

Annex 1

List of High Speed 1 Documentation¹

1. Proposed HS1 Network Statement (June 2009 consultation version)
2. Template Passenger Framework Track Access Agreement (June 2009 version)
3. The Passenger Access Terms (June 2009 version)
4. Template Freight Framework Track Access Agreement (June 2009 version)
5. The Freight Access Terms (June 2009 version)
6. HS1 Network Code (June 2009 version)
7. Comparison of HS1 Network Code (October 2008 consultation version against June 2009 version)
8. HS1 Emergency Access Code (June 2009 version)
9. Comparison of HS1 Emergency Access Code (October 2008 consultation version against June 2009 version)
10. HS1 Performance Data Accuracy Code (June 2009 version)
11. Comparison of HS1 Performance Data Accuracy Code (October 2008 consultation version against June 2009 version)
12. HS1 Railway Systems Code (June 2009 version)
13. Comparison of HS1 Railway Systems Code (October 2008 consultation version against June 2009 version)
14. Disputes Resolution Agreement (including Deed of Accession)
15. Revised DRA Deed
16. EUKL Framework Track Access Agreement
17. LSER Framework Track Access Agreement

¹ As mentioned in paragraph 15 of the letter, the following station access documentation is also available from www.highspeed1.com :

- (a) Template Station Access Agreement
- (b) Station Access Conditions (2007 edition)
- (c) Station Annexes for St Pancras International and Ebbsfleet International

PART A

HIGH SPEED 1 COMMERCIAL AND REGULATORY ARRANGEMENTS

Introduction

1. The purpose of this section is to outline the proposed regulatory and commercial arrangements which are intended to apply to High Speed 1.

Network Statement

2. HS1 Ltd is required by the Railways Regulations to publish a Network Statement for High Speed 1. The Network Statement is intended to provide existing and potential train operators with information on High Speed 1 and the commercial and legal terms and conditions upon which access may be granted to such infrastructure.
3. The Railways Regulations prescribe the information which must be contained in a Network Statement. The revised Network Statement has been drafted to comply with these requirements. Accordingly it includes, amongst other things:
 - (a) technical information about the specifications of High Speed 1;
 - (b) a description of the services supplied by HS1 Ltd in connection with High Speed 1;
 - (c) a description of the principles and criteria for the allocation of capacity on High Speed 1;
 - (d) a description of the charging principles.
4. The revised Network Statement has been based on the existing version of the Network Statement which was published in November 2008 but has been amended to reflect:
 - the change in the regulatory environment for High Speed 1 arising from the commencement of the Railways (Access and Management) (Amendment) Regulations 2009;
 - the role of the ORR in regulating High Speed 1 from 1 October 2009;
 - HS1 Ltd's conclusions on access charges following consideration of the responses to the first and second prospective consultations and the proposed introduction of the Charging Framework by the Secretary of State;
 - HS1 Ltd's conclusions on operational arrangements and the allocation of capacity following consideration of the responses to the third prospective consultation; and
 - the introduction of a revised performance regime for High Speed 1.

5. The track access regime described in the Network Statement is implemented through Framework Track Access Agreements or Track Access Agreements (as appropriate) and associated Passenger Access Terms or Freight Access Terms (as appropriate) and the HS1 Network Code and related operational codes. It is these arrangements that set out the legal rights and obligations of HS1 Ltd and train operators with respect to the use of High Speed 1.

Regulatory Framework

6. By virtue of the amended Railways Regulations the ORR's functions with respect to HS1 Ltd and High Speed 1 include:
 - (a) hearing appeals against decisions adopted by HS1 Ltd on matters such as charging and capacity allocation (regulation 29);
 - (b) regulation of competition in rail services markets; and
 - (c) with effect from 1 October 2009 (ie the date on which the ORR acquires certain statutory powers under the Railways Regulations):
 - (i) pre-approving framework access agreements (i.e. access agreements which relate to more than one working timetable period) and amendments to such agreements (regulation 18(12));
 - (ii) ensuring that High Speed 1 access charges comply with the Railways Regulations (regulation 28(2));
 - (iii) supervising negotiations between an applicant and HS1 Ltd about the level of access charges (regulation 28(3)); and
 - (iv) exercising its rights and responsibilities under, or by virtue of, the agreement with the Secretary of State in relation to the concession to design, build, operate and maintain High Speed 1 ("**Concession Agreement**") in order to ensure that HS1 Ltd is provided with incentives to reduce the cost of provision of infrastructure and the level of access charges (regulation 13(3)).
7. The ORR's functions under the Concession Agreement relate principally to the stewardship of High Speed 1 railway infrastructure (other than stations) and to the review of charges for the operation, maintenance and renewal ("OMRC") of such infrastructure. It also has a role with respect to monitoring the performance of HS1 Ltd.
8. With respect to the ORR's role in setting OMRC, the Concession Agreement provides for the ORR to carry out a periodic review of OMRC with the outcome of the first such review to take effect on 1 April 2015. Thereafter, periodic reviews will be conducted on a five yearly basis until the expiry of the Concession Agreement on 31 December 2047. The Concession Agreement sets out a mechanism intended to result in HS1 Ltd and the ORR agreeing OMRC for the next price control period. Failing such agreement, the ORR will have the power to determine OMRC.

9. In addition to periodic reviews, the Concession Agreement provides for the ORR to conduct an interim review of OMRC at the initiative of HS1 Ltd in the event of a material and significant change to the circumstances upon which the then current OMRC was approved provided that such change is due to circumstances outside HS1 Ltd's control.
10. Following the conclusion of this consultation, the ORR is planning to publish a Regulatory Statement clarifying its regulatory and policy approach with respect to High Speed 1. This is expected to comment on various matters relating to the carrying out the ORR's functions including:
 - the framework track access agreements to be entered into by HS1 Ltd prior to 1 October 2009 (i.e. prior to the ORR acquiring its statutory power of pre-approval under regulation 18(12));
 - certain factors the ORR would recognise in making decisions on track access charges;
 - how the ORR will exercise its appellate function and its statutory powers regarding the pre-approval of framework track access agreements, and amendments to them and the HS1 Network Code;
 - the anticipated process for periodic reviews of OMRC and the scope of such reviews;
 - the triggering of an interim review of charges;
 - the approach of the ORR with respect to enforcement; and
 - the designation of specialised infrastructure.

Access Charges

(i) Charging Framework

11. In accordance with the Railways Regulations the Secretary of State has proposed a Charging Framework for High Speed 1 which establishes certain charging parameters and principles. The Secretary of State is currently consulting on the revised form of the Charging Framework and a copy of the Secretary of State's consultation document can be found on www.highspeed1.com.
12. The charging regime proposed by HS1 Ltd for High Speed 1 (as set out in the revised Network Statement) has been set in a manner which HS1 Ltd considers is consistent with the Charging Framework and the Railways Regulations. However if the Charging Framework is revised as a result of the consultation process, the access charges set out in the revised Network Statement may need to be modified in order that they continue to be consistent with the revised Charging Framework.

(ii) *Track Access Charges*

13. This section outlines developments in HS1 Ltd's approach to track access charging since publication of the Second Consultation on Prospective Levels and Principles of Track Access Charging for the High Speed 1 Railway on 25 September 2008 (the "**Second Consultation**"). If a principle proposed in the Second Consultation is not discussed in this consultation paper, industry parties are directed to the Network Statement and the Passenger Access Terms or Freight Access Terms (as appropriate) which set out the detailed commercial and legal arrangements for High Speed 1 in respect of that principle.
14. This section is provided for information purposes only. Industry parties are encouraged to review and comment on the revised Network Statement rather than rely upon this summary.
- Investment recovery charge for passenger operators***
15. There has been no material change to the proposals described in the Second Consultation to levy an investment recovery charge for passenger operators.
- OMRC for passenger and freight services***
16. There has been a change to the regulatory basis on which HS1 Ltd proposes to levy an OMRC to recover its costs in respect of the operation, maintenance and renewal ("**OMR**") of High Speed 1.
17. With respect to passenger services, the Second Consultation proposed that passenger OMR costs be split into:
- (a) Long run incremental OMR costs (LRIC) associated with the use of High Speed 1 by, on the one hand, high speed international passenger services, and on the other hand, domestic passenger services – i.e. the costs that would not be incurred in the long run if either of such services did not operate on High Speed 1; and
 - (b) Common costs – i.e. costs that would be incurred to keep the line open and operate any high speed passenger train but which are not incremental to either international or domestic passenger services specifically.
18. With respect to freight services, the Second Consultation stated that:

"HS1 Ltd proposes to calculate freight charges on the basis of the long run incremental cost (LRIC) of freight. Freight LRIC includes both variable costs (which vary with the number and type of trains using the line) and freight-specific fixed costs (for example, OMRC associated with track sections used exclusively by freight).

This charge would cover all costs which would be avoidable in the long run if freight trains did not operate on HS1 (providing the actual traffic level was consistent with the level on which the per-unit charge was based) and is therefore the lowest level of charge that would allow [HS1 Ltd] to recover the cost of freight operation, although it does not contribute towards common costs."

19. Following discussions with the ORR, HS1 Ltd has adopted a revised approach to determining OMRC for passenger and freight services, described in the following extract from Appendix 1 to the Network Statement:

"[A] distinction has been drawn between:

- *those costs which are directly incurred as a result of operating train services, which are recovered through the general charging principle (i.e. in accordance with paragraph 1(4) of Schedule 3 to the Rail Regulations 2005); and*
- *common costs, which are recovered on the basis of the long term costs of the operational phase of the HS1 project under the exception to the general charging principle specified in paragraph 3 of Schedule 3 to the Rail Regulations 2005 (the "Second Exception").*

In order to do this:

- *Train services have been grouped into a number of different 'increments'; i.e. 'domestic passenger services', 'international passenger services' and 'freight rvice's'.*
- *Consideration has been given to what OMRC would not be incurred, or would be 'avoidable', in the absence of each of these increments. In determining such avoidable costs, account has been taken of the cost of mothballing elements of HS1 required only by that increment, with such mothballing costs being treated as common costs. To be specific:*
 - *those costs which would be avoidable if international passenger services were not to run on HS1 have been defined as being those costs which are directly incurred by international passenger services.*
 - *those costs which would be avoidable if domestic passenger services were not to run on HS1 have been defined as being those costs which are directly incurred by domestic passenger services.*
 - *those costs which would be avoidable if freight services were not to run on HS1 have been defined as being those costs which are directly incurred by freight services.*

All such costs are recovered under the general charging principle.

- *Those costs which remain after the process of defining increments and analysing avoidable costs (as outlined above) are treated as common costs. These costs are apportioned between international and domestic passenger train services on the following basis:*
 - *Common costs which increase as the length of the line increases (e.g. signalling maintenance) are apportioned between international and domestic passenger train services on the basis of expected train minutes spent on those sections of HS1 used by both international and domestic train services (ignoring stopping time at stations). This is to prevent operators being unfairly penalised for time spent on sections of HS1 the cost of which will, for the most part, be recovered from such operators as costs directly incurred by them (i.e. under the general charging principle);*
 - *Common costs which do not increase with the length of the line (e.g. office administration costs) are apportioned between international and domestic passenger train services on the basis of expected train minutes spent on the whole length of HS1 (ignoring stopping time at stations).*

Common costs are recovered from passenger TOCs on the basis of the long-term costs of the operational phase of HS1 project under the Second Exception. Freight services are not charged for the common costs."

20. With respect to passenger services, in addition to Appendix 1 to the Network Statement, industry parties are referred to section 6.1.1(b) of the Network Statement for further details regarding the approach to determining OMRC, including updated illustrative charges. These charges are derived from a modified cost base which includes efficiency savings. Section 6.1.1(b) also describes arrangements for:
- (a) annual adjustments of OMRC; and
 - (b) the review and/or reapportionment of OMRC, including following a periodic review or interim review by the ORR and in the event of an increase or decrease in train movements by 4% or more.
21. With respect to freight services, in addition to Appendix 1 to the Network Statement, Addressees are referred to section 6.2.1(a) of the Network Statement for further details regarding the approach to determining freight OMRC. That section includes details of HS1 Ltd's intention to introduce a discount for freight services operated at night on High Speed 1 for a period of five years.

Capacity reservation charge

22. There has been a change to HS1 Ltd's proposals to levy a capacity reservation charge. This change relates to:
- (a) the amount of the charge and, in the case of freight services, the circumstances in which it is payable; and

- (b) the availability of a rebate against the capacity reservation charge and the amount of such a rebate.

23. Details of arrangements for capacity reservation charges are set out for passenger services in section 6.1.1(d) of the Network Statement and for freight services in section 6.2(c).

Other charges

24. The description of charges for "other services" provided in paragraphs 154 to 159 of the Second Consultation has been superseded by the description of charges contained in the Network Statement. Consultees are referred to:

- section 6.1.1(c) and (e)-(h) of the Network Statement (in respect of passenger train services):
- section 6.2.1(b) and (d)-(f) of the Network Statement (in respect of freight trains services): and
- section 6.3.1 of the Network Statement (in respect of testing train services).

Reservation and Allocation of Capacity

25. The proposed arrangements regarding the reservation and allocation of capacity are addressed in Part B of this consultation paper.

Performance Regime

26. Following the end of the Second Consultation, HS1 Ltd has continued to develop the proposed performance regime for High Speed 1 so as to ensure that it effectively incentivises all parties operating on High Speed 1 to improve performance of the network.

27. A description of the principles underpinning the proposed performance regime is set out in Appendix 3 of the revised Network Statement. The performance regime will be incorporated into a train operator's framework track access agreement or track access agreement and is contained in Section 8 of the Passenger Access Terms (in respect of passenger train operators) and Section 8 of the Freight Access Terms (in respect of freight operators).

28. HS1 Ltd is proposing to hold a workshop for interested parties at 10am on 2 July 2009 at the British Library in London. The objective of the workshop is to finalise the performance regime for High Speed 1 and in doing so assist industry parties in understanding how the performance regime would operate. It is currently envisaged that the workshop will consist of:

- an explanation of the proposed performance regime;
- a review of worked examples illustrating how the performance regime would operate in certain scenarios; and
- a discussion on the following questions in connection with the proposed performance regime:
 - (i) the revised regime uses TOC-on-TOC delay rather than TOC-on-self delay as the basis for calculating performance payments. Would such a regime provide sufficient incentives on operators to minimise their impacts on performance?
 - (ii) given that there is no historical record of multi-operator operations over High Speed 1, it is proposed that at the end of a period of calibration the payment rates and thresholds (but not the caps) would be subject to review. We would welcome comments on the appropriate duration of the review period.
 - (iii) it is proposed that any party whose performance persists at a less than acceptable level shall be required to implement a performance improvement plan. The criteria proposed for triggering this are where performance reaches the net payment cap in any 3 out of 13 consecutive periods or where in 8 out of 13 consecutive periods performance is, for HS1 Ltd, between a poor performance threshold and a performance benchmark, and, for the Train Operator, worse than a performance benchmark. Are these criteria appropriate or should they be more or less onerous?

29. If you would be interested in participating in the workshop on the performance regime please contact either Naina Mistry or Brian Blackwell of HS1 Ltd at the address given in the covering letter by no later than 17.00 hours (London time) on Monday 29 June 2009.

Stations

30. The approach to stations access and charging is unchanged from the current (November 2008) Network Statement. Stations are therefore not the focus of this consultation. The provisions in the Network Statement relating to station charges are:

- (a) section 6.1.2(a) – common charges;
- (b) section 6.1.2(b) – exclusive charges; and
- (c) section 6.3.2 – station access charges for testing.

PART B

HIGH SPEED 1 OPERATIONAL ARRANGEMENTS

Introduction

1. On 29 October 2008 HS1 Ltd issued the Third Prospective Consultation on the Operational Arrangements and Principles for the Allocation of Capacity for the High Speed 1 Railway ("Third Consultation").
2. The Third Consultation concerned the proposed principles by which capacity would be allocated on High Speed 1 and the long term operational arrangements for High Speed 1. In line with the practice used on the domestic rail network the proposed operational arrangements took the form of:
 - a HS1 Network Code;
 - a HS1 Emergency Access Code;
 - a HS1 Performance Data Accuracy Code; and
 - a HS1 Railways Systems Code.
3. Interested parties were invited to comment on the proposed arrangements by 17 December 2008.
4. This section of the consultation paper sets out HS1 Ltd's conclusions following its consideration of the responses it received in connection with the Third Consultation and reflects its current proposals as to the operational arrangements which will apply to High Speed 1. If a principle proposed in the Third Consultation is not discussed in this consultation paper, industry parties are directed to the Network Statement and the Passenger Access Terms or Freight Access Terms (as appropriate) which set out the detailed commercial and legal arrangements for High Speed 1 in respect of that principle.

Principles relating to the Reservation and Allocation of Capacity

5. Appendix B of the Third Consultation described the general principles regarding the basis upon which HS1 Ltd proposed that capacity on High Speed 1 would be allocated.
6. A number of responses to the Third Consultation raised specific queries regarding the potential application of the proposed allocation principles to the particular respondent. As the queries are predominantly of a commercially sensitive nature and bespoke to the particular respondent, HS1 Ltd has sought to address these queries through bilateral discussions with the relevant respondent rather than address them in this report.
7. Paragraphs 8 to 19 below describe the capacity allocation principles in more detail.

(A) Regulatory Framework

8. Since the publication of the Third Consultation the EU Third Rail Package has been transposed into English Law through the introduction of the Railways Infrastructure (Access and Management) (Amendment) Regulations 2009 which amend the Railways (Access and Management) Regulations 2005.
9. The principles of capacity allocation for High Speed 1 as set out in the HS1 Network Code have been amended so that they are aligned with the amended Railways Regulations.

(B) Declaration of Specialised Infrastructure

10. Several respondents to the Third Consultation queried the appropriateness of the order of priority specified in the Declaration of Specialised Infrastructure made by NR CTRL as the Charging Body and the Allocation Body for High Speed 1 ("Declaration"). However there was no common view arising from the consultation responses as to the manner in which the order of priority set out in the Declaration should be altered.
11. HS1 Ltd believes that the order of priority set out in the Declaration satisfies the requirements of the Railways Regulations and is consistent with the contractual requirements it must satisfy under the Concession Agreement. While HS1 Ltd is willing to keep the form of the Declaration under review, in the absence of any alternative order of priority which has broad support from all industry participants, HS1 Ltd does not propose making any amendments to the Declaration.

(C) Access Agreements

12. As proposed in the Third Consultation, the reservation of capacity on High Speed 1, whether for international or domestic passenger or freight services, will be undertaken by HS1 Ltd through the entering into of:
 - framework track access agreements (where the reservation of capacity is for a period longer than one timetable period); or
 - short term track access agreements (where the reservation of capacity is for up to one timetable period).
13. Template framework track access agreements have been prepared which, amongst other things, will:
 - reflect the capacity allocated to a train operator;
 - incorporate the proposed charging regime for such capacity; and
 - require the train operator to comply with the operational arrangements for High Speed 1 such as the HS1 Network Code.

14. The framework track access agreements have been structured so that they incorporate HS1 Ltd's standard terms and conditions for the operation of passenger or freight services (whether international or domestic). These standard terms and conditions have been called the Passenger Access Terms and the Freight Access Terms (as the case may be).
15. The Passenger Access Terms and Freight Access Terms have, to the extent appropriate, been based on the model passenger track access contract and model freight track access contract for the national rail network published by the ORR. The principal differences relate to the charging regime (Section 7 of the Passenger Access Terms or Freight Access Terms) and the performance regime (Section 8 of the Passenger Access Terms or Freight Access Terms), which have been established to reflect the specific characteristics of High Speed 1 (see Part A of this consultation paper for further detail).
16. A copy of the current version of the Passenger Access Terms and Freight Access Terms and a template Passenger Framework Track Access Agreement and Freight Framework Track Access Agreement are contained on the CD-ROM enclosed with this letter. The documents are also available to be downloaded from www.highspeed1.com.
17. HS1 Ltd considers that the form of agreement for short term track access agreements (of the kind envisaged in paragraph 21 of Appendix B to the Third Consultation) would be the same as for framework track access agreements, other than in respect of duration (although it would be possible to specify timetabled paths for the single timetable period covered).
18. One respondent to the Third Consultation proposed that HS1 Ltd should publish an explanatory guidance note on key aspects of capacity reservation, timetabling and allocation processes and criteria in order to help prospective market entrants and incumbents. HS1 Ltd considers that the revised Network Statement should provide incumbents and potential applicants with the level of guidance desired. However, if the responses to the consultation on the revised Network Statement indicate a continued desire for further guidance, HS1 Ltd is willing to consider the possibility of publishing explanatory notes.

(D) Process for the Allocation of Capacity

19. It is intended that the capacity allocation process followed on High Speed 1 will be as follows:
 - (a) an operator will reserve a certain quantum of capacity on High Speed 1 by entering into a Framework Track Access Agreement ("**FTAA**") or a track access agreement with HS1 Ltd. This reserved capacity is translated into train slots in the timetable through the timetabling process set out in Part D of the HS1 Network Code, which is incorporated into the FTAA. The timetable will be established annually in December with mid-year adjustment in May.

- (b) Each year HS1 Ltd will consult with relevant train operators to understand how their service aspirations may be reflected in the timetable due to come into operation 12 months in the future. To help inform this consultation, HS1 Ltd will provide the operators with details of its plans for the implementation of maintenance and renewal requirements. At the end of this consultation process, each operator will be required to make a formal declaration of its aspirations for train paths and the reserved capacity under its FTAA that it intends to exercise in support of those aspirations. Taking account of these declarations, the decision criteria set out in the HS1 Network Code and subsequent negotiations with the operators, HS1 Ltd will prepare and issue each working timetable.

Operational Arrangements

(A) HS1 Emergency Access Code, HS1 Railway Systems Code and HS1 Performance Data Accuracy Code

20. Other than as set out in paragraph 21 below, respondents to the Third Consultation did not raise any objections to the proposed arrangements set out in the HS1 Performance Data Accuracy Code, the HS1 Railway Systems Code and the HS1 Emergency Access Code (together the "Operational Codes").
21. Some respondents did raise a concern that the dispute resolution mechanism in each of the Operational Codes referred to the dispute resolution procedure set out in the HS1 Network Code which they considered was not appropriate for operational related disputes. This issue is discussed further at paragraphs 25 and 26 below and Part C of this consultation paper.
22. Some minor changes have been made to some of the definitions in each of the Operational Codes to align them with the definitions in the HS1 Network Code. HS1 Ltd does not consider that any of the amendments to the definitions alter the operational arrangements set out in each of the Operational Codes. The financial cap on liability in the HS1 Emergency Access Code has been changed so that the liability cap under the Passenger Access Terms or Freight Access Terms applies to the code. A minor change has also been made to the payment provisions in the HS1 Emergency Access Code to facilitate the recovery by an affected party of any losses it suffers as a result of an emergency from the relevant party to the code.
23. A copy of each of the Operational Codes and a comparison showing the changes from the versions of the codes which were published as part of the Third Consultation are contained on the CD-ROM enclosed with this letter. The documents are also available for downloading from www.highspeed1.com

(B) HS1 Network Code

24. The majority of the responses to the Third Consultation related to the draft HS1 Network Code. Respondents to the Third Consultation welcomed the general approach of HS1 Ltd to align the HS1 Network Code, as far as appropriate, with the Network Code which applies to the national rail network ("**NR Network Code**").

25. A common concern which was expressed by several respondents related to the proposed dispute resolution procedure. The respondents considered that the procedures under the HS1 Disputes Resolution Agreement are not suitable for the operational type of disputes which might arise from the day-to-day operation of High Speed 1.
26. In response to such concerns HS1 Ltd has reviewed the dispute resolution procedure and proposes to make some modifications. Please see Part C of this consultation paper for further details.
27. A number of amendments have been made to the HS1 Network Code to reflect the comments and issues raised in the responses to the Third Consultation. A summary of the key amendments is set out in Appendix A to Part B of this consultation paper, while a comparison highlighting the drafting changes which have been made to the version of the HS1 Network Code which was circulated as part of the Third Consultation is contained on the CD-ROM enclosed with this letter and also available from www.highspeed1.com
28. HS1 Ltd recognises that significant changes have been made to certain parts of the HS1 Network Code since the publication of the Third Consultation including to:
 - Part C (Modifications to the HS1 Network Code);
 - Part E (Environmental Protection);
 - Part I (Dispute Resolution Procedure); and
 - Part J (Changes to Access Rights).

Industry parties are welcome to comment on the proposed changes to the HS1 Network Code as part of their response to this consultation.

Appendix A

HS1 Network Code: Summary of Key Changes

Section of HS1 Network Code	Changes
Part A. General Provisions	<p>Part A has been modified to include an overriding objective to operate a safe and secure railway where the safety and security risks are reduced to a level as low as reasonably practicable.</p> <p>This is the same objective as applies to the NR Network Code.</p> <p>In addition, certain definitions have been amended so that they are consistent with the HS1 Operational Codes and the terms used in the Passenger Access Terms and Freight Access Terms.</p>
Part B. Performance Monitoring	<p>Part B has been amended to reflect the role of the Delay Attribution Guide in the attribution of delay on High Speed 1. As the Delay Attribution Guide currently used on High Speed 1 is the same as the guide used on the national rail network certain provisions have been included in Part B to clarify that:</p> <ul style="list-style-type: none"> (a) decisions relating to the Delay Attribution Guide on the national rail network do not apply to High Speed 1; and (b) the Delay Attribution Guide may only be amended through the change mechanism set out in Part C of the HS1 Network Code. <p>The provisions for the notification and agreement of delays have been revised so that they are aligned with the process contained in the NR Network Code.</p>
Part C. Modifications	<p>Part C sets out the mechanism by which modifications may be made to the HS1 Network Code and other arrangements (such as the Operational Codes). Part C has been revised to reflect the role of the ORR under the Railways Regulations in approving all amendments to framework track access agreements (of which the HS1 Network Code forms a part).</p>
Part D: Timetable Change	<p>In response to the consultation responses, Part D has been amended by defining what is considered to be a "Major Timetable Change" for the purposes of Condition D1.5 as well as clarifying the process for establishing "Domestic Paths" which are contiguous with planned train movements on the national rail network.</p> <p>Except as described above only clarificatory or minor changes have been made to this Part, which are not considered to be</p>

Section of HS1 Network Code	Changes
	material.
Part E: Environmental Change	<p>The environmental information requirements in Condition E1 have been amended to:</p> <ul style="list-style-type: none"> (a) oblige HS1 Ltd to develop and update at least once a year an environmental policy which, amongst other things, reflects good industry practice; (b) require each train operator to develop an environmental policy and an environmental management system and review such documentation at least once a year to ensure it continues to be consistent with, amongst other things, good industry practice; (c) require each train operator to notify HS1 Ltd of the member of its staff who is responsible for managing environmental issues; and (d) entitle HS1 Ltd to carry out environmental audits of a train operator to assess the extent to which that train operator is complying with its environmental policy and environmental management system. <p>A new Condition E3 has been included to set out a mechanism through which HS1 Ltd may change the environmental requirements (or introduce new requirements) relating to High Speed 1. The environmental requirements include matters such as minimising waste and energy consumption.</p>
Part F: Vehicle Change	<p>This Part has been amended to modify the vehicle change procedure slightly to ensure that the process is consistent with the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and that possible ambiguities regarding timing are clarified.</p>
Part G. Network Change	<p>This Part has been amended so that HS1 Ltd is under an obligation to facilitate Network Change. In addition, the Network Change procedure has been revised so that it is more closely aligned to that in the NR Network Code and so as to ensure a consistent approach is taken with the vehicle change procedure in Part F. Other clarificatory changes have also been made.</p>
Part H. Operational Disruption	<p>Minor changes have been made to this Part relating to the review and update of codes of practice and contingency plans.</p>
Part I. Dispute Resolution Procedure	<p>Part I has been amended to reflect the role of the ORR as the appellate body under the Railways Regulations. Condition I3 provides that where a train operator has a right to appeal to the</p>

Section of HS1 Network Code	Changes
	<p>ORR under the Railways Regulations in relation to a dispute which would otherwise be required to be addressed through the Disputes Resolution Agreement, the train operator agrees not to exercise its statutory right until the dispute resolution process has been exhausted.</p>
<p>Part J. Changes to Access Rights</p>	<p>Part J has been amended to clarify:</p> <ul style="list-style-type: none"> (a) the commencement of the "use it or lose it" provisions regarding a failure to bid for a train path; and (b) the consequences for a train operator and HS1 Ltd where a failure to bid for a train path or a failure to use a train path occurs. <p>A provision (Condition J3) has also been inserted to address the consequences on the allocation of capacity if High Speed 1 is declared as Congested Infrastructure.</p>
<p>Part K: Information</p>	<p>This Part is not used.</p>
<p>Part L. Performance</p>	<p>Only minor amendments have been made to this Part. It is considered that these changes do not materially alter the meaning of the provisions in Part L.</p>

PART C

DISPUTE RESOLUTION

Introduction

1. This section outlines the proposed changes to the dispute resolution arrangements for operational disputes arising in connection with High Speed 1 and, in particular, arising under or in relation to track or station access agreements.
2. The dispute resolution arrangements for High Speed 1 are a combination of:
 - a contractual regime contained in the Disputes Resolution Agreement (see paragraph 4 below); and
 - the statutory regime contained in the Railways Regulations.
3. The proposed changes to the dispute resolution arrangements do not affect the existing arrangements under the CTRL Claims Allocation and Handling Agreement ("**HS1 CAHA**") which sets out a regime for the allocation of liability between signatories for certain claims brought by third parties and liability for property damage and consequential loss caused by one signatory to another. A copy of the HS1 CAHA is available upon request from HS1 Ltd.

Disputes Resolution Agreements

4. The Disputes Resolution Agreement dated 18 February 1999 ("**DRA**") was entered into by a number of parties including the Secretary of State, Railtrack Group PLC and LCR. The DRA provides for the resolution of disputes arising out of or in connection with a number of agreements relating to High Speed 1 in accordance with a disputes resolution procedure set out in Schedule 8 of the DRA. (**the "DRP"**).
5. The DRA applies to a wide range of disputes, including (in a limited number of cases) disputes under other agreements whose parties are not parties to the DRA itself but have agreed in those other agreements to apply the DRP contained in the DRA to their disputes. The DRP requires the parties to apply a quick resolution procedure before a panel of experts dividing the disputes into "construction", "operational" and "other disputes" with slightly different procedures and a different panel for each category.
6. The DRA has been amended a number of times to add new parties such as Network Rail and London Underground Limited and to remove Railtrack Group PLC. There have also been substantive amendments.

Determination of Operational Disputes

7. For disputes relating to operational matters which are heard by the Operational Panel, the DRP provides for brief exchanges of notices and written submissions and then for the Operational Panel to decide matters of procedure, subject to any matters the parties may agree in writing.
8. There is broad discretion as to the procedures to be adopted for determining operational disputes and these may include an oral hearing with witnesses, inspections, tests and examinations and all proceedings are to be in private. The Operational Panel comprises three members (including the chairman) who should, as far as is reasonably practicable, have expertise in particular areas including design, planning, operations, maintenance, ticketing and fare collection, train control and communications systems, procurement and rolling stock. The Operational Panel may:
 - (a) require the parties to exchange witness statements before any oral hearing and may appoint a legal assessor to assist it;
 - (b) make orders for the preservation, custody or sale of objects and property;
 - (c) allow amendments to the parties' cases;
 - (d) continue to act if one party does not appear;
 - (e) order disclosure of documents; and
 - (f) order experiments and tests.
9. The Operational Panel must make a decision within 21 days of a dispute being referred to it and its decision is binding unless and until revised by arbitration or agreement.
10. If any party is dissatisfied with the result of the quick resolution procedure described above, it may require the dispute to be referred to an arbitrator (acting under modified London Court of International Arbitration Rules) for a final decision. There is a requirement for an attempt at a negotiated settlement by senior executives from each party if either party wishes to contest a Panel decision or the quick resolution procedure fails before any arbitration can be commenced. The senior executives must reach a joint unanimous decision within 21 days of the Panel decision or of the date when the Panel should have come to a decision. There is a provision for any party to the dispute to "leap frog" the quick resolution procedure and proceed directly to arbitration.
11. There are also provisions for joinder of connected disputes at the quick resolution stage and at the arbitration stage.

Proposed Amendments to Procedure for Determining Operational Disputes

12. As mentioned in Part B of this consultation paper, several respondents to the Third Consultation considered that the existing dispute resolution procedure was not appropriate in its current form for dealing with certain types of operational disputes that might arise in connection with High Speed 1.
13. Having considered the concerns raised by the respondents to the Third Consultation, HS1 Ltd has reviewed the dispute resolution procedure for operational disputes and proposes that certain amendments be made to the procedure in order to provide a more flexible and practical method of resolving operational disputes on High Speed 1.
14. The proposed amendments to the DRA are not intended to and do not alter the fundamental character of the disputes resolution procedure and do not change the final resolution of the disputes through arbitration. However the proposed amendments make the following changes to the DRP:
 - (a) a party acknowledges the role of the ORR in settling certain matters regarding the Concession Agreement under its statutory powers;
 - (b) the inclusion of a very quick procedure for delay attribution issues;
 - (c) the inclusion of a procedure for timetabling and other disputes that secures the involvement of all relevant parties;
 - (d) one party can no longer require a dispute to bypass the quick resolution stage and be determined through arbitration, thereby preventing a quick initial determination. However, after the mandatory quick resolution stage, it is still open to the parties to refer the expert's decision to arbitration; and
 - (e) a streamlining of the drafting of the procedure for the Operational Panel.
15. The proposed amendments are set out in the Revised DRA Deed.
16. HS1 Ltd proposes to hold a series of meetings to discuss the proposed amendments to the DRA. Please see paragraph 24 below for further information.

Accession to the DRA

17. Subject to obtaining the relevant consents and approvals, it is proposed that the proposed amendments to the DRA will come into force on 1 August 2009.
18. After 1 August 2009, a train operator applying for access to High Speed 1 will be required to sign a Deed of Accession to the DRA and the Revised DRA Deed as a condition of being granted access by HS1 Ltd. A copy of the Deed of Accession and the Revised DRA Deed are available from www.highspeed1.com
19. By signing the Deed of Accession and the Revised DRA Deed, the train operator becomes bound by:
 - (a) the current dispute resolution regime under the DRA (by virtue of the Deed of Accession); and

(b) the proposed modified dispute resolution procedure (by virtue of the Revised DRA Deed).

20. It is necessary for a train operator to be a party to both regimes as it has been recognised by HS1 Ltd, the Secretary of State and the ORR that it is not practicable to obtain the consent of all of the parties to the DRA to the proposed amendments to the DRP. As the DRA contains wide provisions for joinder of disputes it is possible that for a limited class of disputes, both the existing unamended DRA and the new amended DRA may apply as between different parties. Accordingly where in these circumstances the existing DRA arrangements apply the train operator would need to be bound by the relevant arrangements.

Further Development of Procedures for Determining Operational Disputes

21. In addition to the proposed amendments described above, HS1 Ltd is, in conjunction with train operators and other interested parties, proposing to undertake a more detailed review of the dispute resolution arrangements for operational disputes in order to determine if any further modifications should be made to the regime. It is currently intended that subject to obtaining the necessary consents and approvals any further amendments will be introduced on or before 1 December 2009. This process is currently reflected in Part I of the HS1 Network Code.

22. Consultees, who are not subject to the HS1 Network Code but who would like to participate in this further review are invited to contact Naina Mistry or Brian Blackwell of HS1 Ltd. Please see paragraph 24 below for further information.

Role of ORR and Operational Disputes

23. The Railways Regulations grant applicants certain rights to appeal to the ORR including where the applicant believes that it has been unfairly treated, discriminated against or is in any other way aggrieved. In order that the statutory regime in the Railways Regulations operates consistently with the contractual regime contained in the DRA, it is proposed that a provision be included in Part I of the HS1 Network Code which requires a train operator to delay exercising any rights it may have under the Railways Regulations in respect of a dispute, until the dispute resolution process under the DRA has been exhausted in respect of that dispute.

Consultation Meetings

24. As mentioned above HS1 Ltd proposes to hold a series of meetings to discuss the proposed amendments to the DRA. The initial meeting is proposed for Friday 3 July in London. At the meeting it is proposed that the following matters will be discussed:

- the current dispute resolution regime for operational and access related disputes;
- the proposed two stage approach to reviewing and amending the dispute resolution regime;
- in relation to the first stage (as described in paragraphs 12-15 above), the nature and scope of the proposed amendments to the dispute resolution procedure; and

- the process and timeframes for closing out the first stage by August 2009 and finalising the amendments to the DRA, including whether an industry working group should be established; and
- the proposed nature and scope of second stage review (as described in paragraph 21 above) of the dispute resolution procedure.

25. If you would like to participate in any of the consultation meetings on the dispute resolution arrangements please advise Naina Mistry or Brian Blackwell of HS1 Ltd at the address set out in the covering letter by no later than 17.00 hours (London time) Monday 29 June 2009.

PART D

EUKL AND LSER ARRANGEMENTS

Introduction

1. This section describes the terms and conditions of the framework track access agreements proposed to be entered in to by HS1 Ltd with each of EUKL and LSER.
2. It is intended that the terms and conditions of both the proposed framework track access agreement with EUKL (the "**EUKL FTAA**") and the proposed framework track access agreement with LSER (the "**LSER FTAA**") will comprise:
 - (a) a bespoke version of the Framework Track Access Agreement;
 - (b) the Passenger Access Terms;
 - (c) the HS1 Network Code;
 - (d) the HS1 Emergency Access Code;
 - (e) the HS1 Performance Data Accuracy Code; and
 - (f) the HS1 Railway Systems Code.
3. The EUKL FTAA and the LSER FTAA have been based on the principles described in the revised Network Statement which is subject to consultation (and has been prepared in a manner consistent with the proposed Charging Framework for High Speed 1). HS1 Ltd recognises that if the terms of the Charging Framework being consulted upon by the Secretary of State are modified and/or the terms of the revised Network Statement change following consultation, it may be necessary to modify the terms of the EUKL FTAA and the LSER FTAA in order that they remain consistent with the Network Statement.

EUKL Framework Track Access Agreement

4. EUKL currently provides international passenger services on High Speed 1 pursuant to:
 - the International Railway Track Access Contract for Passenger Services relating to Section 1; and
 - the International Railway Track Access Contract for Passenger Services relating to Section 2.

5. The proposed EUKL FTAA is intended to replace the existing track access arrangements and will be for a term of 10 years. Given the track access arrangements being replaced would not otherwise expire until 2086, the level of EUKL's prior and planned investment in specialised rolling stock (Eurostar train sets) and the refurbishment thereof, and the risks EUKL faces in developing a relatively new market in Great Britain for high speed international passenger services, HS1 Ltd considers that the proposed term of 10 years is consistent with the Railways Regulations. EUKL has recently requested that the term be extended to 15 years. HS1 Ltd has not yet reached a concluded view on this request and invites comments from consultees.
6. A summary of the key terms of the proposed EUKL FTAA is set out below. A copy of the proposed agreement is contained on the CD-ROM enclosed with this letter and is also available on the HS1 Ltd website www.highspeed1.com

Details of Applicant	<i>Registered Name:</i> Eurostar (U.K.) Limited <i>Registration Number:</i> 02462001 <i>Registered Office:</i> Times House Bravingtons Walk London N1 9AW
Is the Applicant, the person who will operate the services?	Yes
Summary of Agreement	The purpose of the EUKL FTAA is to provide EUKL with access to High Speed 1, to allow it to run passenger services between St Pancras International Station (and, where applicable, intermediate stations) and the Eurotunnel Boundary, in order to run passenger services to and from European destinations.
Duration	The agreement is intended to commence in August 2009 and unless terminated in accordance with its terms, will expire 10 years after its commencement date. See paragraph 5 above with respect to EUKL's request to extend the term to 15 years.
Routes	The routes for the services are <ul style="list-style-type: none"> • St Pancras International to Eurotunnel Boundary; • St Pancras International to Temple Mills Boundary; • St Pancras to Ashford West Boundary; • Ashford East Boundary to Eurotunnel Boundary; • Ashford East Junction to Ashford East Boundary; and • Ashford West Junction to Ashford West Boundary.

Description of Capacity Allocated	<p>It is proposed that EUKL will be granted Firm Rights:</p> <ul style="list-style-type: none"> • to a number of Train Slots per day; • to services arriving or departing St Pancras International no later than a time specified in the morning or to services arriving or departing St Pancras International no earlier than a time specified in the evening. • to Ancillary Movements of Specified Equipment; • for Firm Train Slots to be Scheduled such that EUKL enjoys a reasonable spread of Services during a Day; • to use the Specified Equipment for providing services; and • in respect of Turnaround Times, Platforms and Station Calls. <p>It is also proposed that EUKL will be granted Contingent Rights to:</p> <ul style="list-style-type: none"> • a number of Train Slots per week in both direction • bid for the non timetabled Firm Train Slots on the days other than the days for which they were allotted. <p>See Schedule 5 of the EUKL FTAA for further detail.</p>
Specified Equipment	<p><i>Standard Specified Equipment:</i></p> <ul style="list-style-type: none"> • Class 373/1 Eurostar Intercapitals Units of a length no greater than 2 power cars and 18 trailer cars; and • Class 373/2 Eurostar North of London Units of a length no greater than 2 power cars and 14 trailer cars. <p><i>Additional Specified Equipment:</i></p> <ul style="list-style-type: none"> • Class 08 Locomotives.
Access Charges	<p>The access charges set out in the Network Statement for the operation of passenger services will apply.</p>
Discounts	<p>No discounts have been agreed for any of the services</p>

Liability Caps	<p>EUKL has:</p> <p>(a) a cap on its liability under the EUKL FTAA equivalent to 1% of Aggregate IRC/OMRC (as defined in the Passenger Access Terms) per year subject to a minimum of £500,000 (indexed);</p> <p>(b) a cap on payments under the performance regime equivalent to:</p> <ul style="list-style-type: none"> • 1.5% of Aggregate IRC/OMRC per year subject to a minimum of £500,000 (indexed) in relation to performance payments; and • 25% of 1.5% of Aggregate IRC/OMRC per year in relation to performance bonus payments achieved by HS1 Ltd; and <p>(c) a cap on possessions related payments equivalent to 1% of Aggregate IRC/OMRC per year.</p>
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LSER Framework Track Access Agreement

7. The Secretary of State awarded LSER the passenger rail franchise to operate domestic passenger rail services in the south-east region of England commencing on 1 April 2006. As part of its franchise obligations, LSER is required to provide high speed domestic services between London and Kent using High Speed 1.
8. LSER does not currently operate domestic passenger services on High Speed 1, but does have track access arrangements in place with HS1 Ltd for the testing of new high speed rolling stock that will be used in providing the domestic passenger services proposed under the LSER FTAA. LSER and HS1 Ltd are currently in the process of finalising the terms of a track access agreement which will enable LSER to operate a preview passenger service on High Speed 1 prior to the commencement of the LSER FTAA.
9. A summary of the key terms of the proposed LSER FTAA is set out below. A copy of the proposed agreement is contained on the CD-ROM enclosed with this letter and is also available on the HS1 Ltd website www.highspeed1.com

Details of Access Party	<p><i>Registered Name:</i> London & South Eastern Railway Limited</p> <p><i>Registration Number:</i> 04860660</p> <p><i>Registered Office:</i> 3rd Floor 41-51 Grey Street Newcastle Upon Tyne Tyne & Wear NE1 6EE</p>
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Is the Applicant, the person who will operate the services?	Yes
Summary of Agreement	The purpose of the LSER FTAA is to provide LSER with access to High Speed 1, to allow it to run passenger services between St Pancras International Station (and, where applicable, intermediate stations) and Ashford International Station.
Duration	The agreement is intended to commence on the Principal Change Date in December 2009 and unless terminated in accordance with its terms, will expire six months after the expiry or termination of LSER's franchise agreement with the Secretary of State. The term of the LSER FTAA is justified by reference to LSER's public service obligation under its franchise agreement with the Secretary of State.
Routes	The routes for the services are: - the Main Routes being: <ul style="list-style-type: none"> • St Pancras International to Ashford West Boundary; • St Pancras International to Springhead Junction; • St Pancras International to Temple Mills Boundary; and • Ebbsfleet International to Church Path Pit Siding, and - the Diversionary Routes being: <ul style="list-style-type: none"> • Southfleet Junction to Fawkham Junction; and • Ashford West Junction to Ashford East Junction.
Description of Capacity Allocated	It is proposed that LSER will be granted Firm Rights to: <ul style="list-style-type: none"> • a number of Firm Train Slots per day; • operate the Specified Equipment; • certain specified first and last Firm Train Slots; • use specified platforms at the Stations; • specified turnaround times; and • make Ancillary Movements. See Schedule 5 of the LSER FTAA for further detail.
Specified Equipment	Class 395 rolling stock.
Access Charges	The access charges set out in the Network Statement for the operation of passenger services will apply.
Discounts	No discounts have been agreed for any of the services.

<p>Liability Caps</p>	<p>LSER has:</p> <p>(a) a cap on its liability under the LSER FTAA equivalent to 1% of Aggregate IRC/OMRC (as defined in the Passenger Access Terms) per year subject to a minimum of £500,000 (indexed);</p> <p>(b) a cap on payments under the performance regime equivalent to:</p> <ul style="list-style-type: none"> • 1.5% of Aggregate IRC/OMRC per year subject to a minimum of £500,000 (indexed) in relation to performance payments; • 25% of 1.5% of Aggregate IRC/OMRC per year in relation to performance bonus payments achieved by HS1 Ltd; and <p>(c) a cap on possession related payments equivalent to 1% of Aggregate IRC/OMRC per year.</p>
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