



**Conclusion on Consultation on HS1 Network  
Statement & Related Arrangements**

**September 2009**

## Conclusions on Consultation on HS1 Network Statement and Related Arrangements

- 1 On 19 June 2009, HS1 Limited ("**HS1 Ltd**") as infrastructure manager of the high speed rail network and associated infrastructure between St Pancras International and the portal to the Channel Tunnel in the United Kingdom ("**High Speed 1**") commenced a consultation process with industry participants on the proposed terms of its revised Network Statement and related arrangements ("**June Consultation**"). A copy of the consultation documentation is available for download from [www.highspeed1.com](http://www.highspeed1.com).
- 2 The purpose of this document is to conclude the June Consultation and explain to industry parties the changes which have been made to the Network Statement and related arrangements following HS1 Ltd's consideration of the matters raised by industry parties in their responses to the consultation. The revised commercial and operational arrangements (including the charging arrangements) have been reflected in the framework track access agreements which HS1 Ltd entered into with Eurostar (U.K.) Limited ("**EUKL**") and London and South Eastern Railway Limited ("**LSER**") on 14<sup>th</sup> August 2009 (see Part D of this document for further information).
- 3 In terms of the arrangements for the operation of freight services on High Speed 1, HS1 Ltd proposes to engage with the relevant parties in the near future to finalise the HS1 Freight Access Terms and the Template Freight Framework Track Access Agreement. Accordingly this response does not directly address freight related matters.
- 4 HS1 Ltd is also intending to re-engage with industry parties shortly in connection with the review of the existing dispute resolution arrangements for High Speed 1 (see Part C of this document for further information).

## Responses to Consultation

- 5 As part of engaging with industry on the proposed operational arrangements for High Speed 1, HS1 Ltd held a workshop on the performance regime for High Speed 1 on 2<sup>nd</sup> July 2009 and also held a meeting on 3<sup>rd</sup> July 2009 on the proposed changes to the dispute resolution arrangements.
- 6 HS1 Ltd received submissions from 11 industry parties in response to the June Consultation. A list of the parties who responded to the June Consultation is set out in Appendix 1 to this document.
- 7 HS1 Ltd has considered the points raised by industry parties in their consultation responses and, where appropriate, has amended the Network Statement and/or the relevant contractual documentation to address the matter. In addition, certain other changes have been made to the Network Statement and the contractual documentation in order to reflect:
  - (a) the feedback received from industry parties who attended the workshop on the performance regime for High Speed 1 which was held on 2<sup>nd</sup> July 2009;
  - (b) the response from industry parties who attended the meeting on the proposed changes to the dispute resolution arrangements for High Speed 1 which was held on 3<sup>rd</sup> July 2009;
  - (c) the outcome of negotiations with HM Government regarding the terms of revised arrangements under which HS1 Ltd is awarded the concession to design, construct, operate and maintain HS1 ("**Concession Agreement**"). The Concession Agreement was signed by HS1 Ltd and the Secretary of State on

14<sup>th</sup> August 2009. A copy of the signed Concession Agreement is available for download from [www.highspeed1.com](http://www.highspeed1.com);

- (d) discussions with the Office of Rail Regulation ("**ORR**"), regarding the commercial and operational terms on which HS1 Ltd grants access to High Speed 1 and the manner in which the ORR intends, from 1<sup>st</sup> October 2009, to carry out its duties and exercise its powers regarding the regulation of High Speed 1; and
  - (e) the outcome of commercial negotiations with EUKL and LSER regarding the terms of access to High Speed 1.
- 8 In advance of the commencement of its statutory powers and duties on 1<sup>st</sup> October 2009, HS1 Ltd has been heavily engaged with the ORR to ensure that the proposed financial, commercial and operational arrangements are consistent with the requirements of the Concession Agreement and the open access nature of High Speed 1.
- 9 In its draft Regulatory Statement the ORR has advised that, amongst other things, it is comfortable with the proposed charging structure for High Speed 1 and the terms upon which HS1 Ltd granted access to EUKL and LSER under their respective framework track access agreements. Please see paragraph 7 of Part A to this document for further information.
- 10 For ease of reference in explaining the changes which have been made to the Network Statement and contractual documentation, HS1 Ltd has followed the structure of the June Consultation. Accordingly this response has been structured as follows:
- (a) *Part A: High Speed 1 Commercial and Regulatory Arrangements* - this section describes the changes which have been made to the commercial and regulatory arrangements for High Speed 1 following the June Consultation;
  - (b) *Part B: High Speed 1 Operational Arrangements* - this section explains the changes which have been made to the operational arrangements for High Speed 1 following the June Consultation. In particular this section describes the amendments which have been made to the HS1 Network Code;
  - (c) *Part C: Dispute Resolution* - this section describes the proposed changes to the existing dispute resolution procedure in order that it provides a timely and efficient mechanism for the resolution of access and operational related disputes; and
  - (d) *Part D: Proposed EUKL and LSER Arrangements* - this section explains the changes which have been made to the framework track access agreements following the June Consultation.
- 11 A list of the revised contractual arrangements and other documentation which is available for download from [www.highspeed1.com](http://www.highspeed1.com) is set out in Appendix 2 to this document.

## Industry Parties who responded to the Consultation

- BLS AG
- DB Fernverkehr AG
- DB Schenker
- Eurostar (U.K.) Limited
- London and South Eastern Railway Limited
- National Express Group
- Network Rail Infrastructure Limited
- Rail Freight Group
- Stephenson Harwood
- Transport for London
- Veolia Transport

## Appendix 2

### **HS1 Network Statement and Contractual Arrangements**

#### ***HS1 Network Statement***

- 1 HS1 Network Statement (August 2009)

#### ***HS1 Concession Agreement***

- 2 Concession Agreement between the Secretary of State for Transport and HS1 Ltd dated 14<sup>th</sup> August 2009

#### ***HS1 Passenger Track Access***

- 3 Template Passenger Framework Track Access Agreement (August 2009 version)
- 4 HS1 Passenger Access Terms (August 2009 version)
- 5 EUKL Framework Track Access Agreement dated 14 August 2009
- 6 LSER Framework Track Access Agreement dated 14 August 2009

#### ***HS1 Codes***

- 7 HS1 Network Code (August 2009 version)
- 8 HS1 Emergency Access Code (August 2009 version)
- 9 HS1 Performance Data Accuracy Code (August 2009 version)
- 10 HS1 Railway Systems Code (August 2009 version)

#### ***HS1 Dispute Resolution***

- 11 HS1 Dispute Resolution Arrangements – Initial Meeting – 3 July 2009



## Part A: Commercial and Regulatory Arrangements

### *Introduction*

- 1 Part A of the June Consultation set out the regulatory and commercial arrangements which were proposed to apply to High Speed 1. The purpose of this section is to describe the changes which have been made to those arrangements following the June Consultation.

### *Network Statement*

- 2 In the June Consultation, HS1 Ltd indicated its intention to assume the functions of Charging Body and Allocation Body from Network Rail (CTRL) Limited under the Railways Infrastructure (Access and Management) Regulations 2005 ("**Railways Regulations**") (see paragraph 8 of the June Consultation). HS1 Ltd wishes to advise the industry that since the publication of the June Consultation, HS1 Ltd has assumed both of these functions and the Network Statement has been amended to reflect this position.
- 3 Since the June Consultation the Network Statement has also been revised to reflect certain changes to:
  - (a) the charging arrangements (see paragraphs 8-21 below);
  - (b) the performance regime (see paragraphs 22-25 below);
  - (c) the operational arrangements (see Part B of this document); and
  - (d) the dispute resolution arrangements (see Part C of this document).
- 4 A number of minor clarificatory changes have also been made to the Network Statement to improve readability and remove ambiguity.
- 5 A copy of the revised Network Statement is available from [www.highspeed1.com](http://www.highspeed1.com).

### *Regulatory Framework*

- 6 The June Consultation described the regulatory framework applicable to High Speed 1 and the functions of the ORR in the context of that framework (see paragraphs 6-10 of Part A of the June Consultation).
- 7 As indicated in the June Consultation (see paragraph 10 of Part A of the June Consultation), the ORR has recently published a draft Regulatory Statement clarifying its regulatory and policy approach with respect to High Speed 1. This Regulatory Statement is currently subject to a public consultation process and is available from the ORR website [www.rail-reg.gov.uk](http://www.rail-reg.gov.uk).

## **Charging Regime**

8 The charging regime for High Speed 1 adopted by HS1 Ltd on 17 August 2009 reflects representations made by industry parties in response to the June Consultation and the views of the ORR. It therefore differs from that consulted upon in the June Consultation in the following material respects:

(i) *Additional IRC with respect to further investment*

9 The ability of HS1 Ltd to charge an additional Investment Recovery Charge with respect to further investment in relation to High Speed 1 has been made subject to the approval of the ORR.

(ii) *Distinction between variable and avoidable directly incurred costs*

10 The June Consultation explained that, in determining OMRC, a distinction has been drawn between:

- (a) costs directly incurred as a result of operating train services; and
- (b) common costs.

11 With respect to costs falling within paragraph (a) above, a further distinction has been drawn between variable directly incurred costs and avoidable directly incurred costs. Variable costs are those costs which vary with the number and type of trains running on the line whereas avoidable costs are those costs that would not be incurred in the absence of particular increments of train service (e.g. domestic passenger services and international passenger services).

12 This distinction has resulted in a change to the annual adjustment mechanism for directly incurred costs consulted upon in the June Consultation. The mechanism adopted on 17 August is described below.

13 Costs that are directly incurred as a result of operating the train service will be recovered by HS1 Ltd initially on the basis of the First Working Timetable (as defined in Part D of the HS1 Network Code). The recovered charges will be adjusted annually insofar as they relate to variable (but not avoidable) directly incurred costs to take account of the number of additional services operated by a train operator as a result of Spot Bids (as defined in Part D of the HS1 Network Code) less any scheduled services which could not be operated by that train operator as a result of:

- (a) a restriction of use;
- (b) a Suspension Notice (as defined in the Passenger Access Terms) being served by the train operator
- (c) the exercise by HS1 Ltd of its rights under Part J of the HS1 Network Code; or
- (d) as a result of any cancellation of a service which is attributable to HS1 Ltd.

(iii) *Annual reconciliation of IRC*

14 The Investment Recovery Charge will be recovered by HS1 Ltd on the basis of the First Working Timetable.

15 In a change to the position consulted upon in the June Consultation, provision has now been made for the recovered charges to be adjusted annually to take account of a number of additional services operated by a train operator as a result of Spot Bids less any scheduled services which could not be operated by that train operator as a result of:

- (a) a restriction of use;
- (b) a Suspension Notice being served by the train operator; or
- (c) the exercise by HS1 Ltd of its rights under Part J of the HS1 Network Code.

(iv) *Rebate in respect of surrendered capacity*

16 Train operators are required to pay a capacity reservation charge for capacity that is requested but not used.

17 Under the Passenger Access Terms consulted upon in the June Consultation, it was proposed that train operators would receive a rebate against the capacity reservation charge with respect to surrendered capacity. The amount of the rebate would vary depending upon the period between surrender of capacity and commencement of the timetable period with respect to which the capacity related. A period of four or more timetable periods was required for a 100% rebate.

18 The position with respect to surrendered capacity has now been simplified. Under the arrangements adopted on 17 August 2009, train operators may surrender some or all of the reserved capacity rights by providing notice to take effect at the end of the timetable year following the timetable year in which the notice is served. No capacity reservation charge will be payable with respect to capacity surrendered in this manner.

(v) *Scope of ORR review*

19 The June Consultation explained that, under the Concession Agreement, the ORR has a role in agreeing or determining OMRC in the event of a periodic or interim review.

20 Under the arrangements adopted on 17 August 2009, the scope of periodic and interim reviews has been extended to cover the OMRC charging regime generally and not just the amount of OMRC. In addition, the review will extend to cover the track access performance regime and track access possessions regime apart from, in each case, the cap on liability.

(vi) *Carbon Costs*

21 In a change to the position consulted on in the June Consultation, track access charges to be paid by train operators will include an amount in respect of Carbon Costs. Such amount shall be the fair and equitable proportion (as determined by the ORR) of all costs, expenses and any other financial liabilities relating to the carbon reduction commitment (to be introduced pursuant to Part 3 of the Climate Change Act 2008) incurred by HS1 Ltd.

## **Performance Regime**

- 22 At the time of the June Consultation, the cap on liability under the performance regime was set at 1.5% of the Aggregate IRC/OMRC in respect of any year, subject to a minimum of £500,000 (indexed). This cap has changed so that for the years expiring 31<sup>st</sup> March 2010 and 2011 the cap on liability is 1.5% of the Aggregate IRC/OMRC, subject to a minimum of £250,000 (indexed) and, thereafter, the annual cap on liability is 3% of the Aggregate IRC/OMRC, subject to a minimum of £500,000 (indexed).
- 23 In response to comments made during the June Consultation, a provision has been added which is intended to facilitate the resolution of a dispute where there is a difference of opinion between the TOCs as to the allocation of responsibility.
- 24 The provisions relating to the initial benchmarking and review (paragraph 9 of Part 1 to Section 8 of the HS1 Passenger Access Terms) have been amended to make clear that HS1 Ltd is required to undertake the initial benchmarking (i.e. it is not an option) and that this process must commence between 1<sup>st</sup> July 2011 and 30<sup>th</sup> November 2011. Second, the benchmarking is to be undertaken utilising the process set out in Part C of the Network Code. This ensures that in order to be effective, the result of the benchmarking process must be approved by the ORR. A similar change has been made in respect of a review following a Material Change.
- 25 The calculation of the performance sums was amended in the following respect. First, a new TOC on TOC receipt benchmark was introduced into the calculation of the train operator performance sum. This is the level below which delays experienced by an affected train operator shall be ignored (previously there was no such benchmark). Second, the provisions which legislate for the distribution by HS1 Ltd of train operator performance sums to affected train operators were revised in a number of respects, for example, to clarify the basis on which the calculation is undertaken.

## **Direct Agreement**

- 26 After discussions with the Secretary of State, it was concluded that a Train Operator should enter into a Direct Agreement with the Secretary of State and HS1 Ltd as a condition of being granted track or station access to High Speed 1.
- 27 Under the Direct Agreement:
- (a) a Train Operator undertakes not to terminate its Framework Track Access Agreements or Track Access Agreement on account of HS1 Ltd's event of default without giving the Secretary of State not less than 15 business days prior written notice; and
  - (b) that on termination of the Concession Agreement the Secretary of State may step-in to a TOC's Framework Track Access Agreement and Station Access Agreements and perform or procure the performance of the Infrastructure Manager's obligations. Termination of the Concession Agreement may alternatively allow the Secretary of State or another person to assume by way of a sale, transfer or other disposal the rights and obligations of HS1 Ltd under the relevant agreement.

## Part B: High Speed 1 Operational Arrangements

### *Introduction*

- 1 Part B of the June Consultation set out HS1 Ltd's proposals as to the operational arrangements which would apply to High Speed 1, including the principles relating to the allocation of capacity on High Speed 1.
- 2 This section sets out the changes which have been made to the operational arrangements following consideration of the consultation responses and the other matters referred to in paragraph 5 of this document.

### *Principles relating to the Reservation and Allocation of Capacity*

- 3 The underlying principles for the reservation and allocation of capacity on High Speed 1 as described in the June Consultation have remained largely unchanged following consideration of the responses to the June Consultation.
- 4 In this context, it is noted that the draft Regulatory Statement published by the ORR (see paragraph 7 of Part A to this document) recognises that High Speed 1 has been designated as specialised infrastructure under the Railways Regulations and that at the time such designation was made, the ORR was consulted and did not object to the order of priority set out in the declaration.

### *Track Access Agreements*

- 5 In the June Consultation, HS1 Ltd proposed that the reservation of capacity on High Speed 1 would be undertaken through the entering into:
  - (a) framework track access agreements (where the reservation of capacity is for a period longer than one timetable period); or
  - (b) short term track access agreements (where the reservation of capacity is for up to one timetable period).
- 6 As part of the June Consultation, HS1 Ltd published a Template Passenger Framework Track Access Agreement ("**Template FTAA**") along with the Passenger Access Terms which set out the standard terms and conditions for the operation of passenger services (whether domestic or international) on High Speed 1.
- 7 In response to the responses received, HS1 Ltd has reviewed the Template FTAA and the Passenger Access Terms. A copy of each document is available for download from [www.highspeed1.com](http://www.highspeed1.com).
- 8 In summary the principal changes have been to:

#### *Template Framework Track Access Agreement*

- (a) amend the list of Collateral Agreements in Schedule 3 of the Template FTAA to remove the reference to the Revised/DRA Deed (see paragraph 7 of Part C to this document) and to include a reference to the Direct Agreements with the Secretary of State (see paragraphs 26 and 27 of Part A to this document);

- (b) include wording in Schedule 5 of the Template FTAA which is intended to provide a standard way of describing the capacity reserved by the access agreement;
- (c) amend the tables in Schedules 4 and 6 of the Template FTAA to reflect the modifications which have been made to the charging regime (see paragraphs 8 - 21 of Part A to this document) and the performance regime (see paragraphs 22 – 25 of Part A to this document);

#### *Passenger Access Terms*

- (d) clarify the extent of HS1 Ltd's obligations to provide stabling (see paragraph 1.4 of Section 3 of the Passenger Access Terms);
- (e) remove the provision preventing a train operator or HS1 Ltd from claiming for loss of profit, loss of revenue and consequential losses under the indemnities in Section 5 of the Passenger Access Terms;
- (f) change the liability cap specified in Section 5 so that instead of being 1% of Aggregate IRC/OMRC (as proposed in the June Consultation) the cap is now set at 100% of Aggregate Variable DI Costs;
- (g) modify the charging provisions in Section 7 of the Passenger Access Terms to reflect the changes which have been made to the charging regime for High Speed 1 (see paragraphs 8 – 21 of Part A to this document for further information) and to clarify the scope of a Periodic Review or an Interim Review undertaken by the ORR in accordance with the Concession Agreement and the manner in which the outcome will be implemented; and
- (h) amend the performance regime contained in Section 8 of the Passenger Access Terms to reflect the modifications to the regime described in paragraphs 22 - 25 of Part A to this document.

### **Operational Arrangements**

#### **HS1 Operational Codes**

- 9 Respondents to the June Consultation did not raise any objection to the proposed arrangements set out in the:
  - (a) HS1 Emergency Access Code;
  - (b) HS1 Performance Data Accuracy Code; and
  - (c) HS1 Railway Systems Code(together the "**Operational Codes**"). Given this level of approval from industry, HS1 Ltd has not made any substantive changes to the Operational Codes.
- 10 Some minor drafting changes have been made to the Operational Codes in order to promote the consistent use of terminology across the contractual documentation. HS1 Ltd does not consider that any of the amendments alter the operational arrangements set out in each of the Operational Codes.
- 11 A copy of each of the Operational Codes is available for download from [www.highspeed1.com](http://www.highspeed1.com).

## HS1 Network Code

- 12 HS1 Ltd received a number of comments from industry parties on the operational arrangements contained in the version of the HS1 Network Code which was published in conjunction with the June Consultation.
- 13 A common concern of respondents was that there was an imbalance between the rights and obligations of train operators under the HS1 Network Code and the rights and obligations of HS1 Ltd.
- 14 In response to the comments received from consultees and following discussions with the ORR a number of amendments have been made to the HS1 Network Code in order that the operational arrangements are more balanced.
- 15 A copy of the revised HS1 Network Code is available for download from [www.highspeed1.com](http://www.highspeed1.com).
- 16 A summary of the significant changes which have been made to the HS1 Network Code is set out below:

Section of HS1 Network Code	Amendments
Part A: Organisation of the HS1 Network Code and Definitions	<p>Conditions 1.4.2 and 1.4.3 have been deleted as it is not currently permitted for notices to be sent by email.</p> <p>There have been some amendments to certain definitions so as to reflect changes which have been made to other conditions in the HS1 Network Code.</p>
Part B: Performance Monitoring	<p>Conditions 1.2 and 1.3 have been amended to enable train operators to propose changes to the HS1 Performance Data Accuracy Code and the Delay Attribution Code.</p> <p>A proposal to amend either code must follow the change process set out in Part C of the HS1 Network Code.</p>
Part C: Modifications to the HS1 Network Code	<p>The process for proposing and implementing a change to an "HS1 Operational Arrangement" (as defined in Part C of the HS1 Network Code) has been significantly modified.</p> <p>Amongst other things, the revised process provides the ORR with more discretion as to whether or not to approve a change proposal by HS1 Ltd or a train operator.</p> <p>The ORR has also been given the ability to propose and implement changes to the HS1 Operational Arrangements provided certain conditions and procedural requirements are satisfied (see Condition C3). This is the equivalent to Condition C8 in the Network Code for the classic rail network.</p>
Part D: Timetable Change	<p>Part D has been amended to ensure that "User Representatives" are consulted by bidders in relation to the development of services to be included in the timetable.</p> <p>HS1 Ltd has also been given the ability to exercise a Flexing</p>

	<p>Right if necessary to do so in order to comply with an approval or direction of the ORR.</p> <p>The Decision Criteria have been modified to ensure the primacy of the priority in the allocation of capacity in the preparation of the timetables.</p>
Part E: Environmental Protection	<p>Condition E1 has been revised so that there are corresponding obligations on HS1 Ltd and a train operator in relation to the preparation, implementation and review of environmental documentation.</p> <p>The mechanism in Condition E3 for making changes to the environmental requirements (or introducing new requirements on High Speed 1) has been deleted.</p>
Part F: Vehicle Change	<p>Only minor changes of a clarificatory nature have been made to Part F. The changes principally recognise the role of the ORR in the Vehicle Change process.</p>
Part G: Network Change	<p>Part G has been amended by:</p> <ul style="list-style-type: none"> <li>(a) removing the concept of "Specified Upgrade Project"; and</li> <li>(b) modifying certain provisions (for example Condition G5) so they are more closely aligned to the arrangements that apply on the classic rail network.</li> </ul>
Part H: Operational Disruption	<p>The only substantive change to Part H has been the inclusion of an obligation on HS1 Ltd and train operators to use their reasonable endeavours to provide one another with regular updates regarding the status and consequence of a Disruptive Event and the steps to be taken as a consequence of the same.</p>
Part I: Dispute Resolution Procedure	<p>See Part C of this document for a description of the changes to this part of the HS1 Network Code.</p>
Part J: Changes to Access Rights	<p>Part J has been significantly modified to reflect:</p> <ul style="list-style-type: none"> <li>(a) the ability of a train operator to challenge the proposed surrender of any unused capacity on the basis of it having a "reasonable commercial need" for the unused capacity; and</li> <li>(b) what a train operator needs to establish in order to demonstrate that it has a reasonable commercial need.</li> </ul> <p>The rights and obligations of HS1 Ltd and train operators if High Speed 1 is declared congested under the Railways Regulations have also been significantly revised (see Condition J3).</p>

Part K: Information	Not used.
Part L: Performance	<p>Some minor amendments have been made to Part L to:</p> <ul style="list-style-type: none"><li>(a) expressly provide for the inclusion of Performance Levels in JPIP;</li><li>(b) require HS1 Ltd to provide the ORR with copies of JPIP (and any Remedial Plans); and</li><li>(c) enable HS1 Ltd or a train operator to notify the ORR of any failure by a party to comply with a JPIP or a Remedial Plan.</li></ul>

## Part C: Dispute Resolution

### *Introduction*

- 1 The June Consultation described the current dispute resolution arrangements for HS1 as contained in:
  - (a) the statutory regime under the Railways Regulations and
  - (b) the contractual regime contained in the Disputes Resolution Agreement ("DRA").
- 2 The June Consultation also set out a proposed process for amending the contractual regime in the DRA so that it was more suitable for resolving operational disputes between HS1 Ltd and train operators under track and station access agreements.

### *Proposed Approach to Revising the Dispute Resolution Arrangements*

- 3 As explained in the June Consultation the proposed process for revising the dispute resolution arrangements consisted of:
  - (a) an interim set of modifications to the contractual regime to be implemented (see paragraphs 12-16 of Part C of the June Consultation); and
  - (b) following the implementation of the interim changes, the undertaking of a more detailed review of the dispute resolution arrangements by HS1 Ltd, train operators and other interested parties (see paragraphs 21 and 22 of Part C of the June Consultation).
- 4 A meeting of industry parties was held on 3 July 2009 to discuss the current dispute resolution regime and the proposed two stage approach to reviewing and amending the dispute resolution regime. The meeting was attended by representatives of HS1 Ltd, DB Schenker, EUKL, LSER, Network Rail, ORR and Stephenson Harwood.
- 5 A copy of the presentation given by HS1 Ltd at the consultation meeting is available for download from [www.highspeed1.com](http://www.highspeed1.com).
- 6 At the meeting a general consensus emerged from the industry parties present that the two step approach proposed by HS1 Ltd was not the preferred way forward. Due to the complexity of the dispute resolution arrangements the industry's view was that it would be more beneficial to focus on undertaking the detailed review of the dispute resolution arrangements and implementing the outcome in the proposed timeframe rather than to dedicate resources to agreeing the terms of the interim modifications of the dispute resolution arrangements.
- 7 HS1 Ltd accepts the industry view that a single-step approach should be taken in reviewing the dispute resolution arrangements. As such, HS1 Ltd no longer proposes that train operators execute the Revised DRA Deed as a condition to being granted access to High Speed 1.



### **Industry Working Group**

- 8 As a first step in undertaking the review of the dispute resolution arrangements, there was unanimous support from representatives present at the consultation meeting that an industry working group should be established to undertake the review in conjunction with HS1 Ltd. Representatives from DB Schenker, EUKL, LSER, Network Rail and the ORR indicated a willingness to sit on the Industry Working Group and be involved in the review process.
- 9 HS1 Ltd proposes to engage with the Industry Working Group in the near future to commence the detailed review of the dispute resolution arrangements.

### **Amendments to Part I of the HS1 Network Code**

- 10 As described in the June Consultation (see paragraphs 21 and 23 of Part C of the June Consultation) it was proposed that Part I of the HS1 Network Code contain provisions which require train operators to:
  - (a) delay exercising any rights they 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; and
  - (b) cooperate with HS1 Ltd in undertaking the review and modification to the dispute resolution arrangements by 1 December 2009.
- 11 On the basis on the responses from train operators and discussions with the ORR Part I of the HS1 Network Code has been amended by:
  - (a) deleting the provision requiring train operators to delay exercising any rights they may have under the Railways Regulations. Accordingly the contractual and statutory regimes will operate in parallel until the modified dispute resolution procedure comes into effect. It is HS1 Ltd's aspiration that train operators will use the industry dispute resolution process prior to exercising any statutory rights under the Railways Regulations; and
  - (b) modifying the provisions regarding HS1 Ltd and train operators cooperating to undertake the review of the dispute resolution arrangements to provide that:
    - (i) HS1 Ltd will submit a Proposal for Change under Part C of the HS1 Network Code to implement any changes agreed to the dispute resolution arrangements promptly after they have been agreed (other than if the proposed changes would breach the DRA); and
    - (ii) if a revised dispute resolution procedure has not been agreed by March 2010, the ORR may require HS1 Ltd to make a Proposal for Change under Part C of the HS1 Network Code to implement a revised dispute resolution procedure which satisfies the criteria specified in Condition I3.4 of Part I of the HS1 Network Code.

## Part D: EUKL and LSER Arrangements

### *Introduction*

- 1 As part of the June Consultation, HS1 Ltd set out the proposed terms and conditions on which it intended to enter into a framework track access agreement with each of EUKL and LSER and invited industry parties to comment on the proposed arrangements.
- 2 Following consideration of the responses to the June Consultation, discussions with the ORR and further commercial negotiations with each of EUKL and LSER, HS1 Ltd entered into a framework track access agreement with each of EUKL and LSER on 14<sup>th</sup> August 2009. A copy of each of the framework track access agreements is available for download from [www.highspeed1.com](http://www.highspeed1.com).
- 3 The purpose of this section is to outline the changes made to the terms and conditions of:
  - (a) the Framework Track Access Agreement between EUKL and HS1 Ltd ("**EUKL FTAA**"); and
  - (b) the Framework Track Access Agreement between LSER and HS1 Ltd ("**LSER FTAA**"),since the June Consultation.

### *Framework Track Access Agreements – General*

- 4 As both the EUKL FTAA and LSER FTAA incorporate the:
  - (a) HS1 Passenger Access Terms;
  - (b) HS1 Network Code;
  - (c) HS1 Emergency Access Code;
  - (d) HS1 Performance Data Accuracy Code; and
  - (e) HS1 Railway Systems Code,the changes that have been made to each of those documents following the June Consultation form part of the terms of the EUKL FTAA and LSER FTAA. Please see Parts A and B of this document for an explanation of the amendments.
- 5 As described in paragraphs 26 and 27 of Part A to this document a requirement has been introduced that train operators must enter into a Direct Agreement with the Secretary of State and HS1 Ltd as a condition of being granted access to HS1. Accordingly both EUKL and LSER entered into a Direct Agreement in the standard form with HS1 Ltd and the Secretary of State on 14<sup>th</sup> August 2009.
- 6 While the ORR's statutory powers in respect of approving framework track access agreements in relation to High Speed 1 do not come into effect until 1 October 2009, HS1 Ltd asked the ORR to review the proposed terms of the EUKL FTAA and LSER FTAA. The ORR has advised the parties that had its powers been in effect, it would have been prepared to approve the revised terms of the EUKL FTAA and LSER FTAA as entered into by the parties (see paragraph 40 of the ORR's draft Regulatory Statement).

## ***EUKL Framework Track Access Agreement***

- 7 In the June Consultation HS1 Ltd proposed that the term of the EUKL FTAA would be 10 years but invited comments from industry parties given that EUKL had requested that the term be extended to 15 years (see paragraph 5 of Part D of the June Consultation).
- 8 Having considered the response from industry HS1 Ltd considers that a framework track access agreement of 10 years:
- (a) is justified under the Railways Regulations.
  - (b) is a suitable compromise between providing EUKL with sufficient certainty to plan its business and the legitimate interests of potential new entrants; and
  - (c) is consistent with the duration of EUKL's track access agreement with Network Rail in relation to the conventional rail network.
- 9 A number of other changes have been made to the bespoke framework track access agreement as a result of commercial negotiations with EUKL and discussions with the ORR. These changes may be summarised as follows:
- (a) a provision has been included to permit EUKL to novate its rights and obligations under the EUKL FTAA to the entity to which it transfers its business as part of its corporate restructuring;
  - (b) Schedule 3 of the EUKL FTAA has been modified to remove reference to the Revised DRA Deed (see paragraph 7 of Part C to this document above) and to include reference to the Direct Agreement with the Secretary of State and HS1 Ltd (see paragraphs 26 and 27 of Part A to this document);
  - (c) the table of track charges set out in Schedule 4 of the EUKL TAA has been modified to reflect the separation of those directly incurred OMRC charges which are variable (see paragraphs 8 - 21 of Part A to this document). There is also a small change in the per train OMRC charges reflecting an updated December 2009 timetable;
  - (d) the description of the access rights in Schedule 5 of the EUKL FTAA has been modified so that:
    - (i) the quantum of capacity reserved under the EUKL FTAA is clarified and EUKL's rights in relation to using reserved capacity on public holidays is simplified;
    - (ii) EUKL's right to have a train slot scheduled so that it connects with an adjoining train slot to or from the Channel Tunnel has been deleted; and
    - (iii) EUKL has been granted certain rights in respect of the earliest and latest train slots.
  - (e) The table of performance parameters in Schedule 6 of the EUKL FTAA has been revised, with new parameter values based on the latest historical performance data and reflecting discussions during the consultation on expected levels of performance. In addition, payment rates are now specified on a per minute per train basis in order to allow for changes in the number of trains operated, period-to-period, in the calculation of payment rates.

## **LSER Framework Track Access Agreement**

- 10 As indicated in the June Consultation LSER is intending to commence a full domestic high speed passenger service on HS1 in December 2009. Since the June Consultation LSER and HS1 Ltd have entered into a short term track access agreement to enable LSER to operate a limited number of preview services in the run-up to the commencement of full passenger service in December 2009.
- 11 As with the EUKL FTAA a number of other changes have been made to the LSER FTAA as a result of commercial negotiations with LSER and discussions with the ORR. These changes may be summarised as follows:
- (a) the expiry date of the LSER FTAA has been amended to more closely reflect the arrangements LSER has with the Secretary of State under its franchise agreement;
  - (b) Schedule 3 of the LSER FTAA has been modified to remove reference to the Revised DRA Deed (see paragraph 7 of Part C to this document) and to include reference to the Direct Agreement with the Secretary of State and HS1 Ltd (see paragraphs 26 and 27 of Part A to this document);
  - (c) the table of track charges set out in Schedule 4 of the LSER TAA has been modified to reflect the separation of those directly incurred OMRC charges which are variable (see paragraphs 8 – 21 of Part A to this document). There is also a small change in the per train OMRC charges reflecting an updated December 2009 timetable;
  - (d) the description of the access rights in Schedule 5 of the LSER FTAA has been modified so that:
    - (i) LSER's rights in respect of the earliest and latest train slots have been clarified on the same basis as with EUKL under the EUKL FTAA;
    - (ii) the right for LSER services to call at certain platforms at St Pancras International has been deleted; and
    - (iii) the right of LSER to certain turnaround times has been deleted as this duplicates the current arrangements in the Rules of the Route and the Rules of the Plan;
  - (e) the table of performance parameters in Schedule 6 of the LSER FTAA has been revised with new parameter values based on the latest historical performance data and reflecting discussions during the consultation on expected levels of performance. In addition, payment rates are now specified on a per minute per train basis in order to allow for changes in the number of trains operated, period-to-period, in the calculation of payment rates.