



HS1

EMERGENCY

ACCESS

CODE

AUGUST 2009

HIGH

SPEED

HIGH SPEED 1
HS1 EMERGENCY ACCESS CODE

Edition Date: August 2009

TABLE OF CONTENTS

<u>1.</u>	<u>DEFINITIONS AND INTERPRETATION</u>	1
<u>2.</u>	<u>CAPACITIES</u>	3
<u>3.</u>	<u>PERMISSION TO USE</u>	3
<u>4.</u>	<u>GENERAL OBLIGATIONS</u>	3
<u>5.</u>	<u>CHANGES TO THE CODE</u>	3
<u>6.</u>	<u>ENTITLEMENT OF FACILITY OWNER TO GIVE DIRECTIONS</u>	3
<u>7.</u>	<u>PRIORITY - GOODS AND SERVICES</u>	4
<u>8.</u>	<u>APPLICATION OF EXISTING DOCUMENTATION - STATIONS AND DEPOTS</u>	4
<u>9.</u>	<u>HIGH SPEED 1</u>	4
<u>10.</u>	<u>PRIORITY - CONFLICT WITH OTHER ACCESS AGREEMENTS</u>	5
<u>11.</u>	<u>PAYMENT FOR EMERGENCY ACCESS</u>	5
<u>12.</u>	<u>NON-CONFORMING RAILWAY VEHICLES</u>	5
<u>13.</u>	<u>LIABILITY</u>	6
<u>14.</u>	<u>FAULT ATTRIBUTION</u>	7
<u>15.</u>	<u>HS1 FACILITIES</u>	7
<u>16.</u>	<u>NOTICES</u>	7
<u>17.</u>	<u>DISPUTE RESOLUTION</u>	7
<u>18.</u>	<u>VALUE ADDED TAX</u>	8
<u>19.</u>	<u>DEDUCTION OR WITHHOLDING FROM PAYMENTS</u>	8
<u>20.</u>	<u>CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999</u>	8

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Code, unless the context otherwise requires:

"Access Agreement":

- (a) in respect of HS1, has the meaning ascribed to it in Part A of the HS1 Network Code; and
- (b) in respect of a HS1 Facility other than HS1, means an agreement by which the Facility Owner for that HS1 Facility grants to a Beneficiary permission to use the HS1 Facility;

"Act" means the Railways Act 1993;

"Affected Person" means a party who sustains loss (including any liability to make a payment to any other person pursuant to this Code) as a result of or during the exercise of any permission to use pursuant to this Code;

"Beneficiary" means, in respect of the HS1 Facility in question:

- (a) the party who is the operator of the trains which uses the applicable HS1 Facility; or
- (b) the party who is the person permitted to use the HS1 Facility and whose rights in that respect are exercised by another person;

"Code" means this HS1 Emergency Access Code as may be amended from time to time;

"CTRL Act" means the Channel Tunnel Rail Link Act 1996;

"Disputes Resolution Procedure" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Excepted Provision" means in relation to an Access Agreement:

- (a) any provision of the Access Agreement which requires the Beneficiary to give the Facility Owner or any other person notice of its requirement to enter the HS1 Facility;
- (b) any provision of the Access Agreement which provides for either party to pay any amount to the other party, whether in consideration of the permission to use conferred by the Access Agreement or as a consequence of the failure of any party to do or not to do any act or thing or in any other respect whatsoever; and
- (c) any other provision of the Access Agreement which shall be inconsistent with the terms of this Code;

"Facility Owner" means the facility owner in respect of the HS1 Facility in question;

"HS1" has the meaning ascribed to it in Part A of the HS1 Network Code;

"HS1 Ltd" has the meaning ascribed to it in Part A of the HS1 Network Code;

"HS1 Facility" means a rail link facility (as that expression is defined in the CTRL Act)

and includes:

- (a) HS1;
- (b) a rail link station (as that expression is defined in the CTRL Act); and
- (c) a light maintenance depot;

and "**HS1 Facilities**" shall be construed accordingly;

"HS1 Network Code" means the document entitled "HS1 Network Code" and previously known as the "CTRL Track Access Conditions" as may be amended from time to time;

"HS1 Standards" has the meaning ascribed to it in Part A of the HS1 Network Code;

"Infrastructure Manager" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Liable Person" means

- (a) the party operating the railway asset the failure or condition of which is the direct and reasonably proximate cause of the need to exercise the rights under this Code, as a result of an emergency affecting the railway (whether or not that emergency occurred through any fault of that party), other than a Facility Owner not falling within sub-paragraph (b) which is requiring Railway Vehicles to move from a HS1 Facility as a result of or in connection with an emergency which is the direct and reasonably proximate result of the failure or condition of a railway asset operated by another party; or
- (b) a party who acts in breach of its obligations under this Code;

"Network Statement" means the network statement published by HS1 Ltd in accordance with regulation 11 of the Railways Infrastructure (Access and Management) Regulations 2005;

"party" means HS1 Ltd or any other person which is obliged to comply with this Code and **"parties"** shall be construed accordingly;

"Railway Vehicle" includes any other thing or person brought or allowed onto or into a HS1 Facility in the exercise of the permission to use conferred by this Code;

"Safety Authorisation" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006; and

"Safety Management System" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

1.2 Interpretation

1.2.1 Unless the context otherwise requires:

- (a) terms and expressions used in the Act shall have the same meanings in this Code;
- (b) references to a Beneficiary include its associates; and
- (c) where an obligation is expressed to be dischargeable by a Beneficiary, the Beneficiary in question shall be obliged also to procure that its associates discharge the obligation in question.

1.2.2 The rules of interpretation in the HS1 Network Code shall have effect in this Code.

2. CAPACITIES

2.1 Each party complies with this Code:

2.1.1 in relation to the HS1 Facilities in respect of which it is the Facility Owner, in its capacity as such Facility Owner; and

2.1.2 in relation to every other HS1 Facility, as a Beneficiary.

3. PERMISSION TO USE

3.1 Each Facility Owner hereby grants to each Beneficiary permission to use its HS1 Facility (including, in respect of a light maintenance depot, the right to obtain light maintenance services):

3.1.1 in the case of any emergency affecting a HS1 Facility;

3.1.2 for the duration of the emergency and for as long after the cessation of the emergency as shall be reasonably necessary to remove from the relevant HS1 Facility the Railway Vehicles in question and any other thing or person brought or allowed onto or into the HS1 Facility in the exercise of the said permission to use; and

3.1.3 in accordance with the terms of this Code and the Safety Authorisation relating to the HS1 Facility in question.

4. GENERAL OBLIGATIONS

In relation to the use of any HS1 Facility pursuant to this Code, each Facility Owner and Beneficiary shall at all times act reasonably and in good faith with the objective of ensuring the health and safety and security of persons and property and:

4.1.1 the removal of the cause and the alleviation of the effects of the emergency; and

4.1.2 the removal of each Railway Vehicle from the HS1 Facility which it has been permitted to use pursuant to this Code

as soon as reasonably practicable.

5. CHANGES TO THE CODE

This Code may be amended in the same manner as the HS1 Network Code, and Part C of the HS1 Network Code shall apply to amendments to this Code *mutatis mutandis*.

6. ENTITLEMENT OF FACILITY OWNER TO GIVE DIRECTIONS

6.1 General

6.1.1 Each Beneficiary shall comply with:

- (a) any directions given by a Facility Owner in relation to the movement and stabling on or within the HS1 Facility in question of Railway Vehicles using the HS1 Facility pursuant to this Code; and

- (b) any reasonable request by an Infrastructure Manager in relation to any aspect of the Beneficiary's operations which affects or is likely to affect the performance of that Infrastructure Manager's health and safety duties relating to a HS1 Facility which is being used by the Beneficiary pursuant to this Code.

6.2 Facility owner entitlement to move railway vehicles

A Facility Owner shall be entitled to move any Railway Vehicle on or within the applicable HS1 Facility, and shall take reasonable care when doing so.

7. PRIORITY - GOODS AND SERVICES

Subject to the entitlement of the Beneficiary to have its Railway Vehicles and any persons use or be accommodated on or at a HS1 Facility under this Code, the right of the Beneficiary to any goods or services at the HS1 Facility shall rank after the rights of the Beneficiaries at the HS1 Facility in question under Access Agreements between them and the relevant Facility Owner.

8. APPLICATION OF EXISTING DOCUMENTATION - STATIONS AND DEPOTS

8.1 Existing Access Contract

If the HS1 Facility in question is a station (including a rail link station) or light maintenance depot which the Beneficiary has permission to use under an Access Agreement other than this Code, the provisions of that Access Agreement, other than any Excepted Provisions, shall apply to the permission to use granted under this Code.

8.2 No Existing Access Contract

If the HS1 Facility in question is a station (including a rail link station) or light maintenance depot which the Beneficiary does not have permission to use under an Access Agreement other than this Code, its permission to use under this Code shall be on terms and conditions which are the same as, or as near as is reasonably practicable to, those of the Access Agreement most recently entered into in respect of that HS1 Facility by the Facility Owner other than any Excepted Provisions.

8.3 Reasonable terms

If there is no Access Agreement in respect of a HS1 Facility of the kind to which clause 8.1 applies, the terms and conditions of the permission to use shall be ones which are reasonable.

9. HIGH SPEED 1

9.1 HS1 Network Code

Insofar as this Code confers permission to use any part of HS1, the HS1 Network Code is hereby incorporated in and form part of this Code.

9.2 Application of pre-existing Access Agreement

If the Beneficiary is a party to an Access Agreement with HS1 Ltd which confers permission to use part of HS1 other than the part to which the Beneficiary requires access pursuant to this Code, the provisions of that Access Agreement (other than any Excepted Provisions) shall apply as nearly as practicable to the permission to use granted under this Code.

9.3 No existing Access Agreement

If the Beneficiary does not have permission to use HS1 under an Access Agreement other than this Code, its permission to use under this Code shall be on terms and conditions which are the same as, or as near as is reasonable practicable to, those of the Access Agreement most recently entered into in respect of that part of HS1

10. PRIORITY - CONFLICT WITH OTHER ACCESS AGREEMENTS

10.1 Precedence over other Access Agreements

Subject to clause 7 above, the permission to use conferred by this Code shall prevail over the permission to use any HS1 Facility granted by any party to this Code to any other such party, and each relevant Access Agreement shall be construed in all respects subject to this clause 10.

10.2 Definition

In this clause 10 "relevant Access Agreement" means an Access Agreement other than this Code between any two or more parties to this Code.

11. PAYMENT FOR EMERGENCY ACCESS

11.1 Additional Costs

Subject to clause 13 below, the Liable Person shall reimburse: (i) each Affected Person for all losses, costs and expenses suffered by that Affected Person in respect of any breach of this Code (or any equivalent code incorporated into an Access Agreement) by the Liable Person; and (ii) the Facility Owner and/or the Beneficiary (as the case may be) for all reasonable costs and expenses they incur as a result of the exercise of any permission to use pursuant to this Code (or any equivalent code incorporated into an Access Agreement) which they would not have incurred had the permission not been exercised.

11.2 Stabling charge

11.2.1 The Beneficiary shall pay to the Facility Owner a stabling charge which shall be calculated for each successive period of 24 hours during which any Railway Vehicle is stabled on or at a relevant HS1 Facility pursuant to this Code at the rates set out in the Network Statement.

11.2.2 No payment shall be due under clause 11.2.1 in respect of stabling if the operator of the Railway Vehicle as Beneficiary or as associate of the Beneficiary had permission to use that part of the relevant HS1 Facility for stabling under an Access Agreement other than this Code without any additional payment.

12. NON-CONFORMING RAILWAY VEHICLES

12.1 General permission to use

Notwithstanding anything to the contrary in any Access Agreement but subject to clause 4 hereof, this Code confers on each Beneficiary the right to have its Railway Vehicles enter or move onto a HS1 Facility in respect of which another person is the Facility Owner notwithstanding that the HS1 Facility in question may be unsuitable for the admission or accommodation of the Railway Vehicles in question.

12.2 **Safety**

A party shall be deemed to have acted reasonably and in good faith for the purpose of clause 4 above where the action taken to prevent serious prejudice to the health and safety of any person or property was that which a reasonable and prudent person, who was the sole owner and beneficiary of the relevant HS1 Facility and Railway Vehicle affected by the emergency, could be expected to have taken, with the aim of reducing the overall level of risk of the locality in which the emergency and any subsequent movement of Railway Vehicles occurred, whether or not such action would constitute a breach of the Safety Management System of the actual Facility Owner or Beneficiary, any HS1 Standards, any licence granted under section 8 of the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005, or any other applicable law.

12.3 **Liability for damage and economic loss**

Clause 13 has effect in relation to physical damage and economic loss caused by the exercise of any right granted under this clause 12.

13. **LIABILITY**

13.1 **Liable person**

The Liable Person shall be liable to each Affected Person in respect of any breach of this Code.

13.2 **Responsibility for persons**

In relation to any persons who are permitted to enter or remain upon any HS1 Facility pursuant to this Code, each of the Beneficiary and the Facility Owner shall take reasonable care to avoid acts or omissions which it can reasonably foresee would be likely to injure persons who are so closely and directly affected by its act or omission that it ought reasonably to have them in contemplation as being so affected when it is directing its mind to the acts and omissions which are in question.

13.3 **Limitations - exclusion of consequential etc. losses**

No party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable under this Code to any other party for:

13.3.1 any loss of revenue, loss of use, loss of contract or loss of goodwill; or

13.3.2 any indirect or consequential loss.

13.4 **Remedies not cumulative**

The rights and remedies provided by this Code are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies, express or implied and provided by common law or statute in respect of the subject matter of this Code and which are exercisable by one party against another party.

13.5 **Exclusion of claims in tort**

Without prejudice to the generality of clause 13.4, the rights excluded pursuant to that clause include any rights which any party may possess in tort which shall include actions which may be brought in negligence and/or nuisance.

13.6 **Waiver of rights of action**

Each of the parties hereby waives to the fullest extent possible all rights and remedies of the kind excluded pursuant to clause 13.4 and releases each other party, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Code and undertakes not to enforce any of them except as expressly provided in this Code.

13.7 Trust

Each party shall hold the benefit of clauses 13.3, 13.4, 13.5 and 13.6 for itself and as trustee and agent for its officers, employees and agents.

13.8 Relationship with other Access Agreements

This Code is without prejudice to the provisions of other Access Agreements relating to the payment of compensation, the payment reduction or other adjustment of charges or the grant of any indemnity in each case in connection with the cancellation, delay, interruption, diversion or other performance of trains or the provision of stabling or the provision of maintenance or other goods and/or services in connection with trains.

14. FAULT ATTRIBUTION

HS1 Ltd shall in respect of HS1 determine and record the persons and causes which are responsible for any emergency, whether or not a delay or cancellation of any train is caused as a result of the emergency, in the manner and in accordance with the procedures specified in Part B of the HS1 Network Code. HS1 Ltd shall, if so requested by any Affected Person and so far as reasonably practicable, in like manner make such a determination and record in respect of an emergency on a HS1 Facility other than HS1.

15. HS1 FACILITIES

15.1 Each party shall, if so requested by HS1 Ltd, provide to HS1 Ltd, a statement specifying each HS1 Facility of which it is Facility Owner for the purposes of this Code.

15.2 When a party becomes the Facility Owner of a HS1 Facility of which it was not previously the Facility Owner it shall forthwith notify HS1 Ltd in writing of the applicable HS1 Facility and the date on which it has become the Facility Owner of such HS1 Facility.

16. NOTICES

For the purposes of this Code:

16.1.1 notifications may be given orally or in writing; and

16.1.2 the notices provisions of any other Access Agreement shall not apply.

If an oral notification has been given, it shall be confirmed in writing as soon as reasonably practicable thereafter.

17. DISPUTE RESOLUTION

Any dispute arising out of or in relation to this Code or anything done or omitted to have been done under it shall be resolved in accordance with the Disputes Resolution Procedure.

18. VALUE ADDED TAX

18.1 Where any taxable supply for VAT purposes is made under or in connection with this Code by one party to another, the payer shall, in addition to any payment required for that

supply, pay upon presentation of a valid tax invoice such VAT as is chargeable in respect of it.

- 18.2 Where under this Code one party has agreed to reimburse another in respect of any payment made or cost incurred by that other in respect of any payment made or cost incurred by that other, the first party shall also reimburse the other party for any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other, or for any person with which the reimbursed or indemnified party is treated as a member of a group for VAT purposes under sections 25 and 26 of the Value Added Tax Act 1994.
- 18.3 Where under this Code any rebate or repayment of any amount is payable by one party to another, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate VAT credit note to the other party.
- 18.4 In this clause 18, "VAT" means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto or replacing, modifying or consolidating such legislation and any reference to "VAT" shall be construed accordingly.

19. DEDUCTION OR WITHHOLDING FROM PAYMENTS

All sums due under this Code shall be paid without deduction or withholding in respect of duties, taxes or charges otherwise of a taxation nature unless the deduction or withholding is required by law in which event the payer shall:

- 19.1.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;
- 19.1.2 account to the relevant taxation or other authorities within the period for payment permitted by the applicable law the full amount of the deduction or withholding; and
- 19.1.3 furnish to the payee within the period for payment permitted by the relevant law either an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld or, if such receipts are not issued by the taxation authorities concerned, a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Each party shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights against any other party as have been expressly granted to it under this Code, whether in the capacity of Beneficiary, Facility Owner or an Affected Person.

HS1 Limited 73 Collier Street London N19BE