Sponsor shall be entitled to implement a proposed Vehicle Change if:

- (a) HS1 Co ~~has not given notice under~~ does not consider that any of the conditions specified in Condition F3.1(a) have been satisfied and HS1 Co has not received any notice from a Train Operator or other operator of railway assets in accordance with Condition F3.1 ~~by the relevant response date; or (b);~~
- (b) where HS1 Co has given notice ~~by to~~ by the ~~Relevant Response Date under Sponsor that~~ Condition F3.1 (c) ~~and~~ applies, 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) where HS1 Co has received notice from a Train Operator or other operator of railway assets 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 Vehicle Change between the Sponsor ~~and~~ HS1 Co and/or or any other Train Operator or operator of railway assets; and
- (e) the continuing compatibility of the Specified Equipment the subject of the proposal for Vehicle Change and the Network, if the Vehicle Change was implemented, has been confirmed in accordance with the relevant HS1 Standards and, where applicable, has been approved by a Notified Body (as defined under the Railways (Interoperability) Regulations 2006) and/or a Competent Person (as defined under the Railways and Other Guided Transport Systems (Safety) Regulations 2006).

6.1.2 The Sponsor may instruct HS1 Co to, if it considers it expedient to do so in order to confirm whether or not Condition F6.1.1 has been satisfied, ~~instruct HS1 Co to~~ issue a notice to all affected Train Operators and other operators of railway assets when the Sponsor reasonably believes that it is entitled to implement a proposed Vehicle Change and HS1 Co shall ~~then~~ serve such a notice within 7 days of the instruction.

6.1.3 The Sponsor's<sup>2</sup> entitlement to implement a proposed Vehicle Change shall be treated as confirmed 35 days after HS1 Co has served a notice in respect of that Vehicle Change in accordance with Condition F6.1.2 unless:

- (a) HS1 Co gives notice to the Sponsor within 35 days disputing the Sponsor's<sup>2</sup> entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons; or
- (b) HS1 Co receives notice from a Train Operator within 21 days of the notice served by HS1 Co, disputing the Sponsor's<sup>2</sup> 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 HS1 Co, an affected Train Operator or other affected operator of railway assets in accordance with Condition F6.1.3, the Sponsor may:

- (a) refer the matter for determination pursuant to Dispute Resolution Procedure and Condition F5 shall apply; or
- (b) withdraw the proposed Vehicle Change.

6.1.5 Where as a consequence of a Vehicle Change it is necessary to amend an Access Agreement to reflect that Vehicle Change, HS1 Co shall provide to the other party to such Access Agreement ~~a note~~written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the receipt of such ~~note~~notice by the relevant ~~Access Party~~Train Operator.

## 6.2 When a Vehicle Change may not be implemented

6.2.1 The Sponsor shall not be entitled to implement or require to be implemented a proposed Vehicle Change unless it is 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.

## ~~6.3 Post-Implementation Requirements~~

~~Where a Vehicle Change has been implemented in accordance with Condition F6.1, the Sponsor shall issue a copy of the final Statement of Compatibility to each of the parties which was notified by the Sponsor of the proposal for Vehicle Change in accordance with Condition F2.1.~~

## 7. ~~CONDITION F7~~ TRAIN OPERATOR'S DUTIES

### 7.1 ~~Compliance with other Access Conditions~~ of this HS1 Network Code

Nothing in this Part F releases the Sponsor from the duty to comply with any requirements of any other infrastructure manager affected by a proposed Vehicle Change. The Sponsor has sole responsibility for achieving ~~acceptance~~approval of the proposed Vehicle Change from each affected infrastructure manager.

## ~~Part G Network Change~~

## PART G - NETWORK CHANGE

### *Explanatory Note*

- A. *Part G provides a procedure by which changes may be made to the Network. A Network Change includes any change to any part of the Network or any change to the operation of the Network which has lasted for more than six months and in each case which is likely to materially affect the operation of the Network or of trains operated by an operator. In addition, a variation to any previously agreed Network Change is subject to the Network Change procedure.*
- B. *Proposals for Network Change may be initiated either by HSI Co or by a Train Operator. HSI Co proposing a Network Change has a duty to consult with all affected Train Operators on any proposed Network Change ~~and~~. In some circumstances, HSI Co must give any Train Operator proposing a Network Change ~~an initial~~ a preliminary response within 28 days. Although there is no charge for such a preliminary response, HSI Co is entitled to reimbursement of 100% of all costs of any further investigation of a Network Change proposal put forward by a Train Operator after the 28 day period. Any such costs are restricted to the minimum reasonably necessary for HSI Co to carry out an assessment. A similar provision applies in relation to costs incurred by a Train Operator assessing a Network Change proposed by HSI Co.*
- C. *HSI Co may implement a proposed Network Change except in certain circumstances including where any such change cannot be adequately compensated. HSI Co can also implement a Network Change for safety reasons without following the Network Change procedure for up to three months but upon the expiration of three months HSI Co is obliged to implement the Network Change procedure.*
- D. *The proposer of the Network Change may have to pay compensation in respect of any costs, losses or expenses incurred by (if a Train Operator is the proposer) HSI Co or any ~~other~~ Train Operator and (if HSI Co is the proposer) ~~and~~ by Train Operators, as a result of a Network Change. The benefit of the change to HSI Co or a Train Operator and their chances of recouping their costs or losses from third parties shall be taken into account in determining the amount of that compensation.*
- E. *The Short Term Network Change process allows HSI Co to propose to maintain any part of the Network at less than the published capability for a specified period. Condition G7 provides Train Operators with the ability to request, at HSI Co's cost, the reversal of any such change should they have a reasonable expectation as to the future use of the relevant part of the Network before the expiry of the specified period*
- F. *Where a Network Change is required to be made as a result of a Change of Law or a Direction of a Competent Authority, most of the normal obligations on Train Operators under Part G do not apply.*
- G. *It is expected that the normal means of resolving differences between HSI Co and each Train Operator regarding proposed Network Changes will be by negotiation and agreement, possibly involving some element of financial compensation. However, in order to deal with those cases where agreement cannot be reached, provision is made for disputes to be referred to the Disputes Resolution Procedure.*
- GH. *This Explanatory Note does not form part of the HSI Network Code.*

## DEFINITIONS

In this Part G, unless the context otherwise requires:

**"Authorised Variation"** means a variation to an Established Network Change where:

- (a) the terms and conditions on which the Network Change in question was established contain a variation procedure;
- (b) that variation procedure has been followed in accordance with its terms; and
- (c) the result of the operation of that variation procedure is that the Established Network Change has been varied;

"change" includes:

(a) improvement or deterioration, enlargement or reduction; and

(b) for the purposes of paragraph (b) of the definition of Network Change, a series of changes;

**"Effective Date"** means the date specified in a notice of proposal of a Short Term Network Change upon which the Short Term Network Change is proposed to become effective;

~~"Established Network Change" means a change falling within the definition of "Network Change" and which:~~

~~(A) in the case of a Network Change proposed by HS1 Co, HS1 Co is entitled to carry out having complied with the procedural and other requirements of this Part G; and~~

~~(b) in the case of a Network Change proposed by an Train Operator, HS1 Co is required by this Part G to carry out;~~

**"Established Date"** means the first date upon which a Short Term Network Change can be implemented in accordance with Condition G7, whether or not the change is implemented on that day;

"Established Network Change" means a change falling within the definition of "Network Change" and which:

(a) in the case of a Network Change proposed by HS1 Co, HS1 Co is entitled to carry out having complied with the procedural and other requirements of this Part G; and

(b) in the case of a Network Change proposed by a Train Operator, HS1 Co is required by this Part G to carry out;

**"Expiry Date"**

means the date specified in a notice of proposal in relation to a Short Term Network Change which shall not be more than two years, or such longer period as is agreed between HS1 Co and each Train Operator that may be affected by the implementation of the proposed Short Term Network Change or determined in accordance with Condition G6, from the later of the Effective Date and the Established Date;

**"Governmental Body"**

means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the Office of Rail Regulation);

**"method of delivery"**

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

**"modification"**

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

**"Network Change"**

means, in relation to a Train Operator,

(i) any change in or to any part of the Network (including its layout, configuration or conditions) which is likely materially to affect the operation of ;

(a) the Network; or

(b) trains operated, or anticipated as being operated in accordance with the terms of any Access Agreement, by any Train Operator on the Network; or

(ii) any change to the operation of the Network (being a change which does not fall within paragraph (a) above) which:

(a) is likely materially to affect the operation of trains operated, or anticipated as being operated in accordance with the terms of any Access Agreement, by any Train Operator on the Network; and

(b) has lasted or is likely to last for more than six months,

including ;

(x) a temporary speed restriction;

- (y) a material change to the location of any of the specified points referred to in Condition B1.1.1; or
- (z) a change to the method of delivery of any operational documentation (other than HS1 Standards) owned or used by HS1 Co and/or any Train Operator; or
- (iii) any material variation to an Established Network Change other than an Authorised Variation; or
- (iv) any Specified Upgrade Project,

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

**"Relevant Costs"**

means, in respect of any Network Change implemented in accordance with Condition G5:

- (i) in respect of HS1 Co all costs, losses and expenses (including loss of revenue, loss of profit and consequential losses) and liabilities to other train operators but excluding liabilities under any Train Operator's Access Agreement as a consequence of any Restriction of Use in connection with the implementation of that Network Change) incurred by HS1 Co as a consequence of the implementation of that Network Change;
- (ii) in respect of any Train Operator, all costs, expenses, and losses (including loss of profit, loss of revenue and consequential losses) incurred by that Train Operator as a consequence of any Restriction of Use in connection with the implementation of that Network Change;

**"Relevant Response Date"**

means:

- (i) in relation to a proposal for a Network Change under Condition G1, the later of such dates as are reasonably specified by HS1 Co under Condition G1.2(a), having regard to:
  - (a) the size and complexity of the Network Change; and
  - (b) the likely impact of the Network Change on the Train Operator,

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

(ii) in relation to a proposal for a Network Change under Condition G3, the later of such dates as are reasonably specified by HS1 Co under Condition G3.3.1(c)(i), having regard to:

(a) the size and complexity of the change; and

(b) the likely impact of the change on the Train Operator,

and which shall not be:

(A) less than 60 days; or

(B) unless HS1 Co and the Sponsor agree otherwise in writing, more than 90 days, from the date on which HS1 Co's notice under Condition G3.3.1(c) is given;

**"Short Term Network Change"**

means a Network Change which HS1 Co specifies as such in any proposal made under Condition G1, being a Network Change which involves a temporary reduction in the capability of the Network for a defined period of time during which there is no reasonable expectation of a requirement for the capability being temporarily withdrawn; ~~and~~

**"Specified Upgrade Project"**

means the replacement, upgrade or enhancement of signalling infrastructure, control systems and track base (including ballast, trackform and sleepers) as agreed by HS1 Co and the Secretary of State pursuant to the Concession Agreement; and

**"Sponsor"**

means a Train Operator who ~~has an Access Agreement with HS1 Co and who~~ wishes to implement a Network Change under Condition G3.

**CONDITION GA – FACILITATION AND COMPLIANCE**

**A1 HS1 Standards**

The obligation to comply with the requirements of this Part G shall be without prejudice to the obligations of HS1 Co and all Train Operators to comply with the HS1 Standards and, to the extent applicable, Technical Specifications for Interoperability.

**A2 Applicable Laws**

The obligation to comply with the requirements of this Part G shall be without prejudice to the obligations of HS1 Co and all Train Operators to comply with all Applicable Laws, including:

A2.1 the Railways and Other Guided Transport Systems (Safety) Regulations 2006; and

A2.2 the Railways (Interoperability) Regulations 2006.

### A3 **Obligation to facilitate Network Change**

HS1 Co shall take all reasonable steps to facilitate the development, establishment and implementation of any proposal for Network Change by a Train Operator.

### A4 **Facilitation**

The obligation of HS1 Co under Condition GA3 means:

- (a) the provision to a Train Operator of such information concerning the condition, capacity and/or capability of the Network as:
  - (i) HS1 Co may possess in a reasonably accessible form; and
  - (ii) that Train Operator may reasonably request in connection with the development of a proposal for Network Change by that Train Operator;
- (b) where HS1 Co considers it appropriate, the publication on its website (subject to Condition A6 of the HS1 Network Code) of:
  - (i) every proposal for Network Change made by HS1 Co under Condition G1.1 or by a Train Operator under Condition G3.1;
  - (ii) every response to a proposal for Network Change made by a Train Operator under Condition G2.1 or by HS1 Co under Condition G4.1; and
  - (iii) every Authorised Variation;
- (c) the provision of a preliminary response to a proposal for Network Change by a Train Operator under Condition G3.4; and
- (d) such consultation before a notice of a proposal for a Network Change is submitted by a Train Operator as may reasonably be expected to enable that Train Operator to assess the feasibility and affordability of the proposed change; and
- (e) if requested, provision of the names and contact details of each Train Operator which HS1 Co considers may be affected by the implementation of a proposed Network Change.

## **1. CONDITION G1 - NETWORK CHANGE PROPOSAL BY HS1 CO**

### **1.1 Notice of proposal**

Subject to Conditions G1.8 and G1.9, HS1 Co shall, if it wishes to implement a Network Change:

- (a) give notice of its proposal for Network Change to each Train Operator ~~with which it has an Access Agreement~~ and that may be affected by the implementation of the proposed Network Change together with particulars of the proposed Network Change which are reasonably necessary to enable that person to assess the effect of the proposed Network Change and to enable each Train Operator ~~with which it has an Access Agreement~~ to assess the effect of the proposed Network Change on the operation of its trains; ~~and~~

- (b) [where HS1 Co considers it appropriate, publish on its website a summary of its proposal for Network Change; and](#)
- (c) ~~(b)~~ invite the submission of comments from the persons specified in Condition G1.1(a) within such period as is reasonable in the circumstances having due regard to the likely impact of the proposed Network Change on those persons.

Any such notices shall be copied to the Secretary of State.

## 1.2 Content of notice of proposed Network Change

A notice of a proposed Network Change given by HS1 Co under Condition G1.1 shall:

- (a) state the ~~relevant response date~~ [Relevant Response Date](#) and the obligations of [the Train Operator](#) under Conditions G1 and G2;
- (b) indicate whether the proposed Network Change is a Short Term Network Change;
- (c) invite the persons specified in Condition G1.1(a) ~~(i) and (ii)~~ to submit comments by the ~~relevant response date~~ [Relevant Response Date](#);
- (d) contain:
  - (i) the reasons why it is proposed to make the Network Change, including the effect it is intended or may reasonably be expected to have on the operation of the Network or on trains operated on the Network;
  - (ii) a specification of the works to be done (including a plan showing where the work is to be done and the parts of the Network and associated railway assets likely to be affected);
  - (iii) the proposed times within which the works are to be done and when they are intended or may reasonably be expected to be begun and completed;
  - (iv) HS1 Co's proposals (if any) for the division of the costs of carrying out the Network Change, including any proposals in relation to the calculation or payment of compensation to Train ~~Operator's~~ [Operators and/or the calculation of any increases in access charges \(including any additional investment recovery charges and operations, maintenance, renewals and replacements charges \(as applicable\)\)](#) in respect of the Network Change;
  - (v) in the case of a Short Term Network Change:
    - (A) HS1 Co's proposals as to the Effective Date;
    - (B) HS1 Co's proposals as to the Expiry Date;
    - (C) the estimated timescale in which the Network Change could reasonably be reversed if so requested by a Train Operator based on its reasonable expectations as to future use of the Network; and
    - (D) the capability of the relevant section of the Network before the proposed Short Term Network Change (and any Short Term Network Change which it succeeds) and the proposed reduction to that capability;
  - (i) ~~(VI)~~ any additional terms and conditions which HS1 Co proposes should apply to the Network Change, including any proposed variation procedure; [and](#)

- (ii) describe any changes which will need to be made to any Access Agreement as a consequence of the implementation of the Network Change; 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 Network 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 and Provision of estimate of costs**

1.3.1 HS1 Co shall after giving notice of any proposal for Network Change under Condition G1.1(a) consult with all the Train Operators likely to be materially affected by the proposed Network Change to the extent reasonably necessary so as properly to inform those persons of the proposed Network Change and to enable each of those persons to assess the consequences for it of the proposed Network Change.

1.3.2 After consultation under this Condition G1.3 HS1 Co may notify a later Relevant Response Date to the persons to whom the notice of proposal for Network Change was given.

1.3.3 ~~1.3.2~~ Any Train Operator consulted by HS1 Co in accordance with Condition G1.3.1 shall, as soon as and so far as reasonably practicable, provide to HS1 Co an estimate of the costs, direct losses and expenses (~~including~~excluding any loss of revenue and consequential loss) which can reasonably be expected to be incurred by that Train Operator as a consequence of the implementation of the proposed Network Change by HS1 Co.

### 1.4 **Reimbursement of costs**

Subject to Conditions ~~G1.3~~1.3.3 and G2, each Train Operator shall be entitled to reimbursement by HS1 Co of the reasonable costs incurred by it in assessing and responding to any Network Change proposed by HS1 Co ~~in accordance with Condition G2.1~~. Those costs shall be the minimum reasonably necessary for the Train Operator to carry out that assessment and response (excluding any loss of revenue, any consequential loss and any costs and expenses incurred in providing a preliminary response pursuant to Condition G1.5).

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

A Train Operator shall, if requested to do so in writing by HS1 Co, provide at no cost to HS1 Co a preliminary written response in respect of a proposed Network Change (which, unless a Train Operator indicates otherwise, shall be binding on it) to HS1 Co as soon as practicable and in any event within a period of 28 days commencing on:

- (a) ~~the date of first notification to it in writing of the proposal for Network Change;~~  
~~or (if later)(b)~~ the date of the request for a preliminary response, and any such preliminary response, if negative, shall include the reasons therefor.

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

Each Train Operator shall upon request from HS1 Co from time to time provide HS1 Co with written estimates of the costs of assessing and responding to a proposal for Network

Change proposed by HS1 Co (as referred to in Condition G1.4) 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 HS1 Co from time to time, provide HS1 Co with such information as may be reasonably necessary to enable HS1 Co to assess the reasonableness of any estimate.

#### 1.7 Accuracy of estimates

Each Train Operator shall ensure that:

- (a) ~~Each Train Operator shall ensure that~~ any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it; and
- (b) so far as reasonably practicable, each type of cost comprised in the estimate provided pursuant o Condition G1.3.3 is separately identified.

#### 1.8 Obligation to incur no further costs

A Train Operator shall ~~;~~:

- (a) if requested at any time by HS1 Co incur no further costs (except any costs which cannot reasonably be avoided) ; and
- (b) unless otherwise agreed by HS1 Co, incur no costs in excess of the estimate provided pursuant to Condition G1.3.3,

in respect of any proposal for Network Change made by HS1 Co.

#### 1.9 Changes to the operation of the Network

In the case of a change within the meaning of paragraph (ii) of the definition of Network Change, HS1 Co may commence implementing the procedure set out in this Part G and shall, upon notice being given by the relevant Train Operator to HS1 Co at any time after the expiry of the relevant period, promptly commence implementing and thereafter comply with that procedure as if that change were a Network Change proposed by HS1 Co.

#### 1.10 Network Change for safety reasons

~~To~~ Subject to Condition G5, to the extent that a change within the meaning of paragraph (i) of the definition of Network Change is required to be made by HS1 Co for safety reasons, HS1 Co shall not be obliged to implement the procedure set out in this Part G in relation to that change until that change has lasted for three months. Upon expiry of the relevant period, HS1 Co shall promptly commence implementing and thereafter comply with the procedure set out in this Part G as if the relevant change were a Network Change proposed by HS1 Co.

## 2. **CONDITION G2 - RESPONSE TO HS1 CO SPONSORED NETWORK CHANGE PROPOSAL**

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

2.1.1 A Train Operator shall give notice to HS1 Co by the Relevant Response Date if it considers that:

- (a) one or more of the following conditions has been satisfied:
  - (i) the implementation of the proposed Network Change would necessarily result in HS1 Co breaching an Access Agreement to which that Train Operator is a party; or
  - (ii) HS1 Co has failed, in respect of the proposed Network Change, to provide sufficient particulars to that Train Operator under Condition G1.1, provided that HS1 Co shall first have been given a reasonable opportunity to remedy that failure; or

~~(iii) the implementation of the proposed Network Change would result in a material deterioration in the performance of that Train Operator's trains which cannot adequately be compensated under this Condition G2; and/or~~

- (b) it should be entitled to compensation from HS1 Co for the consequences of the implementation of the proposed Network Change either:
  - (i) in accordance with the compensation terms proposed under Condition G1.2(d)(iv); or
  - (ii) on terms other those proposed (if any) under Condition G1.2(d)(iv); or

(c) subject to Condition G2.1.3, the implementation of the proposed Network Change would result in a material deterioration in the performance of that Train Operator's trains which cannot adequately be compensated under this Condition G2 or, in respect of a Restriction of Use in connection with the implementation of the proposed change, under that Train Operator's Access Agreement;

2.1.2 Any notice of the kind referred to in Condition G2.1.1(a) or G2.1.1(c) above shall include the reasons for the Train Operator's opinion. Any notice of the kind mentioned in Condition G2.1.1(b)(ii) above shall include reasons why the Train Operator 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 Train Operator 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 HS1 Co should provide.

The notice referred to above shall contain such detail as is reasonable to enable HS1 Co to assess the merits of the Train Operator's decision.

2.1.3 A Train Operator shall only be entitled to give a notice pursuant to Condition G2.1.1(c) if it is able to demonstrate to HS1 Co that:

- (a) the terms of the proposed Network Change as notified by HS1 Co pursuant to Condition G1.1 have not given due consideration to the potential material deterioration in the performance of that Train Operator's trains that would be reasonably likely to arise from the implementation of the proposed Network Change;
- (b) the proposed manner and/or the proposed timescales for the implementation of the Network Change do not minimise the material deterioration in the performance of that Train Operator's trains as far as reasonably practicable; and
- (c) the scale of the consequences which cannot adequately be compensated under this Condition G2 or under the Train Operator's Access Agreement are not outweighed by the benefits which would arise or are likely to arise from the implementation of the Network Change.

## 2.2 Amount of compensation

Subject to Condition ~~G2.3~~2.3 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~~excluding any loss of revenue and consequential loss) which are reasonably incurred or can reasonably be expected to be incurred by the Train Operator as a consequence of the implementation of the proposed Network Change.

## 2.3 Benefits to be taken into account

There shall be taken into account in determining the amount of compensation referred to in Condition G~~2.1~~2.2:

- (a) the benefit (if any) to be obtained or likely ~~in the future~~ to be obtained in the future by the Train Operator as a ~~result~~consequence of the implementation of the proposed Network Change provided that to the extent that any such benefit is or is likely to be an increase in revenue, the amount of any loss of revenue suffered by the Train Operator during the implementation of the Network Change shall be taken into account; and
- (b) the ability or likely future ability of the Train Operator to recoup any costs, losses and expenses from third parties including passengers and customers.

## 2.4 ~~Rights in relation to implementation of Network Change~~ Restrictions of Use

~~If:~~

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

## 2.5 Implementation of Network Change proposed by HS1 Co

- (a) HS1 Co shall be entitled to implement a proposed Network Change if:
- (i) ~~it has not received a notice from any~~ Train Operator ~~shall have given a notice to HS1 Co pursuant to~~ under Condition G2.1.1(a) ~~and HS1 Co shall have failed to refer the matter to the Disputes Resolution Procedure~~ or G2.1.1(c) by the Relevant Response Date; or
  - ~~(b) —~~
  - (ii) it has received notice by the Relevant Response Date from a Train Operator ~~shall have given notice to HS1 Co pursuant to~~ under Condition G2.1.1(b) ~~and HS1 Co shall have failed~~ either:
    - ~~(i) — to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or~~
    - ~~(ii) — to refer the matter to the Disputes Resolution Procedure within 14 days of the date of the notice in question,~~  
~~the proposed Network Change shall not be implemented. In any other case and subject to the other provisions of this HS1 Network Code, HS1 Co shall be entitled to implement the Network Change, the amount of any compensation referred to in Condition G2.2 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G6;~~
  - (iii) there is no other unresolved dispute under this Part G (whether under this Condition G2.5 or otherwise) as regards the proposed change between HS1 Co and any affected Train Operator; and
  - (iv) the continuing compatibility of the Specified Equipment operated on the Network if the Network Change (and any associated changes to the Specified Equipment) was implemented has been confirmed in accordance with the relevant HS1 Standards and, where applicable, has been approved by a Notified Body as defined under the Railways (Interoperability) Regulations 2006 and/or a Competent Person (as defined under the Railways and Other Guided Transport Systems (Safety) Regulations 2006).
- (b) HS1 Co may, if it considers it expedient to do so in order to confirm whether or not Condition G2.5(a) has been satisfied, issue a notice to all affected Train Operators when it reasonably believes it is entitled to implement a proposed Network Change.
- (c) HS1 Co's entitlement to implement a proposed Network Change shall be treated as confirmed 21 days after it has served a notice in respect of that Network Change in accordance with Condition G2.5(b) unless it receives notice from a Train Operator within those 21 days disputing HS1 Co's entitlement to implement that proposed Network Change under Condition G2.5(a) and giving full particulars of its reasons.
- (d) If HS1 Co does not agree with the contents of a notice served by an affected Train Operator in accordance with Condition G2.5(c), HS1 Co may:

- (i) refer the matter to the Disputes Resolution Procedure and Condition G6 shall apply; or
- (ii) withdraw the proposed Network Change.
- (e) HS1 Co shall not be entitled to implement a proposed Network Change unless it is so entitled to implement that Network Change under Condition G2.5(a).
- (f) For the purposes of the Conditions G2.5(a), unresolved disputes shall include:
  - (i) a notice has been served under Condition G2.1.1(a) or G2.1.1(c) which has not been withdrawn, resolved under Condition G6 or agreed not to apply; and
  - (ii) a notice has been served under Condition G2.1.1(b) which has not been agreed or resolved as referred to in Condition G2.5(a)(ii) or otherwise agreed, resolved or withdrawn.
- (g) When HS1 Co receives a notice referred to in Condition G2.1.1(c), it shall refer the matter to the Disputes Resolution Procedure and Condition G6 shall apply. Within 21 days of a determination to the effect that HS1 Co is entitled to implement the proposed Network Change, HS1 Co may implement the Network Change.

2.6 Where as a consequence of a Network Change proposed by HS1 Co, it is necessary to amend an Access Agreement to reflect that Network Change, HS1 Co shall provide to the other party to such Access Agreement written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the receipt of such notice by the relevant Train Operator.

### **3. CONDITION G3 - INITIATION OF NETWORK CHANGE PROPOSAL BY A TRAIN OPERATOR**

#### **3.1 Submission of proposal**

A Sponsor shall, if it wishes HS1 Co to make a Network Change:

- ~~(A)~~ (a) submit to HS1 Co a proposal for such change; and
- (b) permit HS1 Co to consult to the extent provided for under Condition ~~G3.3~~3.3.1(b) subject to such requirements as to confidentiality as are reasonable.

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

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

- (a) contain:
  - (i) the reasons why it is proposed to make the Network Change, including the effects it is intended or expected to have on the operation of the Network or on trains operated on the Network;
  - (ii) a specification of the works to be done (including a plan or plans showing where the work is to be done and the parts of the Network and associated railway assets likely to be affected);
  - (iii) the proposed times within which the works are to be done and when they are intended or expected to be begun and completed;

- (iv) the Sponsor's proposals (if any) for the division of the costs of carrying out the Network Change including any proposals in relation to the calculation or payment of compensation to HS1 Co or any Train Operator in respect of the Network Change; and
  - (v) the additional terms and conditions (if any) which the Sponsor proposes should apply to the Network 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 G3.3.1(b), to enable HS1 Co and any person specified in Condition G3.3.1(b) to assess the likely effect of the proposed Network Change on its business and its performance of any obligations or exercise of any discretions which it has in relation to railway services.

### 3.3 Evaluation of proposal and consultation

3.3.1 HS1 shall following receipt of any proposal for Network Change from the Sponsor:

- (a) evaluate and discuss the proposal for Network Change with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed Network Change on either or both of HS1 Co and other Train Operators; and
- (b) consult with other Train Operators to the extent reasonably necessary so as properly to inform them of the proposed Network Change and to enable them to assess the consequences for them of the proposed Network Change.
- (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 other Train Operators, with a copy to the Sponsor, inviting them to submit comments by the Relevant Response Date and stating:
  - (i) the Relevant Response Date and the obligations of Train Operators 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) so far as reasonably practicable HS1 Co's estimate of the likely impact of the change on the operation and performance of the Network (such estimate not to be binding on HS1 Co); and
  - (iv) HS1 Co's own proposals (if any) as to:
    - (A) the arrangements for, and any proposed terms applicable to, the implementation of the change;
    - (B) the specification of the works to be done (including a plan or plans showing where the work is to be done and the parts of the Network and associated railway assets likely to be affected);

- (C) the times within which the works are to be done and when they are intended or expected to be begun and completed;
- (D) the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to Train Operators in respect of the change and/or any proposals for providing security of payment in relation to the proposed Network Change and/or associated compensation;
- (E) any additional terms and conditions which should apply to the change, including any proposed variation procedure; and
- (F) any changes which will need to be made to any Access Agreements as a consequence of the implementation of the Network Change.

3.3.2 In preparing a notice under Condition G3.3.1(c), HS1 Co:

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

3.3.3 ~~3.3.2~~—The Sponsor shall use all reasonable endeavours to facilitate the consultation referred to in Conditions G3.3.1(a) and G3.3.1(b).

3.4 **Provision of ~~estimate~~Estimate of ~~costs~~Compensation by Train Operators**

3.4.1 Any Train Operator consulted by HS1 Co in accordance with Condition G3.3.1(b) shall, as soon as and so far as reasonably practicable, provide to HS1 Co, an estimate of the costs, direct losses and expenses (~~including~~excluding any loss of revenue and consequential loss) which can reasonably be expected to be incurred by such Train Operator as a consequence of the implementation of the proposed Network Change by the Sponsor.

3.4.2 HS1 Co shall as soon as and so far as reasonably practicable, provide to the Sponsor, an estimate of the costs, direct losses and expenses (~~including~~excluding any loss of revenue and consequential loss) which can reasonably be expected to be incurred by HS1 Co or other Train Operators as a consequence of the implementation of the proposed Network Change by the Sponsor other than any such costs, losses or expenses which are attributable to the Sponsor improving its ability to compete with other Train Operators.

### 3.5 **Obligation to provide preliminary response**

3.5.1 HS1 Co shall, if requested to do so in writing by the Sponsor, provide at no cost to the Sponsor, ~~a preliminary response in respect of a proposed Network Change (which, unless HS1 Co indicates otherwise, shall be binding on it) to that Sponsor~~ as soon as practicable and in any event within a period of 28 days commencing on:

~~(a) — the date of first notification to it in writing of the proposal for the Network Change made by the Sponsor; or (if later)~~(b) — the date of the request for a preliminary response, and any a preliminary written response in respect of the proposed Network Change (which shall not be binding on HS1 Co) and if such preliminary response, if is negative, shall include the including reasons therefor.

3.5.2 HS1 Co shall not be obliged to comply with a request from the Sponsor under Condition G3.5.1:

(a) unless:

(i) the Relevant Response Data is 90 or more days after the date on which HS1 Co's notice under Condition G3.3.1(c) was given; and

(ii) the request is made within 7 days of the Sponsor receiving HS1 Co's notice under Condition G3.3.1(c); or

(b) to the extent that HS1 Co is unable to comply with such a request, having regard to the information reasonably available to it.

3.5.3 After consultation with the Sponsor HS1 Co 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).

### 3.6 **Reimbursement of costs**

~~Subject to Conditions G3.4 and G4,~~ HS1 Co shall be entitled to reimbursement by the Sponsor of all of its costs incurred by HS1 Co in assessing and responding to any Network Change proposed by the Sponsor ~~— in accordance with Condition G4.1.~~ Those costs shall be the minimum reasonably necessary for HS1 Co to carry out that assessment and response (excluding any loss of revenue, any consequential loss and any costs and expenses incurred in providing a preliminary response pursuant to Condition G3.5.1).

### 3.7 **Provision of estimate of costs by HS1 Co**

HS1 Co shall, upon request from time to time from the Sponsor, provide to the Sponsor with written estimates of the costs of assessing and responding to a proposal for Network Change submitted by that 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.

### 3.8 Accuracy of estimates

HS1 Co shall ensure that :

- (a) any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it; and
- (b) so far as reasonably practicable each type of cost comprised in the estimate provided pursuant to Condition G3.7 is separately identified.

### 3.9 Obligation to incur no further costs

HS1 Co shall:

- (a) if requested at any time by the Sponsor, incur no further costs (except any costs that cannot reasonably be avoided) ; and
- (b) unless otherwise agreed by the Sponsor, incur no costs in excess of the estimate provided pursuant to Condition G3.7,

in respect of any proposal for Network Change made by the Sponsor:

~~3.10 — Relationship with Vehicle Change~~ ~~self the implementation of a Network Change proposed by the Sponsor also requires the implementation of a Vehicle Change in respect of the trains operated by the Sponsor, the Sponsor shall follow the procedures and satisfy the requirements of both this Part G and Part F and the requirement for a Vehicle Change shall not preclude the right of the Sponsor to follow the procedure in this Part G for a Network Change or vice versa.~~

## 4. CONDITION G4 - RESPONSE BY HS1 CO TO THE NETWORK CHANGE PROPOSAL BY THE SPONSOR

### 4.1 Obligation to give notice of response

4.1.1 HS1 Co shall give notice to the Sponsor if:

- (a) HS1 Co considers that one or more of the following conditions has been satisfied:
  - (i) the implementation of the proposed Network Change would necessarily result in HS1 Co breaching any Access Agreement; or
  - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition G3 provided that HS1 Co shall first have given the Sponsor a reasonable opportunity to remedy that failure; or
  - (iii) the implementation of the proposed change would result in a material adverse effect on the maintenance or operation of the Network or the operation of any train on the Network which in any such case cannot adequately be compensated under this Condition G4; or, in respect of a Restriction of Use in connection with the implementation of the proposed change, under the relevant Train Operator's Access Agreement; or

- (iv) the proposed Network Change does not adequately take account of the reasonable expectations of a Train Operator (other than the Sponsor) as to the future use of the relevant part of the Network; and/or
- (b) any Train Operator shall have given notice to HS1 Co that it considers that any of the conditions specified in paragraph (a) above has been satisfied; and/or
- (c) HS1 Co considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the Network Change proposed by the Sponsor:
  - (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 Train Operator shall have given notice to HS1 Co that it considers that such Train Operator should be entitled to compensation from the Sponsor for the consequences of the implementation of the Network Change proposed by the Sponsor:
  - (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) or G4.1.1(b) shall include the reasons for the opinion in question. Any notice of the kind mentioned in Conditions G4.1.1(c) ~~or G4.1.1(ii) and~~ (d) (ii) above shall include ~~a statement of the amount of compensation required and the reasons why HS1 Co or the relevant Train Operator considers that any compensation terms proposed under Condition G3 are inappropriate and shall detail:~~

- (i) the amount of compensation required and the methodology used to calculate the amount of compensation required; or
- (ii) if HS1 Co or the relevant Train Operator 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
- (iii) 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~~

The notice referred to above shall contain such detail as is reasonable to enable the Sponsor to assess the merits of ~~the statement and shall be given as soon as reasonably practicable.~~ HS1 Co's or the relevant Train Operator's decision.

## 4.2 Amount of compensation

Subject to Condition ~~G4.3, 4.3~~ and Condition G4.4, the amount of the compensation referred to in Condition G4.1 shall be an amount equal to the amount of the costs, direct losses and expenses (~~including~~ excluding and loss of revenue and consequential loss) which are reasonably incurred or can reasonably be expected to be incurred by HS1 Co or any other Train Operator, as a consequence of the implementation of the proposed Network

Change other than any such costs, losses or expenses which are attributable to the Sponsor improving its ability to compete with other Train Operators.

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

There shall be taken into account in determining the amount of compensation referred to in Condition G4.14.2:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by HS1 Co or other Train Operators as a ~~result~~consequence of the implementation of the proposed Network Change; and
- (b) the ability or likely future ability of HS1 Co or other Train Operators to recoup any costs, losses and expenses from third parties including passengers and customers.

#### 4.4 ~~Rights in relation to implementation of Network Change~~Restrictions of Use

~~If:~~

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).

#### 4.5 Implementation of a Sponsor proposed Network Change

- (a) The Sponsor shall be entitled to instruct HS1 Co to implement a proposed Network Change if:
  - (i) HS1 Co does not consider that any of the conditions specified in Condition 4.1.1(a) have been satisfied and HS1 Co has not received any notice from a Train Operator in accordance with Condition 4.1.1(b);
  - (ii) HS1 Co has given notice to the Sponsor that Condition G4.1.1(c) applies and either the amount of any compensation referred to in Condition G4.2 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G6; or
  - (iii) HS1 Co has received notice from a Train Operator under Condition G4.1.1(d) and either the amount of any compensation referred to in Condition G4.2 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G6.

- (iv) there is no other unresolved dispute under this Part G (whether under this Condition G4.5 or otherwise) as regards the proposed change between the Sponsor and any Train Operator; and
- (v) the continuing compatibility of the Specified Equipment operated on the Network if the Network Change was implemented has been confirmed in accordance with the relevant HS1 Standards and, where applicable, has been approved by a Notified Body as defined under the Railways (Interoperability) Regulations 2006 and/or a Competent Person (as defined under the Railways and Other Guided Transport Systems (Safety) Regulations 2006).
- (b) The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition G4.5(a) has been satisfied, instruct HS1 Co to issue a notice to all affected Train Operators when the Sponsor reasonably believes that it is entitled to instruct HS1 Co to implement a proposed Network Change and HS1 Co shall then serve such a notice within 7 days of the instruction.
- (c) The Sponsor's entitlement to instruct HS1 Co to implement a proposed Network Change shall be treated as confirmed 35 days after HS1 Co has served a notice in respect of that Network Change in accordance with Condition G4.5(b) unless:
  - (i) HS1 Co gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G4.5(a) and giving full particulars of its reasons; or
  - (ii) HS1 Co receives notice from a Train Operator within 21 days of the notice served by HS1 Co disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G4.5(a) and giving full particulars of its reasons.
- (d) If the Sponsor does not agree with the contents of a notice served by HS1 Co or an affected Train Operator in accordance with Condition G4.5(c), the Sponsor may:
  - (i) ~~(a) HS1 Co shall have given a notice to the Sponsor pursuant to Condition G4.1.1(a) or (b) and the Sponsor shall have failed to~~ refer the matter to the Disputes Resolution Procedure and Condition G6 shall apply; or
  - (ii) withdraw the proposed Network Change.
- (e) A Sponsor shall not be entitled to require HS1 Co to implement a proposed Network Change unless it is so entitled to require the implementation of that Network Change under Condition G4.5(a).
- (f) For the purposes of the Conditions G4.5(a), unresolved disputes shall include:
  - (i) a notice has been served under Condition G4.1.1(a) or (b) which has not been withdrawn, resolved under Condition G6 or agreed not to apply; and
  - (ii) ~~(b) HS1 Co shall have given a notice to the Sponsor pursuant to~~ has been served under Condition G4.1.1(c) or (d) ~~and the Sponsor shall have failed either;~~ which has not been agreed or resolved as referred to in Condition G4.5(a)(ii) or G4.5(a)(iii) or otherwise agreed, resolved or withdrawn.
    - ~~(i) to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or~~

~~(ii) to refer the matter to the Disputes Resolution Procedure within 14 days of the date of the notice in question,~~

- (g) ~~the proposed~~ Where as a consequence of a Network Change proposed by a Train Operator it is necessary to amend an Access Agreement to reflect that Network Change, HS1 Co shall not be implemented. In any other case, and subject to the other provisions of this HS1 Network Code, the Sponsor shall be entitled to have it implemented by HS1 Co provide to the other party to such Access Agreement written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the receipt of such notice by the relevant Train Operator.

## 5. CONDITION G5 - CHANGES IMPOSED BY COMPETENT AUTHORITIES

### 5.1 Obligations following imposition of changes

Where HS1 Co is required (other than at its own request or instigation) to implement a Network Change as a result of any Change of Law or any Direction of any Competent Authority:

- (a) HS1 Co shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 (other than Condition G1.2(d)(iv)) in respect of that Network Change;
- (b) each Train Operator shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that Network Change and shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions ~~F4.2, 4.32.1 and 4.4;~~ F2.2 (except F2.2.1(vi));
- (c) Subject to Condition G5(d), HS1 Co and each Train Operator shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof.;

### ~~5.2 Compliance with HS1 Standards~~

~~The obligation to comply with the requirements of this Part G shall be without prejudice to the obligations of HS1 Co and each Train Operator to comply with the HS1 Standards (including the safety review panel process).~~

- (d) each Train Operator shall cooperate with HS1 Co and, where requested by HS1 Co, promptly provide HS1 Co with an estimate, in reasonable detail and accompanied by supporting documentation, of the Relevant Costs which that Train Operator would suffer or incur as result of the implementation of the proposed Network Change; and
- (e) HS1 Co shall use reasonable endeavours to negotiate with the relevant Competent Authority or Governmental Body (as applicable) a level of compensation in respect of that Network Change which is sufficient to ensure that the Train Operator receives compensation for all of its Relevant Costs which have been notified to HS1 Co pursuant to Condition G5.1(d). HS1 Co shall from time to time consult with the Train Operator and keep the Train Operator informed in reasonable detail of the progress of such negotiations.

## **6. CONDITION G6 - APPEAL PROCEDURE**

### **6.1 Right of reference to the Disputes Resolution Procedure**

If a Train Operator or the Sponsor (as the case may be) is dissatisfied in relation to any matter concerning the operation of the procedure in this Part G, the contents of any notice given by a Train Operator under Condition G2.1 or by HS1 Co under Condition G4.1 (and, in particular, the amount of compensation referred to in the relevant Condition) or any estimate referred to in Condition G1.5 or G3.6 it may refer the matter to the Disputes Resolution Procedure.

### **6.2 In relation to any matter which is referred to the Disputes Resolution Procedure pursuant to this Condition G6, the Panel and/or the Arbitrator (as the case may be) shall have the power:**

6.2.1 to make any interim order as to the conduct or the positions of the parties pending final determination of the matter;

6.2.2 in determining the matter in question:

(a) to direct the parties to the dispute to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions");

(b) to direct the parties to accept any submissions made by HS1 Co or Train Operator/Sponsor (as the case may be) as to the relevant Network Change; and

(c) to specify the matters which HS1 Co should have determined in giving any notice pursuant to condition G2.1 or G4.1 or to specify the matters which the Sponsor should have determined in giving any notice pursuant to Condition G.3.1,

any such directions being either by interim order or final determination;

6.2.3 having given general directions, on the application of any party to the dispute within 7 days of the determination of the matter in question (or such longer period as the Panel and/or Arbitrator shall allow), to make such further orders as they/he shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

## **7. CONDITION G7 - SHORT TERM NETWORK CHANGE**

### **7.1 Reversal of a Short Term Network Change**

7.1.1 A Train Operator may request in writing that HS1 Co reverse the effect of a Short Term Network Change before its Expiry Date if the effect of the Short Term Network Change would prevent the Train Operator using the Network in a manner consistent with the reasonable expectations of that Train Operator as to the future use of the relevant part of the Network.

7.1.2 The Train Operator shall include with any notice requesting the reversal of the effect of a Short Term Network Change served under Condition G7.1.1 evidence to support the Train Operator's claim of reasonable expectations as to the future use of the relevant part of the Network which requires that reversal.

7.1.3 The Train Operator shall provide HS1 Co with such further information as HS1 Co may reasonably require to enable HS1 to assess the reasonableness of the Train Operator's request to reverse the effect of a Short Term Network Change.

7.1.4 Upon receipt of a notice to reverse the effect of a Short Term Network Change served under Condition G7.1.1, HS1 Co shall:

(a) reverse the effect of the Short Term Network Change at its own cost by the later of the following:

(i) the earlier of:

(A) the estimated timescale for reversal set out in the notice of proposed Network Change served under Condition G1.1; and

(B) the timescale within which HS1 Co can complete the reversal without incurring any greater cost than would have reasonably been incurred by HS1 Co had the effect of the Short Term Network Change been reversed in accordance with the estimated timescale for reversal set out in the notice of proposed Network Change served under Condition G1.1; or

(ii) the earliest use for which the Train Operator can demonstrate a reasonable expectation as to future use; or

(b) respond to the Train Operator in writing within 30 days of the request of the Train Operator stating that HS1 Co does not believe that the effect of the Short Term Network Change is preventing the Train Operator using the Network in accordance with the reasonable expectations of that Train Operator as to the future use of the relevant part of the Network and giving reasons for its decision.

HS1 Co shall not be liable to any Train Operator if and to the extent that the date of the requested reversal is earlier than the date by which HS1 Co must reverse the effect of the Short Term Network Change as calculated under Condition G7.1.4(a)

## 7.2 Expiry of a Short Term Network Change

HS1 Co shall restore at its own cost any part of the Network which has been subject to a Short Term Network Change to its original capability as set out in the notice of proposal for the Short Term Network Change by the Expiry Date unless and to the extent that:

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

(b) a further Short Term Network Change has been implemented.

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

HS1 Co shall publish details of each Short Term Network Change which is reversed prior to the Expiry Date.

## **8. CONDITION G8 – NETWORK CHANGE**

### **8.1 Relationship with Vehicle Change**

If the implementation of a Network Change proposed by HS1 Co or a Train Operator also requires the implementation of a Vehicle Change in respect of the trains operated by a Train Operator, HS1 Co or the Train Operator shall follow the procedures in Part F and satisfy the requirements of both this Part G and Part F and the requirement for a Vehicle Change shall not preclude the right of the Sponsor to follow the procedure in this Part G for a Network Change or vice versa.

### **8.2 Compatibility Information**

In assessing a proposal for Network Change notified under Condition G1.1(a) or G3.1(a) HS1 Co and/or an affected Train Operator shall be entitled to request a copy of the Statement of Compatibility and/or any information comprised in the Compatibility File prepared by HS1 Co (where HS1 Co has proposed the Network Change) or by the Sponsor (where the Sponsor has proposed the Network Change) in accordance with the applicable HS1 Standards. HS1 Co or the Sponsor (as the case may be) shall provide the requested information within 5 days following receipt by it of such a request.

## **Part****PART H - Operational Disruption****OPERATIONAL DISRUPTION**

### *Explanatory Note*

- A. *Part H provides procedures and plans for minimising the effects of Operational Disruption. Operational Disruption is categorised as a Disruptive Event or a Minor Disruption. The dividing line is materiality and different regimes apply to each category of disruption.*
- B. *A Disruptive Event materially prevents or materially disrupts the operation of trains on any part of the Network and in those circumstances HS1 Co is required to decide the most appropriate action taking into account the Contingency Objective, Codes of Practice, the Railway Regulation Statement and the Contingency Plans with a view to minimising the inconvenience of passengers but having due regard to the interests of operators of non-passenger trains. If a Disruptive Event only affects one Train Operator, HS1 Co is required to take such action as the Train Operator reasonably requires HS1 Co to take to restore the operation of trains over the affected part of the Network.*
- C. *There are provisions for the development and implementation of Contingency Plans and Codes of Practice, for minimising the effects of a Disruptive Event and for any consequential amendment to the Working Timetables including a consultation process with the Train Operators affected by a Disruptive Event and those likely to be affected.*
- D. *A Train Operator is required to comply with HS1 Co's instructions in the event of a failure of one of its trains provided such request does not contravene any HS1 Standard. Any Train Operator may be commissioned to assist a Failed Train of another Train Operator.*
- E. *In adverse weather conditions or where the track is obstructed, a Train Operator may be requested by HS1 Co to provide HS1 Co with any of its equipment and with reasonable assistance.*
- F. *HS1 Co is required after the end of a Disruptive Event or an Extended Disruption to restore its Working Timetable as soon as is reasonably practicable and if HS1 Co has reasonable grounds to believe that it is not reasonably practicable so to do, HS1 Co is required to give notice to the Train Operators affected or likely to be affected and to repeat the procedures for determining a Disruptive Event and implementing an amendment to its Working Timetable.*
- G. *HS1 Co is obliged to establish and comply with a Train Regulation Statement specifying the procedures to be followed in cases of Operational Disruption, conforming to the Contingency Objective. The Train Regulation Statement will be issued annually by HS1 Co at the first Passenger Change Date occurring in each calendar year and will be preceded by a notification and consultation process with the Train Operators commencing 150 days prior to such Passenger Change Date. During such period, if a Train Operator disagrees with the Train Regulation Statement, it may refer the matter to the Disputes Resolution Procedure.*
- H. *This Explanatory Note does not form part of ~~the Access Conditions~~ this HS1 Network Code.*

## **DEFINITIONS**

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

<b>"Appropriate Location"</b>	means the nearer of: <ul style="list-style-type: none"><li>(a) the nearest point at which it is reasonably practicable to attach an alternative locomotive to a Failed Train; and</li><li>(b) <ul style="list-style-type: none"><li>(i) in respect of a Failed Train which is a passenger train, the nearest point at which it is reasonably practicable for its passengers to alight so as to continue with their forward journeys; and</li><li>(ii) in respect of a Failed Train which is a non-passenger train, the nearest point at which it is reasonably practicable to stable it;</li></ul></li></ul>
<b>"Code of Practice"</b>	means, in relation to any Route, a code of practice established pursuant to Condition H4 and designed to deal with a Disruptive Event in circumstances where either: <ul style="list-style-type: none"><li>(a) no Contingency Plan has been developed; or</li><li>(b) an existing Contingency Plan does not adequately deal with the Disruptive Event in question;</li></ul>
<b>"Contingency Objective"</b>	has the meaning ascribed to it in Condition H3.1;
<b>"Contingency Plan"</b>	means a plan of action developed in accordance with the procedures set out in Condition H5;
<b>"Control Point"</b>	means that person or section within a Train Operator's organisation whose responsibility includes dealing with the Operational Disruption;
<b>"deal with"</b>	in relation to a Disruptive Event or an Extended Disruption, includes dealing with the consequences of the disruption in question;
<b>"Disruptive Event"</b>	means any event or circumstance which materially prevents or materially disrupts the operation of trains on any part of the Network in accordance with the relevant Working Timetable;
<b>"Extended Disruption"</b>	has the meaning ascribed to it in Condition H7.1;
<b>"Failed Train"</b>	means a train which is the subject of a Train Failure;
<b>"first consultation notice"</b>	means the notice given pursuant to Condition H11.4.1;

<b>"HS1 Control Centre"</b>	means in relation to the Network, that part of HS1 Co's organisation, which is responsible for dealing with the Operational Disruption;
<b>"Minor Disruption"</b>	means the occurrence or existence of an event or circumstance which prevents or disrupts the operation of trains on any part of the Network in accordance with the relevant Working Timetable (including an amended Working Timetable established pursuant to Condition H7.3) and which is not a Disruptive Event;
<b>"non-passenger train"</b>	means a train which is not a passenger train;
<b>"Operational Disruption"</b>	means a Disruptive Event, an Extended Disruption or a Minor Disruption, as the case may be;
<b>"passenger train"</b>	means a train which provides services for the carriage of passengers by railway;
<b>"through journey"</b>	means a journey during which the passenger in question will require to change trains at least once;
<b>"time sensitive goods"</b>	means goods carried by railway in respect of which the time at which they are delivered to their intended destination is a matter of material importance: <ul style="list-style-type: none"> <li>(a) to either or both of the consignor and the consignee, whether because of their perishable nature, the terms of the contract for their sale, other disposal or transportation, or in any other respect; or</li> <li>(b) in the interests of safety or security;</li> </ul>
<b>"Train Failure"</b>	means any failure of a train to move under its own power (including as a result of breakdown or any failure properly to load the train) which adversely affects either the operation of other trains on the Network or any works carried out or to be carried out by or on behalf of HS1 Co during a possession to which HS1 Co is entitled pursuant to <del>these Access Conditions</del> <a href="#">this HS1 Network Code</a> or any Access Agreement; and
<b>"Train Regulation Statement"</b>	means a policy and set of procedures established pursuant to Condition H11.1.

## **1. CONDITION H1 – DISRUPTIVE EVENTS AND ESTABLISHMENT OF COMMUNICATIONS**

### **1.1 Notification by Train Operators**

Each Train Operator shall notify HS1 Co of the occurrence of a Disruptive Event as soon as reasonably practicable after it becomes aware of it.

### **1.2 Notification by HS1 Co**

HS1 Co shall notify each Train Operator of the occurrence of a Disruptive Event which is likely to affect the operation of trains by that Train Operator, as soon as reasonably practicable after it becomes aware of it.

### **1.3 Notification of expected Disruptive Events**

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

### **1.4 Information to be provided in notices of Disruptive Events**

Each notice given pursuant to Conditions H1.1, H1.2 and H1.3 shall, as far as reasonably practicable, include a specification of the nature and extent of the Disruptive Event in question and its likely duration, in an amount of detail as shall be reasonably required so as to enable the person receiving the notice to inform its staff, passengers and other associates of the disruption in question and minimise the inconvenience and disruption which is likely to be caused to them.

### **1.5 Designation of HS1 Control Centres**

HS1 Co shall designate and notify to each Train Operator the location and contact details of HS1 Control Centre.

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

Each Train Operator shall liaise with HS1 Co in relation to the identity and location of its Control Point and the setting up of communication arrangements sufficient to ensure proper contact with HS1 Control Centre. Any such communication shall, in the case of the Train Operator, be through its Control Point and, in the case of HS1 Co, be through HS1 Control Centre.

### **1.7 Conflict with HS1 Standards**

If there is any conflict between this Part H and the provisions of any HS1 Standard, the provisions of the relevant HS1 Standard shall, to the extent of any inconsistency, prevail.

### **1.8 Relationship with performance regimes**

The provisions of this Condition H shall have effect without prejudice to any regime established between HS1 Co and a Train Operator in or pursuant to their Access Agreement

in relation to any incentives and payments associated with the performance of their respective obligations under that Access Agreement.

## **2. CONDITION H2 - ACTION FOLLOWING A DISRUPTIVE EVENT AND MINOR DISRUPTION**

### **2.1 Determination by HS1 Co**

HS1 Co shall, as soon as reasonably practicable following the occurrence of a Disruptive Event:

- (a) determine the most appropriate action to be taken to restore the operation of trains on the Network in accordance with the Working Timetable and, in making its determination, shall take account (in the order of priority in which they are listed where there is any inconsistency) of the following:
  - (i) any Contingency Plan which applies to the Disruptive Event in question;
  - (ii) any Code of Practice which applies to the Disruptive Event in question; and
  - (iii) the Contingency Objective; and
- (b) consult as fully and regularly as reasonably practicable with each Train Operator which is affected or likely to be affected by the Disruptive Event as to the action which HS1 Co proposes to take in connection with that event.

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

If the action to be taken to deal with a Disruptive Event is not likely to affect the operation of trains of more than one Train Operator, that affected Train Operator shall be entitled to require HS1 Co to take such actions as ~~the~~that Train Operator shall reasonably specify in relation to the restoration of the operation of the affected part of the Network so as to permit the operation of trains on that part in accordance with the Working Timetable.

### **2.3 Minor Disruptions**

On occurrence of a Minor Disruption, HS1 Co shall take action to re-route trains around such disruptions or otherwise mitigate the effects of the Minor Disruption and inform all affected Train Operators, detailing the revised arrangements and likely duration of such arrangements. When the Minor Disruption is over and normal train running can resume, HS1 Co shall inform all the affected Train Operators.

## **3. CONDITION H3 - CONTINGENCY OBJECTIVE**

### **3.1 Definition**

The Contingency Objective is the minimisation of the inconvenience and delay of passengers following the occurrence of Operational Disruption, having due regard to the interests of operators of non-passenger trains.

### 3.2 Relevant considerations

In signalling and otherwise controlling the train movements over or along any track, HS1 Co shall use all reasonable endeavours to achieve the Contingency Objective. In doing so, HS1 Co shall have due regard to the need to strike a fair and reasonable balance between the interests of the Train Operators, paying due regard to:

- (a) the need to maintain the European Passenger Timetable, including transit slots through the Channel Tunnel, train slots on the Network and train slots on the NR Network which are used by train services operating through the Channel Tunnel;
- (b) obligations under any agreed performance regime;
- (c) the minimisation of journey times;
- (d) the completion of through journeys;
- (e) the need to keep passengers moving towards their destinations by such means as are appropriate (including by diversion and, if appropriate, change of mode of transport);
- (f) the need to keep time sensitive goods moving towards their destinations by such means as are appropriate (including by diversion and, if appropriate, change of mode of transport);
- (g) the minimisation of costs to each Train Operator affected by the Disruptive Event in question; and
- (h) safety and security.
- (i) the need to minimise overall delay to train movements;
- (j) the need to minimise overall delay to passengers travelling or intending to travel by railway, both in respect of the aggregate delay to any one of them and the aggregate numbers of passengers delayed;
- (k) the need to maintain connections between railway passenger services [including Train Slots which are contiguous with train movements on the NR Network](#);
- (l) the need to protect the commercial interests of HS1 Co and each Train Operator;
- (m) the need to minimise delays to the trains of International Train Operators which (subject to the factors set out in paragraphs (i) to (vii) below) are to have priority over the trains of Domestic Train Operators and shall provide that in deciding whether or not the train of an International Train Operator is to be delayed, HS1 Co shall have regard to:
  - (i) the performance of trains in terms of their acceleration and maximum speed;
  - (ii) the stopping pattern of trains;
  - (iii) circumstances applicable on the day of the delay including (without limitation) temporary speed restrictions or reduced power on the trains concerned;

- (iv) regulating points and loop lines along the routes of the trains;
- (v) platform capacity at relevant stations;
- (vi) the Performance Regimes of relevant Train Operators; and
- (vii) the need to ensure the punctual presentation of trains at the interface with the Network Rail network and the Eurotunnel network.

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

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

4.1.1 Each Train Operator shall, as soon as reasonably practicable following the date on which its Access Agreement comes into effect, participate in conjunction with HS1 Co, in the development and establishment of a Code of Practice complying with Condition H4.2. HS1 Co shall consult on an ongoing basis with Eurotunnel and Network Rail in the development and establishment of the Codes of Practice with their respective train operators.

4.1.2 HS1 Co shall, in conjunction with the relevant Train Operators, review and, where applicable, update the Code of Practice from time to time in order that such Code of Practice continues to comply with Condition H4.2.

##### **4.2 Contents**

Each Code of Practice shall:

- (a) conform with the Contingency Objective;
- (b) establish in general terms the roles and responsibilities of HS1 Co and the Train Operators in responding to Operational Disruption; and
- (c) in particular, include provisions dealing with the following matters:
  - (i) communications following Operational Disruption between the Train Operator and HS1 Co, other Train Operators and, where appropriate, Network Rail and Eurotunnel;
  - (ii) arrangements as to the utilisation of railway vehicles and requirements as to any relevant route and traction knowledge of Train Crews;
  - (iii) arrangements as to the provision of alternative transport modes or alternative means of transporting time sensitive goods;
  - (iv) the involvement of persons engaged to repair, renew or maintain the Network; and
  - (v) the names and numbers of personnel to be contacted in the event of protracted disruption.

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

### 5.1 **Development and establishment**

5.1.1 ~~The Access Parties~~ Each Train Operator shall, as soon as reasonably practicable following the date of signature of ~~their~~ its Access Agreement, ~~use all reasonable endeavours to procure, with the agreement of and upon request from HS1 Co, co-operate with HS1 Co and~~ other Train Operators, in the development, review and establishment of appropriate/or revision of Contingency Plans in relation to particular types of Disruptive Event which may affect the Routes which they have permission to use.

5.1.2 HS1 Co shall, in consultation with the relevant Train Operators, review and, where applicable, update the Contingency Plans from time to time in order that such plans continue to comply with Condition H5.2.

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

Each Contingency Plan shall conform with the Contingency Objective.

### 5.3 **Information**

HS1 Co shall ensure that each Train Operator is kept informed both of the Contingency Plans which are relevant to it, of the identity of the other Train Operators to whom those Contingency Plans are also relevant, together with any changes to those plans or those other Train Operators.

### 5.4 **Copies**

HS1 Co shall, following agreement of or any change to a Contingency Plan with all Train Operators, promptly send a copy of it to each Train Operator affected by the Contingency Plan.

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

### 6.1 **Implementation**

Subject to any determination by HS1 Co to the contrary pursuant to Condition H2.1, the Access Parties shall, on the occurrence of a Disruptive Event for which a Contingency Plan has been established, proceed to implement that plan so far as reasonably practicable.

### 6.2 **Train Crew knowledge**

Each Train Operator shall ensure that its Train Crews have an adequate route and traction knowledge of any diversion set out in an applicable Contingency Plan to the extent that the Contingency Plan in question so provides. HS1 Co shall not unreasonably object to co-operating in the implementation of diversionary training of Train Crews.

### 6.3 **Adoption of plan**

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

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

Subject to any determination by HS1 Co to the contrary pursuant to Condition H2.1, where no Contingency Plan exists or the Contingency Plan fails to deal with a particular Disruptive Event adequately, HS1 Co shall apply the applicable Code of Practice (if any) in such a manner as it considers reasonable and appropriate in the circumstances.

#### 6.5 **Contingency Objective**

Subject to any determination by HS1 Co to the contrary pursuant to Condition H2.1, where no Contingency Plan exists or the Contingency Plan fails to deal with a particular Disruptive Event adequately and no Code of Practice exists, HS1 Co shall use all reasonable endeavours to secure the Contingency Objective in such a manner as it considers reasonable and appropriate in the circumstances.

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

#### 7.1 **Definition**

An Extended Disruption is a Disruptive Event which is likely to be of sufficient duration as to make it necessary in the reasonable opinion of HS1 Co to adopt a revised timetable.

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

In the event of an Extended Disruption, HS1 Co shall determine whether to proceed with an amendment to the relevant Working Timetable convening, if necessary, an emergency planning committee comprising representatives of all interested parties to agree the onward strategy. HS1 Co and each affected Train Operator shall nominate representatives to the emergency planning committee. The emergency planning committee will decide if the relevant Working Timetable should be amended in line with the Train Regulation Statement and the Contingency Plan after consideration of all relevant factors. If such an amended Working Timetable shall have been agreed, the provision of Condition H7.3 shall have effect accordingly.

#### 7.3 **HS1 Co to establish amended Working Timetable**

7.3.1 Subject to Condition H7.2, where an amended Working Timetable shall have been agreed, in the case of an Extended Disruption, HS1 Co shall promptly produce a revised Working Timetable:

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

7.3.2 The revised Working Timetable shall be implemented in accordance with the relevant HS1 Standard.

7.3.3 HS1 Co shall keep the operation of the revised Working Timetable under review, modifying it, where it reasonably considers necessary and after due consultation

with the Train Operators affected or likely to be affected by the Extended Disruption as far as reasonably practicable, to comply with the Decision Criteria.

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

The procedures set out in Condition D7 shall apply mutatis mutandis to any changes or proposed changes to a Working Timetable pursuant to this Condition H7.

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

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

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

If a Train Failure occurs in respect of a train operated by a Train Operator, the Train Operator shall require its Train Crew to promptly notify HS1 Co of the location of the Failed Train and any other details reasonably required by HS1 Co in respect of the Failed Train.

##### 8.1.2 *HS1 Co's obligation to consult operators*

On becoming aware of a Train Failure, HS1 Co shall promptly:

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

##### 8.1.3 *Movement of Failed Train by its operator*

If, after consultation in accordance with Condition H8.1.2, HS1 Co reasonably believes that the Train Failure in question can be remedied by action taken by or on behalf of the Train Operator's Train Crew at the site of the Train Failure, it may permit the Train Operator to take such action as is necessary to move the Failed Train. Such permission may be subject to such time limits as HS1 Co shall reasonably specify to the Train Operator having due regard to the effect of the Train Failure on trains on the same or adjoining sections of track.

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

If, after consultation in accordance with Condition 8.1.2 and, if relevant, the expiry of any time limit specified by HS1 Co pursuant to Condition H8.1.3, HS1 Co reasonably believes that the Failed Train can only be moved with the assistance of another train or locomotive or other equipment, HS1 Co shall consult with the Train Operator operating the Failed Train as to the capabilities of any trains or locomotives which are available to assist the Failed Train or the nature of other assistance.

### 8.1.5 *Compliance with HS1 Co's instructions*

The Train Operator shall, subject to HS1 Co having consulted with it in accordance with Conditions H8.1.2 and H8.1.4, comply with any reasonable instructions of HS1 Co for the purpose of ensuring, with any such assistance as is referred to in Condition H8.1.4, the prompt removal of the Failed Train to an Appropriate Location.

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

### 8.2.1 *Use of following train*

If, after consultation in accordance with Condition H8.1, HS1 Co reasonably believes that the train, or the locomotive coupled to a train, immediately following a Failed Train is able to move the Failed Train by pushing or pulling it, HS1 Co may commission the Train Operator of such train or locomotive to use it to push or pull the Failed Train under the guidance and control of the Train Operator of the Failed Train to such Appropriate Location as HS1 Co shall notify to that Train Operator.

### 8.2.2 *Commission of other trains*

If a Failed Train cannot, in the opinion of HS1 Co, be moved by the train or locomotive immediately following the Failed Train, HS1 Co may commission any Train Operator in control of a train or locomotive in the vicinity of the Failed Train to move the Failed Train to such Appropriate Location as HS1 Co shall notify to it. HS1 Co may only commission the Train Operator's train or locomotive if, having had due regard to all relevant factors (including the factors set out in Condition H8.2.3), it reasonably believes the Train Operator's train or locomotive is the most appropriate means to move the Failed Train.

### 8.2.3 *Relevant factors*

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

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

#### 8.2.4 *Consent to commissioning required*

HS1 Co may commission the train or locomotive of a Train Operator under this Condition H8 only with the consent of that Train Operator (which consent may not be unreasonably withheld or delayed).

#### 8.2.5 *Compliance with directions*

Where it provides an assisting train or locomotive, a Train Operator shall comply with any directions given by HS1 Co to move that Failed Train to such Appropriate Location as has been notified to it and, subject to such directions, that Train Operator's Train Crew shall, during the course of moving the Failed Train, act under the guidance and control of the Train Operator of the Failed Train. Nothing in this Condition H8.2.5 shall oblige any Train Operator to contravene any HS1 Standard.

#### 8.2.6 *Movement to Appropriate Location*

HS1 Co shall use all reasonable endeavours to ensure that a Failed Train is moved to the Appropriate Location notified to the Train Operator in accordance with this Condition H8.2. A Train Operator commissioned to move a Failed Train under this Condition H8.2 shall be obliged to move such Failed Train only to an Appropriate Location notified to the Train Operator in accordance with this Condition H8.2.

#### 8.2.7 *Timely release of assisting train*

HS1 Co shall use all reasonable endeavours to release the assisting train or locomotive to the assisting Train Operator within a period of 3 hours from the time at which such train or locomotive was commissioned by HS1 Co in accordance with this Condition H8.2.

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

HS1 Co shall use all reasonable means to assist a Train Operator whose train or locomotive has been commissioned to move a Failed Train, to reach its intended destination, as soon as reasonably practicable.

#### 8.2.9 *Transbordement of passengers*

If it is not possible to assist the Failed Train, which is a passenger train, by pushing or pulling with another train, the Train Operator of the Failed Train shall arrange for transbordement of passengers. If traction current has been lost in the immediate area as a result of which transbordement of passengers is not possible, the Train Operator of the Failed Train shall arrange road transport to clear the passengers.

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

#### 8.3.1 *Obligation to reimburse HS1 Co*

Except as provided for in Condition H8.3.3, if one of a Train Operator's trains is subject to Train Failure due to a mechanical defect or other cause attributable to

the Train Operator and such train is moved in accordance with Conditions H8.1 and H8.2, the Train Operator shall pay HS1 Co the sum of the amounts payable under Condition H8.3.2.

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

Except as provided for in Condition H8.3.3, if a Train Operator is commissioned to use one of its trains or locomotives to assist a Failed Train in accordance with Condition H8.2.2, HS1 Co shall pay to the Train Operator such fees as may be agreed between the parties from time to time.

**8.3.3** *Liability of assisting Train Operator for payments to HS1 Co*

Without prejudice to any liability arising as a result of its failure to perform any obligation or its negligence, no Train Operator shall be liable to pay to HS1 Co any amount (whether in respect of permission to use track, signalling or other equipment or the provision of electricity or any service otherwise) which it would, but for this Condition H8.3.3, have become liable to pay as a result of assisting a Failed Train.

**9. CONDITION H9 - ADVERSE WEATHER CONDITIONS AND OBSTRUCTIONS**

**9.1 Provision of equipment and assistance**

Subject to Condition H9.2, if a Train Operator holds any equipment which, in the reasonable opinion of HS1 Co, may assist it in dealing with disruption to the operation of trains on the Network caused by either or both adverse weather conditions and obstructions of the track, it shall, where reasonably requested to do so by HS1 Co, make that equipment available and otherwise provide reasonable assistance to HS1 Co in remedying that disruption where requested to do so.

**9.2 Payment**

Any equipment or assistance referred to in Condition H9.1 shall only be made available or provided to, or used in the assistance of, HS1 Co ~~on the payment of~~ provided that HS1 Co has agreed to pay the relevant Train Operator such fees as shall be agreed between the parties from time to time no later than 30 days after the later of:

(a) the date when HS1 Co ceases to use the equipment made available, or no longer requires the assistance provided, by the Train Operator; and

(b) the date when the Train Operator and HS1 Co agree the fee for the equipment or assistance made available or provided by the Train Operator.

**10. CONDITION H10 - RESTORATION OF WORKING TIMETABLE**

**10.1 Obligation to restore normal operation**

Subject to Condition H10.2, as soon as reasonably practicable after the end of a Disruptive Event or Extended Disruption, HS1 Co shall:

(a) procure that the operation of the Network shall be restored so as to permit the operation of trains in accordance with the relevant Working Timetable; and

- (b) give to each Train Operator affected by the disruption in question as much notice of such restoration as is reasonably practicable.

## 10.2 Continuation of emergency timetable

As soon as reasonably practicable after HS1 Co has reasonable grounds for believing that it is not likely to be reasonably practicable for it to procure that the operation of the Network shall be restored so as to permit the operation of trains in accordance with the relevant Working Timetable after the end of a Disruptive Event or Extended Disruption, HS1 Co shall:

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

The timetable established after compliance by HS1 Co with this Condition H10.2 shall become the Working Timetable.

## 11. CONDITION H11 - TRAIN REGULATION STATEMENT

### 11.1 HS1 Co's obligation to establish and comply with the Train Regulation Statement

HS1 Co shall establish in relation to the Network and thereafter comply with a Train Regulation Statement in accordance with the provisions of this Condition H11 and the relevant HS1 Standard.

### 11.2 Contents of the Train Regulation Statement

Each Train Regulation Statement:

- (a) shall conform to the Contingency Objective;
- (b) shall contain the procedures which HS1 Co shall follow in cases of Operational Disruptions when signalling and otherwise controlling train movements over or along any part of the Network;
- (c) may contain provision for its amendment provided that in all cases due regard shall be had to the Contingency Objective.

### 11.3 Consultation with Train Operators prior to notice of proposed Train Regulation Statement

*11.3.1* No later than 150 days before the Passenger Change Date first occurring in each calendar year, HS1 Co shall give notice to each Train Operator inviting it to make representations to it in relation to the manner in which train regulation should be

carried out in cases of Operational Disruption in the year beginning on such Passenger Change Date in respect of each part of the Network.

*11.3.2* Each Train Operator so consulted shall use all reasonable endeavours to provide to HS1 Co such representations as it shall wish to make in respect of such train regulation within 30 days after receipt of the first consultation notice.

#### **11.4 Notice of proposed Train Regulation Statement**

*11.4.1* No later than 60 days after giving the first consultation notice, HS1 Co shall give notice to each Train Operator of its proposed Train Regulation Statement and invite submissions to it of representations or objections in respect of it. Each such notice shall include:

- (a) the text of the proposed Train Regulation Statement;
- (b) the part or parts of the Network to which it shall be intended to apply;
- (c) a statement of HS1 Co's reasons for the proposed Train Regulation Statement; and
- (d) such other information as it shall be reasonable for HS1 Co to provide in order properly to inform Train Operators of the proposed Train Regulation Statement and its likely effect on their operations.

*11.4.2* No later than 30 days after the receipt of a copy of the proposed Train Regulation Statement from HS1 Co, each Train Operator may submit its representations or objections in respect of it to HS1 Co.

#### **11.5 Establishment of the Train Regulation Statement**

HS1 Co shall:

- (a) take into account all representations or objections received from Train Operators pursuant to Condition H11.4;
- (b) make such modifications to the proposed Train Regulation Statement as it shall reasonably consider appropriate so as to ensure, so far as reasonably practicable, that the proposed Train Regulation Statement complies with the Contingency Objective; and
- (c) not later than 120 days after the date of the first consultation notice, establish the applicable Train Regulation Statement by sending a copy of it to each Train Operator .

#### **11.6 Duration of the Train Regulation Statement**

*11.6.1* A Train Regulation Statement established pursuant to this Condition H11 shall have effect for a period of 12 months beginning with the first Passenger Change Date first occurring after the issue of such Train Regulation Statement.

11.6.2 HS1 Co shall have due regard to any reasonable request by a Train Operator that a Train Regulation Statement established pursuant to this Condition H11 should be modified.

**11.7 Right of reference to the Disputes Resolution Procedure**

*11.7.1* If any Train Operator is dissatisfied as to any decision of HS1 Co not to take into account any representations or objections submitted by that Train Operator to HS1 Co under Condition H11.4.2, it may refer the matter to the Disputes Resolution Procedure.

*11.7.2* In relation to any matter which is referred to the Disputes Resolution Procedure pursuant to this Condition H11, the Panel and/or the Arbitrator (as the case may be) shall have the power:

- (a) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter;
- (b) in determining the matter in question to direct the parties to the dispute to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions"), any such directions being either by interim order or final determination; and
- (c) having given general directions, on the application of any party to the dispute within 7 days of the determination of the matter in question (or such longer period as the Panel and/or the Arbitrator shall allow), to make such further orders as they/he shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

**~~Part I – Dispute Resolution Procedure~~**

## PART I - DISPUTE RESOLUTION PROCEDURE

### 1. **CONDITION I1 -INTRODUCTION**

- 1.1 ~~Any~~Save to the extent expressly provided otherwise any dispute arising under, out of, or in connection with, ~~these an~~ Access ~~Conditions~~Agreement shall be resolved in accordance with the Disputes Resolution Procedure.
- 1.2 HS1 Co shall ensure that all Train Operators are required to accede to the Disputes Resolution Agreement as a condition of ~~a~~such Train Operator having access to the Network pursuant to the terms of an Access Agreement.

### 2. **CONDITION I2 -MATTERS TO BE TAKEN INTO ACCOUNT**

~~2.1~~The Panel and/or the Arbitrator in making any determination shall be required to act in a manner which is fair and reasonable taking into account the interests of the parties to the dispute and in particular shall be required: to act in a manner which is not inconsistent with or will impede the performance of the Concession Agreement.

~~2.1.1~~ ~~to have regard to~~

### 3. **CONDITION I3 –APPEALS TO THE ORR**

Where a Train Operator has a right to appeal to the ORR under the Railway Regulations in relation to a dispute which, in accordance with Condition II.1, is to be resolved in accordance with the Dispute Resolution Procedure, that Train Operator agrees that it shall not exercise such right of appeal until the Dispute Resolution Procedure has been exhausted in respect of such dispute.

### 4. **CONDITION I4 - DEVELOPMENT OF PROCEDURES FOR OPERATIONAL DISPUTES**

- 4.1 HS1 Co and each Train Operator shall cooperate and, working together, undertake a review of the Dispute Resolution Procedure with a view to agreeing on or before 1 December 2009 (or such later date as such parties may agree) whether any amendments should be made to the Dispute Resolution Procedure, including amendments relating to:

4.1.1 the identity of the Operational Panel;

4.1.2 the development of principles which should be taken into account in resolving objections to proposed changes to the terms of an Access Agreement, provided that any such principles should take account of

- (a) the financial position of ~~the rail link undertaker (as referred to in Section 21 of the CTRL Act) in respect of any activities or proposed activities in relation to which the Panel and/or the Arbitrator has a locus under these Access Conditions;~~ and HS1 Co; and
- (b) ~~2.1.2 to act in a manner which is not inconsistent with or will impede the performance of~~ the obligations of HS1 Co under the Concession Agreement;

## **Part J—Changes to Access Rights**

4.1.3 the procedure and timeframes for resolving certain types of disputes, and if considered appropriate, so as to follow a similar process to that used for the resolution of disputes on the NR Network.

4.2 Condition I4.1 shall not limit any right of a Train Operator who is aggrieved by the any of the proposed amendments to the Dispute Resolution Procedures to refer such matter(s) to the ORR in accordance with the Railways Regulations.

## PART J – CHANGES TO ACCESS RIGHTS

### *Explanatory Notes*

- A. *Part J provides a mechanism for a use it or lose it regime for the HSI Network which enables HSI Co to alter access rights where access rights are not being used. It also establishes a regime for the modification of a Train Operator's access right where all or part of the Network has been declared congested in accordance with the Railways Regulations.*
- B. *Condition J1 sets out a mechanism whereby capacity can be made available to other users if the train operator fails to bid for train slots as part of a timetabling process. Condition J2 requires the surrender of train slots where they are not being utilised and such non-use exceeds certain thresholds.*
- C. *Under Condition J3 where some or all of the Network has been declared congested by HSI Co in accordance with the Railways Regulations, and this results in the Firm Rights held by a Train Operator being unable to be exercised and/or any Bids for Train Slots unable to be scheduled in the Working Timetable such Firm Rights are deemed to be suspended until HSI Co revokes the declaration of congestion. If any Firm Rights are suspended a Train Operator is entitled to relief from paying any access charges that arise in connection with the suspended rights.*
- €D. *This Explanatory Note does not form part of the HSI Network Code.*

### **Definitions**

In this Part J, unless the context otherwise requires:

"Failure to Bid" has the meaning specified in Condition J1.1.1;

"Failure to Use" has the meaning specified in Condition J 2.2;

"Failure to Use Notice" has the meaning specified in Condition J 2.3;~~and~~

"First Train Operator " has the meaning specified in Condition J ~~2.2.2.2;~~

"Forfeited Rights" has the meaning specified in Condition J2.5.1;

"Surrendered Rights" has the meaning specified in Condition J1.1.2;

"Suspended Rights" means any Firm Rights held by a Train Operator which have been suspended in accordance with Condition J3.1; and

"Unused Capacity" means, where a Failure to Bid has occurred, the difference between:

(a) the capacity reserved for the applicable Service (as represented by the number of Train Slots specified in Schedule 5 of the Access Agreement for the relevant Train Operator); and

(b) the quantum of Train Slots for the applicable Service which formed part of the Bids made by the Train Operator in respect of the second consecutive Timetable Period comprising the relevant Failure to Bid.

## 1. CONDITION J1 - FAILURE TO BID FOR TRAIN PATH

### 1.1 Failure to Bid ~~for~~in Consecutive Timetable Periods

1.1.1 ~~With effect from the Passenger Change Date in December 2014, where~~Where in relation to a Service a Train Operator ~~with a Firm Right in respect of a Train Slot~~ fails to ~~bid for that Train Slot~~submit one or more Bids in accordance with Part D which corresponds to the full quantum of capacity reserved for that Service (as represented by the number of Train Slots specified in Schedule 5 of the Access Agreement for that Train Operator) for two consecutive Timetable Periods commencing on or after the Passenger Change Date in December 2010 (a "Failure to Bid"), HS1 Co may, in its sole discretion, and, by giving written notice to the Train Operator, require ~~the such~~ Train Operator to refrain from ~~bidding for that Train Slot under the terms of its Access Agreement~~submitting Bids and otherwise exercising any rights it may have for some or all of the Unused Capacity for the remainder of the ~~period~~term of its Access Agreement.

1.1.2 Where a Train Operator is required by HS1 Co to refrain from ~~bidding~~submitting Bids or otherwise exercising any rights it may have in relation to any Unused Capacity in accordance with Condition J~~1.1.1~~, 1.1.1 ("Surrendered Rights"):

- (a) that Train Operator shall comply with that requirement;
- (b) any Bid submitted by a Train Operator and/or other exercise of such Surrendered Rights in contravention of this Condition J1.1.2 shall be deemed to have no effect;
- (c) HS1 Co shall not be liable to such Train Operator for any direct or indirect losses (including any loss of profit, loss of revenue and/or loss of goodwill), cost and expenses suffered or incurred by that Train Operator arising from the Failure to Bid, it refraining to submit Bids for any Unused Capacity and/or its inability to exercise any Surrendered Rights; and
- (d) that Train Operator shall not be entitled to any form of compensation from HS1 Co or any other person and/or any relief from its obligations under its Access Agreement other than in relation to any charges payable by that Train Operator under Schedule 7 of its Access Agreement in connection with such Surrendered Rights, which with effect from the date that HS1 Co serves notice on that Train Operator in accordance with Condition J1.1.1 shall be deemed to be zero.

### 1.2 Spot Bid

Condition J~~1.1.1~~ shall not limit a Train Operator's right to ~~make~~submit a Spot Bid for a ~~Train Slot which~~the allocation of capacity on the Network provided that such capacity is not the subject of a Firm Right of another Train Operator.

## 2. CONDITION J2 - FAILURE TO USE TIMETABLED TRAIN PATH

### 2.1 Surrender of Train Path

A Train Operator shall surrender a Train Slot in the event of a Failure to Use.

## 2.2 Failure to Use

A Failure to Use in relation to a Train Slot of a Train Operator (the "**First Train Operator**") occurs:

2.2.1 where HS1 Co considers that:

~~(A)~~ (a) another Train Operator would utilise the First Train Operator's Train Slot on 50% or more of the occasions when it is available in ~~a month~~ any 28 day period; and

~~(B)~~ (b) the First Train Operator utilises that Train Slot on less than 50% of the occasions when it is available in ~~a month~~ any 28 day period; or

2.2.2 where the Train Slot can be utilised on an ad hoc basis by another Train Operator without material disruption to the First Train Operator; or

2.2.3 where the First Train Operator utilises that Train Slot on less than 10% of the occasions when it is available in ~~a month~~ any 28 day period.

## 2.3 Service of Failure to Use Notice

If HS1 Co considers there is a Failure to Use by the First Train Operator, it shall serve a notice (a "**Failure to Use Notice**") on the First Train Operator requiring the First Train Operator to surrender the Train Slot.

## 2.4 Contents of a Failure to Use Notice

A Failure to Use Notice shall specify:

2.4.1 the Failure to Use by the First Train Operator which HS1 Co has determined has occurred;

2.4.2 the Train Slot which HS1 Co requires the First Train Operator to surrender; and

2.4.3 the date from which the First Train Operator shall surrender the Train Slot.

## 2.5 Effect of Surrender

With effect from the date specified in the Failure to Use Notice:

2.5.1 ~~With effect from the date specified in the Failure to Use Notice,~~ the First Train Operator shall cease to have Firm Rights in respect of the Train Slot which is the subject of the Failure to Use Notice for the remainder of the Timetable Period: ("Forfeited Rights") unless the Failure to Use Notice has been contested in good faith by the First Train Operator with timely recourse to all appropriate measures and procedures;

2.5.2 any attempt by the First Train Operator to exercise such Forfeited Rights during the Timetable Period in which the Failure to Use occurred shall have no effect other than where the First Train Operator exercises such Forfeited Rights by submitting a Bid in accordance with Part D in connection with the preparation of the Working Timetable for the next Timetable Period;

2.5.3 HS1 Co shall not be liable to the First Train Operator for any direct or indirect losses (including any loss of profit, loss of revenue and/or loss of goodwill) costs and expenses suffered or incurred by the First Train Operator arising from the Failure to Use and/or the inability to exercise any Forfeited Rights; and

2.5.4 the First Train Operator shall not be entitled to any form of compensation from HS1 Co or any other person and/or any relief from its obligations under its Access Agreement other than in relation to any charges payable by the First Train Operator under Schedule 7 of its Access Agreement in connection with such Forfeited Rights which with effect from the date specified in the Failure to Use Notice shall be deemed to be zero for the remainder of the applicable Timetable Period.

## 2.6 Seasonal factors

Where a Train Operator has a Train Slot which it does not use for seasonal reasons, non-use by the Train Operator outside the recognised season will not give rise to surrender of a Train Slot.

## 2.7 Non-use for non-economic reasons

2.7.1 The Train Operator may object to the Failure to Use Notice where the non-use was for non-economic reasons beyond the control of the Train Operator.

2.7.2 For the purposes of this Condition "**non-economic reasons**" includes, but is not limited to:

~~(A)~~ (a) non-availability of another network on which the Train Operator's service would, but for the non-availability, operate; and

~~(B)~~ (b) a Force Majeure Event.

## 3. ~~ACCESS OPTIONS~~ CONDITION J3 - MODIFICATIONS TO ACCESS RIGHTS ARISING FROM CONGESTED INFRASTRUCTURE

3.1 ~~Where a Train Operator with an Access Option exercises its option to renew access, the maximum access to which it shall be entitled as a consequence of such Access Option is the access to which it was entitled under its Access Agreement prior to exercising the option, subject to the operation of Condition J.2.~~ Effect of Congested Infrastructure

Where in accordance with the Railways Regulations HS1 Co has declared some or all of the Network to be congested:

(a) any Firm Rights held by a Train Operator which are unable to be exercised by that Train Operator due to the Network being declared congested:

(i) shall be deemed to have been suspended from the date upon which HS1 Co made such declaration of congestion; and

(ii) shall have no effect until such time as HS1 Co revokes the declaration of congestion;

(b) any Bids for Train Slots made by a Train Operator which, in accordance with Part D, are unable to be scheduled in the Working Timetable due to the Network being

declared congested shall be deemed to have no effect, and Condition J3.1(a) shall apply to the Firm Rights upon which the Train Operator made such Bid; and

- (c) HS1 Co shall not be liable to a Train Operator for any direct or indirect losses (including any loss of profit, loss of revenue and/or loss of goodwill), costs and expenses suffered or incurred by a Train Operator in connection with HS1 Co declaring some or all of the Network to be congested.

- 3.2 ~~Subject to Condition J3.1, where Train Operator with an Access Option exercises its option to renew access in part only, the maximum access to which it shall be entitled as a consequence of such Access Option is the access entitlement as a consequence of such partial exercise.~~ **Compensation**

Save to the extent provided for in Condition J3.3 the suspension of any Firm Rights held by a Train Operator pursuant to Condition J3.1(a) and/or the inability to schedule any Bids for Train Slots made by a Train Operator in the Working Timetable as described in Condition J3.1(b) shall not entitle the Train Operator to any form of compensation from HS1 Co or any other person and/or any relief from its obligations under its Access Agreement.

- 3.3 ~~Where a Train Operator with an Access Option fails to exercise its option to renew access, it shall not have any entitlement to access as a consequence of such Access Option.~~ **Relief from Access Charges**

Any charges payable by a Train Operator under section 7 of an Access Agreement shall, to the extent that such charges arise in connection with any Suspended Rights, be deemed to be zero for the period commencing on the date upon which HS1 Co made the applicable declaration of congestion and ending on the date HS1 Co revokes such declaration of congestion.

#### 4. **CONDITION J4 - DISPUTES**

Any disputes arising in respect of this Part J shall be resolved in accordance with the Dispute Resolution Procedure.

**Part**PART **K** – **Information**INFORMATION (not used)

*Explanatory Notes*

*The provision of information requirements will be addressed within Access Agreements*

## **Part**PART L – **Performance**PERFORMANCE

### *Explanatory Note*

- A. *Part L sets out a process for the Access Parties to work together in order to improve, on a continuous basis, the performance of the Access Parties and the rail industry as a whole.*
- B. *This Explanatory Note does not form part of the HS1 Network Code.*

### **DEFINITIONS**

In this Part L, unless the context otherwise requires:

<b>"JPIP"</b>	has the meaning ascribed to it in Condition L1.2;
<b>"JPIP Party"</b>	means HS1 Co or any <del>Access Party</del> <u>Train Operator</u> with whom a JPIP has from time to time been agreed in accordance with this Part L and "JPIP Parties" means both of them;
<b>"Performance Objective"</b>	has the meaning ascribed to it in Condition L1;
<b>"Remedial Plan"</b>	means a plan agreed pursuant to Condition L2.

## **1 CONDITION L1 – OBJECTIVE**

### **1.1 Performance Objective**

The objective of this Part L (the "**Performance Objective**") is to provide for the improvement, on a continuous basis, of performance both as between HS1 Co and each ~~Access Party and of the rail industry as a whole~~Train Operator, through a process for liaison and cooperation in performance improvement to be applied between those parties.

### **1.2 Achievement of Performance Objective**

HS1 Co and each ~~Access Party~~Train Operator shall participate in performance reporting, planning, monitoring and reviewing with a view to agreeing and implementing a joint performance improvement plan (a "**JPIP**") in order to achieve the Performance Objective.

### **1.3 Period**

Each JPIP shall specify the period to which it relates. It is anticipated that elements of a JPIP may relate to differing periods, reflecting the short, medium or long term nature of the plans concerned.

### **1.4 Contents of a JPIP**

A JPIP shall contain such matters as are agreed as being designed to achieve the Performance Objective for the period covered by that JPIP, including:

- (a) performance metrics to be used for reporting on performance, the information to be provided by each party to the other for the purpose of such reporting, the format for regular reporting of performance and any more detailed process required to support the compilation, review and agreement of such reports;
- (b) performance targets in respect of the JPIP Party or JPIP Parties, which may include,
  - (i) stretch targets; and
  - (ii) performance levels at which a Remedial Plan will be established,
- (c) specific actions planned to be taken by one or both of the JPIP Parties (either together or separately and whether or not involving third parties) which are designed to help improve performance generally or to help achieve any stretch performance targets in the JPIP or (where these targets have been met) to maintain performance at least at these levels and to achieve further performance improvements which are reasonably practicable.

### 1.5 Review of JPIP

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

### 1.6 Compatibility of JPIPs

Without prejudice to the Performance Objective, each JPIP Party shall endeavour to ensure, so far as is reasonable, that:

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

## 2 CONDITION L2 - REMEDIAL PLANS AND FAILURE TO AGREE

If at any time:

- (a) one or more of the performance targets (other than any which is described as a stretch performance target) contained in a JPIP is not achieved; ~~or~~
- (b) in the opinion of either JPIP Party, acting reasonably, any performance target (other than any which is described as a stretch performance target) contained in a JPIP will not be achieved within the time periods set out in that JPIP; ~~or~~
- (c) ~~if~~ the JPIP specifies that a Remedial Plan is required at a particular level of performance and that level has been reached; ~~;~~ or
- (d) paragraph 5 of Part 2 of Section 8 of an Access Agreement applies in respect of a party's performance.

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

### **3 CONDITION L3 - PERFORMANCE REPORTING**

- 3.1 Subject to any confidentiality obligations, HS1 Co and each ~~Access Party~~Train Operator shall provide to the other information in its possession or under its control reasonably required by the other for the purposes of any JPIP or the agreement of any JPIP to which that ~~Access Party~~Train Operator is a party.
- 3.2 The parties to each JPIP shall keep under regular review the terms of that JPIP relating to the regular reporting and review of performance, recognising that there are efficiencies and other benefits to be secured through the adoption of common formats and processes of such reporting across the Network and that these are expected to evolve over time. Accordingly and without prejudice to any arrangements in a JPIP which are specific to monitoring initiatives or aspects of performance particular to that JPIP, ~~an Access Party~~a Train Operator shall not unreasonably withhold its consent to proposals for change to the JPIP insofar as they relate to changes to such common formats and processes of reporting in circumstances where such changes have been agreed between HS1 Co and a majority of other Train Operators.

### **4 CONDITION L4 – FRANCHISING AUTHORITY**

- 4.1 HS1 Co shall, except to the extent that a franchising authority may otherwise request, provide such franchising authority with copies (which may be in electronic format) of all JPIPs and any modifications of them made from time to time, and of any Remedial Plan, in respect of any franchised passenger train operator.
- 4.2 Any JPIP Party may, where it is a franchised passenger train operator, provide to the relevant franchising authority:
  - (a) any JPIP or Remedial Plan; and
  - (b) any other information regarding the matters contemplated by this Part L.

### **5 CONDITION L5 - LIMITS**

This Part L shall require participation as set out in Condition L1.2, but

- (a) does not provide a cause of action in relation to the failure either to agree or to achieve any performance targets or levels or improvement plans;
- (b) other than as regards such participation, shall not require any person to whom it applies to do or omit to do anything; and
- (c) shall neither relieve any person of any responsibility it may have in relation to its operations, acts or omissions nor transfer any such responsibility to any other person.

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***HS1 Limited 73 Collier Street London N19BE***

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Description	#18470150v1<London_10> - HS1 Network Code.DOC
Document 2 ID	interwovenSite://LN-WORKSITE/London_10/18470150/15
Description	#18470150v15<London_10> - HS1 Network Code - amended version 15
Rendering set	HS_Colour