
**HIGH SPEED 1
HS1 NETWORK CODE**

Edition Date: December 2012

TABLE OF CONTENTS

PART A – ORGANISATION OF THE HS1 NETWORK CODE AND DEFINITIONS	1
PART B – PERFORMANCE MONITORING	11
PART C – MODIFICATIONS TO THE HS1 NETWORK CODE	16
PART D – TIMETABLE CHANGE	21
PART E - ENVIRONMENTAL PROTECTION.....	52
PART F - VEHICLE CHANGE.....	59
PART G - NETWORK CHANGE	72
PART H - OPERATIONAL DISRUPTION	91
PART I - DISPUTE RESOLUTION PROCEDURE	105
PART J – CHANGES TO ACCESS RIGHTS	106
PART K – INFORMATION (NOT USED)	110
PART L – PERFORMANCE	111

PART A – ORGANISATION OF THE HS1 NETWORK CODE AND DEFINITIONS

Explanatory Note

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

1. CONDITION A1 - GENERAL

1.1 General Interpretation

The paramount objective in the railway industry is to operate a safe and secure railway on which the elements of risk to safety and security are reduced to a level as low as reasonably practicable. Nothing in this HS1 Network Code shall be interpreted or construed as compromising that objective.

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

1.1.1 *The HS1 Network Code*

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

1.1.2 *Parts, Conditions and Paragraphs*

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

1.1.3 *Definitions in the Acts*

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

1.1.4 *Statutory Provisions*

References to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re-enactments (whether with or without modification).

1.1.5 *Interpretation Act*

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

1.1.6 *Include*

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

1.1.7 *Other Documents*

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

1.1.8 *Time Limits*

Where in this HS1 Network Code any obligation of an Access Party is required to be performed within a specified time limit that obligation shall continue after that time limit if the Access Party fails to comply with that obligation within the time limit.

1.1.9 *Headings*

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

1.1.10 *Ruling Language*

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

1.1.11 *References to Time*

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

1.1.12 *Use of Singular and Plural*

Use of the singular shall include the plural and vice versa.

1.2 **Definitions**

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

- "Act"** means the Railways Act 1993;
- "Access Agreement"** means any particular access contract incorporating this HS1 Network Code;
- "Access Parties"** means, in respect of an Access Agreement, HS1 Ltd and the Train Operator who is a party to that Access Agreement and **"Access Party"** shall mean either of them;
- "Affiliate"** means, in relation to any company:
- (a) a company which is either a holding company or a subsidiary of such company; or
 - (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,
- and for these purposes, "holding company" and "subsidiary" have the meanings ascribed to them in section 1159 of the Companies Act 2006;
- "Applicable Engineering Access Statement"** means the Engineering Access Statement in force in respect of the Routes on the Effective Date, as from time to time amended or replaced under Part D of this HS1 Network Code;
- "Applicable Laws"** means any of the following:
- (a) any treaty, enactment or legislative provision in England;
 - (b) any regulation made by the Council or the Commission of the European Union; and
 - (c) any common law, or any interpretation of law or

finding contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirements within paragraphs (a) or (b) above to have effect in a way which is different from that which it previously had effect;

"Applicable Rules of the Plan"	means the Applicable Timetable Planning Rules;
"Applicable Rules of the Route"	means the Applicable Engineering Statement;
"Applicable Timetable Planning Rules"	means the Timetable Planning Rules in force in respect of the Routes on the Effective Date, as from time to time amended or replaced under Part D of this HS1 Network Code;
"Ashford East Boundary"	means the boundary of HS1 and the NR Network east of Ashford International;
"Ashford West Boundary"	means the boundary of HS1 and the NR Network west of Ashford International;
"Bid"	means an Access Proposal or a Rolled Over Access Proposal (as each such expression is defined in Part D of this HS1 Network Code);
"Bidder"	means Timetable Participant (as such expression is defined in Part D of this HS1 Network Code);
"Change of Law"	means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to: <ul style="list-style-type: none"> (a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or (b) Value Added Tax;
"Channel Tunnel"	means the existing fixed link under the English Channel between the southern portal at the Department of Pas-de-Calais in France and the northern portal in the County of Kent in England together with the terminal areas associated therewith;
"Compatibility File"	means a document prepared in accordance with the applicable HS1 Standards which describes: <ul style="list-style-type: none"> (a) the Specified Equipment; (b) the proposed changes to the Specified Equipment; (c) the methods used to assess compatibility of the proposed changes to the Specified Equipment with HS1; and (d) the criteria used to assess compatibility and how

those criteria have been derived;

"Competent Authority"	means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the Office of Rail Regulation and the Channel Tunnel safety authority) whether of the United Kingdom or of the European Union, which has jurisdiction over either or both of the Access Parties in relation to the subject matter of, or in connection with, an Access Agreement provided that "Competent Authority" shall not include Her Majesty's Government (or any department, minister, official or nominee thereof) where acting as shareholder of the Access Party in question or other than pursuant to the Crown prerogative or a statutory function or power;
"Concession Agreement"	means the agreement between the Secretary of State and HS1 Ltd granting HS1 Ltd the concession for the design, construction, financing, operation, repair and maintenance of HS1, as may be amended from time to time;
"CTRL Act"	means the Channel Tunnel Rail Link Act 1996;
"Direction"	means, in respect of an Access Agreement, any direction, requirement, instruction or rule binding on either or both of the Access Parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force;
"Disputes Resolution Agreement"	means an agreement dated 18th February 1999 between (inter alia) HS1 Ltd, London & Continental Railways Limited and the Secretary of State providing a procedure for the resolution of certain disputes relating to HS1;
"Disputes Resolution Procedure"	means the procedure for the resolution of disputes contained in the HS1 Access Dispute Resolution Rules;
"Domestic Train Operator"	means (without prejudice to Condition A1.3), in respect of an Access Agreement, a person (whether or not an operator of trains) who has permission to use HS1 pursuant to that Access Agreement for the operation of trains not involving travel through the Channel Tunnel;
"European Freight Timetable"	means the timetable for the passage of freight trains across national boundaries agreed between European infrastructure managers from time to time;
"European Passenger Timetable"	means the timetable for the passage of passenger trains across national boundaries agreed between European infrastructure managers from time to time;
"Eurotunnel"	means the Channel Tunnel Group Limited and France-Manche S.A.;

"Eurotunnel Boundary"	means the boundary of HS1 and the Channel Tunnel portal at Cheriton, Folkestone, Kent;
"First Working Timetable"	means the version of the New Working Timetable published by HS1 Ltd at D-22 in accordance with Condition D2.7.1 as may be modified in accordance with Condition D2.7.4;
"Franchised Services"	has the meaning given to that term in Condition A1.6;
"Force Majeure Event"	<p>means any of the following events (and any circumstances arising as a direct consequence of any of the following events):</p> <ul style="list-style-type: none"> (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage; (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure; (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice); (d) nuclear, chemical or biological contamination; (e) pressure waves caused by devices travelling at supersonic speeds; (f) discovery of fossils, antiquities or unexploded bombs; and (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;
"Forum"	has the meaning given to that term in the HS1 Access Dispute Resolution Rules;
"HS1"	means the rail link between St Pancras International and the boundary with the Channel Tunnel portal at Cheriton, Folkestone, Kent previously known as the Channel Tunnel Rail Link (CTRL) (and for the purposes of this definition "rail link" shall have the same meaning as in section 56 of the CTRL Act);
"HS1 Access Dispute Resolution Rules"	means the set of rules known as the "HS1 Access Dispute Resolution Rules" which apply to the resolution of disputes arising under or in connection with Access Contracts (as defined in such rules);
"HS1 ADRR"	means the HS1 Access Dispute Resolution Rules;
"HS1 Ltd"	means HS1 Limited, a company registered in England under number 03539665 having its registered office at 3rd Floor, Eversholt Street, London, NW1 1AY;
"HS1 Standards"	means technical standards and operating procedures contributing to safe railway system operation and inter-

	working issued by HS1 Ltd, which are identified as "CTRL Standards" and compliance with which is mandatory;
"International Train Operator"	means (without prejudice to Condition A1.3), in respect of an Access Agreement, a person (whether or not an operator of trains) who has permission to use HS1 pursuant to that Access Agreement for the operation of trains involving travel through the Channel Tunnel;
"Legal Requirement"	means (for the purpose of the definition of Change of Law), in relation to any person, any of the following: <ul style="list-style-type: none">(a) any treaty, enactment or legislative provision in England to the extent that it applies to that person;(b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that person or a decision taken by the Commission of the European Union which is binding on that person to the extent that it is so binding; and(c) any common law, or any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different from that in which it previously had effect;
"Network Rail Infrastructure Ltd. or "NRIL"	means Network Rail Infrastructure Limited, a company incorporated in England and Wales under number 2904587 and having its registered office at Kings Place, 90 York Way, London N1 9AG;
"NR Network"	means the network of which Network Rail Infrastructure Ltd. is the facility owner and which is situated in England, Wales and Scotland;
"NR Network Boundary"	means the boundary of HS1 and the NR Network;
"Network Change"	has the meaning ascribed to it in Part G of this HS1 Network Code;
"Operator"	means an operator of HS1 appointed by HS1 Ltd;
"ORR" or "Office of Rail Regulation"	has the meaning ascribed to it by Section 15 of the Railways and Transport Safety Act 2003;
"Performance Regime"	means the provisions which are included in Access Agreements which relate to performance of trains and infrastructure on HS1;
"Railways Regulations"	means the Railways Infrastructure (Access and Management) Regulations 2005;
"Restriction of Use"	means, in respect of any Day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Timetable

Planning Rules relevant to that Day notified to each Bidder on or before the end of the Drafting Period under Part D of the HS1 Network Code) which results in:

- (a) a difference between the Applicable Timetable on that Day as compared with the First Working Timetable in respect of that Day; and/or
- (b) a difference between the First Working Timetable on that Day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;

"Routes"	means, in respect of an Access Agreement, those parts of HS1 which a Train Operator has permission to use pursuant to that Access Agreement;
"Rules of the Plan"	means the Timetable Planning Rules (as such expression is defined in Part D of this HS1 Network Code);
"Rules of the Route"	means the Engineering Access Statement (as such expression is defined in Part D of this HS1 Network Code);
"Scheduled"	means, in relation to the quantum, timing or any other characteristic of a Service, that quantum, timing or other characteristic as included in the Applicable Timetable;
"Secretary of State"	means the Secretary of State for Transport;
"Services"	means, in respect of an Access Agreement: <ul style="list-style-type: none">(a) the services for the carriage of passengers by railway;(b) the services for the carriage of goods by railway; and(c) any other train movement for the purpose of testing the physical or operational characteristics or capabilities of any railway asset, in each case as provided for in that Access Agreement;
"Specified Information"	means any information, statement, proposal, draft, instrument or document;
"Spot Bid"	means a Train Operator Variation (as such expression is defined in Part D of this HS1 Network Code);
"Statement of Compatibility"	means the written statement containing the information prescribed by the applicable HS1 Standards, including: <ul style="list-style-type: none">(a) the compatibility between the Specified Equipment and HS1;(b) the configuration of the Specified Equipment;(c) operational requirements and limitations;(d) route constraints; and(e) network factors, within which compatibility of the Specified Equipment and HS1 has been assessed;
"Technical Specification"	has the meaning ascribed to the term "TSI" in the Railways

for Interoperability"	(Interoperability) Regulations 2006;
"Timetable Year"	means the period of time between (and including) one Principal Change Date and (but excluding) the immediately succeeding Principal Change Date;
"Timetabling Dispute"	has the meaning given to that expression in the HS1 ADRR;
"Timetabling Panel"	has the meaning given to that expression in the HS1 ADRR;
"Train Crew"	means those persons on a train responsible for the operation of that train;
"Train Operator"	means an International Train Operator or a Domestic Train Operator as the context shall require;
"working day" or "Working Day"	means each of Monday to Friday (inclusive) excluding common law and statutory public holidays on which banks in the City of London are not open for business; and
"Working Timetable"	means the timetable which HS1 Ltd is obliged to draw up in respect of HS1 pursuant to Part D of this HS1 Network Code.

1.3 **References to Train Operator**

Each reference to a Train Operator, or to any obligation of a Train Operator, shall, insofar as the Train Operator is not an operator of a train, be construed as a reference to the person whose operation of trains on HS1 derives from that Train Operator's Access Agreement or (as the case may be) to that person's obligation and, in the latter case, the Train Operator shall procure that the person concerned performs the relevant obligation.

1.4 **Notices**

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

1.5 **Good faith between Access Parties**

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

1.6 **Franchised services**

References to Franchised Services include:

- 1.6.1 railway passenger services which the appropriate designating authority has designated as eligible for provision under franchise agreements pursuant to section 23 of the Act;
- 1.6.2 railway passenger services provided by a person appointed as a concessionaire or concession operator by a railway funding authority; and
- 1.6.3 railway passenger services provided by the relevant franchising authority, or another person on behalf of the relevant franchising authority, under section 30 of the Act.

2. **CONDITION A2 - STANDARDS OF DOCUMENTATION**

Where in this HS1 Network Code any person is required to prepare, produce or publish any Specified Information, that obligation is an obligation to ensure that the Specified

Information:

- (a) is in terms which are, to the greatest extent reasonably practicable, precise, clear and unambiguous; and
- (b) contains the information specified for its contents by the provision of this HS1 Network Code which requires its preparation, production or publication, and this Condition A2 is without prejudice to any further or other requirements specified in this HS1 Network Code and/or the Access Agreement in relation to the Specified Information.

3. CONDITION A3 - LIMITATION ON LIABILITY

3.1 General

If an Access Party fails to perform an obligation under this HS1 Network Code, the provisions of its Access Agreement limiting the liability of such Access Party under that contract shall have effect in relation to such failure unless and to the extent that:

- (a) an express provision states otherwise in any Part of this HS1 Network Code; or
- (b) an express provision states otherwise in the relevant Access Agreement.

3.2 Saving

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

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

4.1 Application to third parties

Except as provided in this Condition A4, no person who is not an Access Party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this HS1 Network Code.

4.2 Application to HS1 Network Code

Where in this HS1 Network Code a right is given to any person who is not an Access Party, that person shall be entitled to enforce directly any such right under the Contracts (Rights of Third Parties) Act 1999 but only by way of injunction or other performance order of a court or competent tribunal and not by way of damages or other compensatory award.

4.3 Vehicle Change and Network Change

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

5. CONDITION A5 - CONSULTATION

5.1 Consultation by a meeting

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

6. CONDITION A6 – PUBLICATIONS

6.1 General Obligation

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

6.1.2 HS1 Ltd shall not be obliged to publish, and shall take reasonable steps to avoid publishing, any information which, if published is likely materially to compromise or otherwise prejudice the commercial interests of any Access Party or any of its

Affiliates or may reasonably be expected seriously and prejudicially to affect the interests of any person.

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

PART B – PERFORMANCE MONITORING*Explanatory Note*

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

DEFINITIONS

In this Part B, unless the context otherwise requires:

- "Delay Attribution Guide"** means, as at 17th August 2009, the industry document used on the NR Network for the attribution of delay as the same may be amended or replaced from time to time pursuant to Part C of the HSI Network Code;
- "Performance Data Accuracy Code"** means the code relating to the standards of performance data accuracy entitled HSI Performance Data Accuracy Code, as amended from time to time pursuant to Part C of the HSI Network Code;
- "Performance Monitoring System"** means the system operated by HSI Ltd for monitoring train performance described in Condition B1; and
- "Proposal for Change"** has the meaning given to it in Part C of this HSI Network Code.

1. CONDITION B1 - PROCEDURES FOR MONITORING PERFORMANCE

- 1.1 HSI Ltd shall operate a system for monitoring train performance in relation to HSI which accurately records:
- 1.1.1 the times at which trains arrive at, depart from and pass specified points on HSI;
- 1.1.2 the difference between the time at which a train arrives at, departs from or passes a specified point and the time published for such arrival, departure or passing in its Working Timetable;
- 1.1.3 all cancelled trains and trains failing to pass any specified point;
- 1.1.4 the cause of train delays and cancellations on HSI; and

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

1.2 Performance Data Accuracy Code

- 1.2.1 The Performance Data Accuracy Code is incorporated into this HS1 Network Code. Each Access Party shall observe and perform its obligations, and shall have the benefit of its rights, under the Performance Data Accuracy Code. For the purpose of Condition B1.1 "accurately" shall be construed in accordance with the Performance Data Accuracy Code.
- 1.2.2 Subject to Condition B1.2.3, an Access Party shall be entitled to make a Proposal for Change to amend the Performance Data Accuracy Code.
- 1.2.3 Part C of the HS1 Network Code shall apply to any Proposal for Change by an Access Party to amend the Performance Data Accuracy Code and any such proposal shall be treated as if it were a Proposal for Change (as defined in Part C of the HS1 Network Code).

1.3 Delay Attribution Guide

- 1.3.1 A decision, ruling, finding, judgment, order or direction regarding the operation or interpretation of the Delay Attribution Guide in relation to the attribution of delay on the NR Network shall not be treated as binding and/or act as any precedent in relation to the attribution of delay on HS1.
- 1.3.2 Subject to Condition B1.3.3, an Access Party shall be entitled to:
- (a) make a Proposal for Change to amend the Delay Attribution Guide in connection with the attribution of delay or cancellations on HS1; and
 - (b) make a Proposal for Change to replace the Delay Attribution Guide (in whole or in part) with an alternative guide to the attribution of delay on HS1.
- 1.3.3 Part C of the HS1 Network Code shall apply to any Proposal for Change by an Access Party to amend or replace the Delay Attribution Guide and any such proposal shall be treated as if it were a Proposal for Change (as defined in Part C of the HS1 Network Code).

2. CONDITION B2 - DIAGNOSIS OF DELAYS

2.1 Determination of causes of delays or cancellations

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

- 2.1.1 the NR Network; or
- 2.1.2 the Eurotunnel Boundary;
- determine and record the delay.

2.2 Information relating to causes of delays or cancellations

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

- 2.2.1 information from any computerised or other recording system which HS1 Ltd may, for the time being, be permitted to use for the purposes of a particular Access

Agreement;

- 2.2.2 information supplied by signallers and other persons duly authorised to participate in the signalling of trains;
- 2.2.3 information supplied by any Train Operator, whether such information is within its knowledge or based on information supplied by other Train Operators;
- 2.2.4 information supplied by Network Rail, Eurotunnel or other providers of European railway networks whether such information is within that persons knowledge or based on information supplied by persons engaged or acting on behalf of or otherwise acting in accordance with or subject to the instructions of that person; and
- 2.2.5 information and guidance set out in the Delay Attribution Guide.

2.3 **Notification and agreement of delays**

- 2.3.1 HS1 Ltd shall, as soon as reasonably practicable following the occurrence on HS1 of any train delay or cancellation affecting the train of a Train Operator or any other train operator which is attributed to the Train Operator notify that Train Operator of the occurrence of that delay or cancellation and the responsibility, if any, for that delay or cancellation attributed by HS1 Ltd to that Train Operator. Any such notices shall be sent to such person as that Train Operator shall have nominated for the purposes of this Condition B2.3.1.
- 2.3.2 A Train Operator shall consider each delay or cancellation attributed by HS1 Ltd to that Train Operator, and if the Train Operator wishes to refer the attribution for further investigation it shall do so within two clear working days of receipt of that notice, and at the same time give its reasons for doing so. Any notification of such referral shall be sent to such person as HS1 Ltd shall have nominated for the purposes of this Condition B2.3.2.
- 2.3.3 Any attribution shall, unless referred for further investigation by that Train Operator within two clear working days of receipt of that notice in accordance with Condition B2.3.2, be deemed to be agreed by that Train Operator.

2.4 **Matters referred for further investigation**

- 2.4.1 The representatives nominated, pursuant to Condition B2.3, by HS1 Ltd and the Train Operator shall, within the next two clear working days after receipt of notification pursuant to Condition B2.3.1, attempt to resolve the matter referred for further investigation. Such further investigation shall take into account all relevant circumstances of the case and the guidance set out in the Delay Attribution Guide.
- 2.4.2 If agreement has not been reached within the two clear working days referred to in Condition B2.4.1, the matter shall be referred for review by the designated senior manager appointed by the Train Operator and the designated senior manager appointed by HS1 Ltd for the purposes of this Condition B2.4.2.
- 2.4.3 If, within 60 days, or such other period as may be agreed by HS1 Ltd and the Train Operator, of the matter being referred for review pursuant to Condition B2.4.2, HS1 Ltd and the Train Operator are unable to agree on the attribution, either party may refer the matter to be determined in accordance with the Disputes Resolution Procedure.

3. **CONDITION B3 - SYSTEM INVESTIGATION**

3.1 **Notification of unsatisfactory system**

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

satisfy such requirements.

3.2 **Investigation of system**

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

- 3.2.1 details of all relevant tests and checks carried out by HS1 Ltd;
- 3.2.2 the results of HS1 Ltd's investigations;
- 3.2.3 HS1 Ltd's conclusion as to whether the Performance Monitoring System failed to satisfy the requirements set out in Condition B1.1 in the manner alleged by that Train Operator or in any other respect;
- 3.2.4 HS1 Ltd's reasons for its conclusions and copies of all relevant data and documentation in respect thereof; and
- 3.2.5 any steps which HS1 Ltd is taking or proposes to take in respect of any failure to satisfy the said requirements.

3.3 **Adjustment to prior results**

If it is established in accordance with Condition B3.2 or Condition B4.2 that the Performance Monitoring System is not satisfying the requirements set out in Condition B1.1, the results obtained from the Performance Monitoring System for the period of 2 months preceding the date of the investigation or, if later, since the date of the last investigation under Condition B3.1 (but not in respect of earlier periods), shall be adjusted by HS1 Ltd in a manner which is fair and reasonable to HS1 Ltd and the Train Operators affected, in order to correct the results.

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

4.1 **Obligation to keep information**

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

4.2 **Right to audit and inspect**

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

- 4.2.1 audit and inspect at any reasonable time all processes, systems and records of the Performance Monitoring System applicable to an Access Agreement to which it is a party for any particular period and in relation to the Train Operator's Services provided pursuant to such Access Agreement;
- 4.2.2 inspect at any reasonable time all such premises and equipment as are used in connection with such Performance Monitoring System to monitor train performance in respect of the Train Operator's Services provided pursuant to such Access Agreement; and
- 4.2.3 require the other Access Party to carry out analysis, investigations and tests of the relevant Performance Monitoring System including the processes, systems and equipment used in connection with the Performance Monitoring System in the presence of an independent expert nominated by the first Access Party such tests to be as reasonably required by the first Access Party to determine its accuracy and suitability to monitor train performance in respect of the Train Operator's Services provided pursuant to such Access Agreement.

4.3 Costs to be borne by investigating party

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

4.4 Costs to be borne by party subject to investigation

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

5. CONDITION B5 - COOPERATION

5.1 Review of operations

All Access Parties having access to HS1 shall, not less than once every 6 months, meet together and review train performance and performance of the infrastructure comprised in HS1 and discuss alterations to their respective operations which will improve train and infrastructure performance and reduce train delays and cancellations.

5.2 Implementation of alterations

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

5.3 Obligations in Access Agreement

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

PART C – MODIFICATIONS TO THE HS1 NETWORK CODE*Explanatory Notes*

- A. *Part C provides for a process by which the HS1 Network Code, other operational arrangements (such as the HS1 Emergency Access Code, the HS1 Performance Data Accuracy Code and the HS1 Railway Systems Code) and certain other arrangements may be changed. The process set out in Part C is, in certain circumstances, also used in relation to changes to aspects of Access Agreements into which this code is incorporated.*
- B. *A Proposal for Change may be initiated by the ORR, a Train Operator or HS1 Ltd and is subject to a consultation process.*
- C. *This Explanatory Note does not form part of the HS1 Network Code.*

DEFINITIONS

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

- "Consultation Period"** means the period for consultation described in Condition C1.2.2;
- "HS1 Operational Arrangements"** means the HS1 Network Code (including this Part C); the HS1 Emergency Access Code; the HS1 Performance Data Accuracy Code; the HS1 Railway Systems Code; the Delay Attribution Guide; or any other arrangement which contemplates being varied in accordance with this Part C;
- "Proposal for Change"** means any proposal to change the HS1 Operational Arrangements together with any modification of that proposal;
- "relevant person"** means HS1 Ltd, a Train Operator and any other person who, in the opinion of the ORR, shall be likely to be affected by its decision whether to approve or reject a Proposal for Change; and
- "sponsor"** means the person who proposes a Proposal for Change.

1. CONDITION C1 - RECEIPT AND NOTIFICATION OF PROPOSALS FOR CHANGE SPONSORED BY HS1 LTD OR A TRAIN OPERATOR

1.1 Entitlement to make Proposal for Change

HS1 Ltd and each Train Operator shall be entitled to make a Proposal for Change for consideration. Any such Proposal for Change shall be sent by the sponsor to all other persons entitled to make a Proposal for Change and the ORR and shall:

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

1.2 Notice of Proposal for Change

HS1 Ltd shall, within 7 days following circulation or receipt of a Proposal for Change or, where HS1 Ltd is not the sponsor of that proposal, within 7 days following receipt of any clarification that HS1 Ltd may reasonably request from the sponsor in respect of a Proposal for Change:

- 1.2.1 give notice to each Train Operator and to the ORR of its provisional timescale for consulting on and considering that Proposal for Change; and
- 1.2.2 invite the submission to HS1 Ltd of written representations in respect of that Proposal for Change within such period as is reasonable in all the circumstances, being a period of not less than 30 days from the date of notification under Condition C1.2.1 above.

1.3 Modification of Proposal for Change

- 1.3.1 A modification to a Proposal for Change may be proposed by HS1 Ltd, the ORR or a Train Operator at any time during the Consultation Period and shall be copied to all other persons entitled to make such a modification to a Proposal for Change.
- 1.3.2 HS1 Ltd and the sponsor of the Proposal for Change (where that sponsor is not HS1 Ltd) shall consider any modifications which are proposed to a Proposal for Change and:
 - (a) where the proposed modification is a material modification then HS1 Ltd shall treat the proposal as a new Proposal for Change; and
 - (b) where the proposed modification is not a material modification then HS1 Ltd shall consider the Proposal for Change, as modified, but shall not treat the proposal as a new Proposal for Change;

provided that, where HS1 Ltd and the sponsor of the Proposal for Change (where that sponsor is not HS1 Ltd) cannot agree promptly whether or not a proposed modification is material or not then, for the purposes of this Condition C1.3, the modification will be treated as though it is a material modification.

1.4 Clarification

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

1.5 Meeting to discuss a Proposal for Change

Within 7 days following the end of the Consultation Period, HS1 Ltd shall give notice to each Train Operator and the ORR calling a meeting to discuss the Proposal for Change and any written representations it has received in respect of that Proposal for Change. HS1 Ltd shall inform each Train Operator and the ORR of the date, venue and time of such meeting (having first made reasonable efforts to consult with each Train Operator and the ORR as to such date, venue and time), such meeting to be held no later than 21 days following the end of the Consultation Period.

1.6 Further consultation

HS1 shall, as soon as reasonably practicable following a request at any meeting convened pursuant to Condition 1.5 to carry out further consultation in respect of any Proposal for Change, carry out that further consultation.

2. CONDITION C2 - CONSIDERATION OF PROPOSAL FOR CHANGE SPONSORED BY HS1 LTD OR A TRAIN OPERATOR

2.1 Submission of Proposal for Change to ORR

Following the conclusion of the Consultation Period and, where applicable, following the conclusion of any meeting called by HS1 Ltd pursuant to Condition C1.5 and any further consultation conducted pursuant to Condition 1.6, HS1 Ltd shall submit the Proposal for Change to the ORR, together with a written memorandum:

- (a) explaining the reasons for the Proposal for Change;
- (b) containing details of the results of the consultation process including, where relevant, any further consultation process (in each case including copies of any representations made during such consultation process);
- (c) confirming whether or not HS1 Ltd supports the Proposal for Change (including its reasons);
- (d) confirming whether or not each Train Operator supports the Proposal for Change (including their reasons (to the extent that they are known to HS1 Ltd, having made reasonable enquiry)); and
- (e) stating the date or series of dates upon which it is considered that the proposal should take effect should the ORR approve the Proposal for Change pursuant to Condition C2.3, such date being no earlier than 14 days after the date on which the ORR gives notice of any such approval.

2.2 Request for further information from the sponsor of a Proposal for Change

The sponsor of the Proposal for Change, including where such sponsor is HS1 Ltd, shall use its reasonable endeavours to provide any further information required in relation to the consideration of a Proposal for Change by the ORR.

2.3 Notification of approval or rejection of a Proposal for Change

2.3.1 The ORR may notify HS1 Ltd as soon as reasonably practicable of its approval or rejection of a Proposal for Change sponsored by HS1 Ltd or a Train Operator submitted to it pursuant to Condition C2.1 and, where relevant, any further information submitted to it pursuant to Condition C2.2, provided that the ORR may make any minor clarificatory modifications before approving any such Proposal for Change.

2.3.2 No Proposal for Change sponsored by HS1 Ltd or a Train Operator shall have effect unless the ORR gives notice to HS1 Ltd in writing that it approves the proposal pursuant to Condition C2.3.1 and only if the following conditions have been satisfied (and the ORR has given its reasons in the notice as to why it considers such conditions have been satisfied):

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

provided that, in all cases, the Proposal for Change in question shall not prejudice the ability of HS1 Ltd to perform its obligations under the Concession Agreement or otherwise unduly harm the financial position of HS1 Ltd.

2.4 Notification to parties

Where the ORR gives notice to HS1 Ltd pursuant to C2.3.2, HS1 Ltd shall ensure that all Train Operators shall be notified of the change and its effective date.

2.5 Effective date of change

Any notice given under C2.4 shall specify the effective date(s) of the proposed change which shall be unless otherwise determined 14 days from the date of notification made pursuant to Condition C.2.4.

3. CONDITION C3 - PROPOSAL FOR CHANGE SPONSORED BY THE ORR

3.1 The HS1 Operational Arrangements shall have effect with the modifications specified in any notice given by the ORR for the purposes of this Condition C3, provided that the ORR shall be satisfied as to the need for the modification as provided for in Condition C3.2, the procedural requirements of Condition C3.3 shall have been satisfied and the modification shall not have effect until the date provided for in Condition C3.4.

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

Any notice given by the ORR pursuant to Condition C3.1 in respect of a Proposal for Change sponsored by the ORR shall have effect only if the following conditions have been satisfied (and the ORR has given its reasons in the notice as to why it considers such conditions have been satisfied):

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

provided that, in all cases, the modification in question shall not prejudice the ability of HS1 Ltd to perform its obligations under the Concession Agreement or otherwise unduly harm the financial position of HS1 Ltd.

3.3 The procedural requirements which require to have been followed for the purposes of Condition C3.1 are:

- (a) the ORR shall have sent a copy of its proposal to HS1 and each Train Operator which shall:
 - (i) be in writing;
 - (ii) specify the wording of the modification proposed;
 - (iii) specify the date or series of dates on which it is proposed that the modification come into effect; and
 - (iv) be supported by an explanation in reasonable detail of the reason for the proposed modification, which must include the reasons why it considers the conditions in C3.2 would be satisfied;
- (b) the ORR shall have invited the submission of written representations on the documentation provided pursuant to (a) above from HS1 Ltd and each Train Operator within such period as is reasonable in all circumstances;

- (c) the ORR shall have taken such representations into account (other than those which are frivolous or trivial) in making its decision on the modification to be made; and
- (d) the ORR shall have notified HS1 Ltd and each Train Operator as to its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions, which may be provided at the same time as the notice under Condition C3.1.

3.4 Effect

A notice under Condition C3.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice.

4. CONDITION C4 - PROVISION OF REVISED TEXTS

A notice under Part C shall not have effect in relation to any Proposal for Change which relates to Condition C2.3.2 or proposed modification which relates to Condition C3.

5. CONDITION C5- PROVISION OF REVISED TEXTS

HS1 Ltd shall, as soon as reasonably practicable following issue of a notice pursuant to Condition C3.1 or following approval of a Proposal for Change by the ORR pursuant to Condition C2.3, supply to all Train Operators and the ORR a revised version of the amended documentation incorporating the change and shall publish a revised copy of such documentation on its website.

PART D – TIMETABLE CHANGE*Explanatory Note*

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

Criteria, HS1 Ltd will prepare and issue a draft timetable on or before the last day of the drafting period.

- H. Following issue of the draft Timetable, HS1 Ltd will continue to work with Timetable Participants to further refine the timetable plan to include any new aspirations of the Timetable Participants. It is not intended that significant service changes should be introduced at this stage but changes may be introduced to the extent that it is reasonably practicable to do so in the available time. HS1 Ltd will make a formal offer of its proposed New Working Timetable and Timetable Participants will have a right of appeal against HS1 Ltd's decisions reflected in that Timetable.*
- I. In its capacity as manager of the Working Timetable, HS1 Ltd is required to make a number of decisions, including whether to accept Access Proposal for new or different timetable slots, how to reconcile competing or conflicting Access Proposal. HS1 Ltd must have due regard to the Railways Regulations and to specified Decision Criteria when making decisions regarding proposed changes to the Working Timetable and to any applicable Engineering Access Statement and applicable Timetable Planning Rules. These criteria are to be weighed and balanced by HS1 Ltd in the light of the particular circumstances surrounding each decision and in certain circumstances HS1 Ltd must also consider whether it is reasonably practicable for proposed amendments to the Working Timetable to be developed and implemented in the time available.*
- J. It is expected that the normal means of resolving timetable disputes between HS1 Ltd and each Timetable Participant will be by negotiation and agreement. However, to deal with those cases where agreement cannot be reached, provision is made for Timetable Participants to appeal against any relevant HS1 Ltd decision in accordance with the Dispute Resolution Procedure.*
- K. The Annexes to Part D set out the timeframes for the timetable development process and any variations to the Working Timetable requested following D-22.*
- L. This Explanatory Note does not form part of the HS1 Network Code.*

1. INTRODUCTION

1.1 Overview

- 1.1.1 It is the responsibility of HS1 Ltd to establish a timetable for HS1, referred to as the “Working Timetable”.
- 1.1.2 Those entitled to participate in the processes set out in this Part D are defined as “Timetable Participants”.
- 1.1.3 The Working Timetable is re-issued in revised form twice a year. The process for producing the bi-annual revision of the Working Timetable is described in 2.
- 1.1.4 In the period between bi-annual revisions of the Working Timetable, either HS1 Ltd or Timetable Participants may wish to vary the Working Timetable, whether by altering or removing a scheduled Train Slot or by inserting a new Train Slot. HS1 Ltd shall operate the processes described in 3 to facilitate variations to a Working Timetable in appropriate circumstances.
- 1.1.5 In conducting the processes set out in this Part, decisions must be made by HS1 Ltd in accordance with the principles set out in 4.

- 1.1.6 5 describes the processes by which a Timetable Participant, dissatisfied with a decision of HS1 Ltd made in respect of this Part D, may in specified circumstances appeal against that decision.
- 1.1.7 HS1 Ltd requires access to HS1 in order to fulfil its obligations in relation to HS1. The processes by which:
- (A) the Working Timetable is updated on a bi-annual basis (as described in 2); and
 - (B) variations to the Working Timetable outside that bi-annual process are facilitated (as described in 3),
- include arrangements to procure access to HS1 required by HS1 Ltd. Where such access is required over a period greater than that covered by one revision of the Working Timetable, HS1 Ltd may wish to conduct an extraordinary process of consultation with parties affected by those works. A process for such consultation is described in 6.
- 1.1.8 It is the responsibility of HS1 Ltd and all Timetable Participants to collaborate with each other so that the implementation of the procedures in this Part D is carried out with optimal efficiency. HS1 Ltd and Timetable Participants shall each establish and maintain systems and resources which are necessary and sufficient to facilitate such collaboration and their compliance with the procedures set out in this Part.
- 1.1.9 In addition to compliance with the processes described in this Part D, Timetable Participants may be separately required to consult with the Secretary of State, Transport for London, user representatives, other infrastructure managers and any other parties with the right to be so consulted, regarding proposals for the development of Services.
- 1.1.10 In this Part D, capitalised words shall have the meanings shown below unless the context otherwise requires:

"Access Proposal"	shall have the meaning ascribed to it in Condition D2.4.1;
"Ancillary Movement"	means a train movement which is not an express part of any Services but which is necessary or reasonably required for giving full effect to the train movements which are an express part of a Service and shall include any such train movement as is referred to in paragraph (c) of the definition of "Services" to the extent that it is not expressly provided for in an Access Agreement;
"Considerations"	shall have the meaning ascribed to it in Condition D4.6.1(b);
"Contingent Right"	means a right which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in Schedule 5 of the relevant Train Operator's Access Agreement;
"D-X"	shall have the meaning ascribed to it in Condition D2.1.5;
"Decision Criteria"	shall have the meaning ascribed to it in Condition D4.6;
"Domestic Path"	means a Train Slot other than an International Path;

"Draft Rules"	shall have the meaning ascribed to it in Condition D2.2.3;
"Engineering Access Statement"	means a document, formerly called Rules of the Route, setting out, for any part of HS1, each of the following matters: <ul style="list-style-type: none">(a) the location, number, timing and duration of any Restrictions of Use; and(b) any alternative train routes or stopping patterns which may apply during any Restrictions of Use referred to in paragraph (a) above;
"Exercised"	shall mean as a consequence of: <ul style="list-style-type: none">(a) submitting an Access Proposal to HS1 Ltd by the Priority Date in accordance with Conditions D2.4 and D2.5; or(b) a Rolled Over Access Proposal;
"Firm Right"	means: <ul style="list-style-type: none">(a) in the case of a Timetable Participant, a right under an Access Agreement in respect of the quantum, or any other characteristic of a train movement; and(b) in the case of HS1 Ltd, a right under the Rules; and which in either such case is not expressed to be subject to any contingency outside the control of the right holder (save that in the case of (a), the right may be subject to the Rules);
"Flexing Right"	means a right, exercisable by HS1 Ltd in allocating a Train Slot in the New Working Timetable, to vary a Train Slot: <ul style="list-style-type: none">(a) sought in an Access Proposal ; or(b) arising from a Rolled Over Access Proposal; or(c) sought in a Train Operator Variation Request, in any way within and consistent with the Exercised Firm Rights of the relevant Timetable Participant;
"HS1 Ltd Variation"	shall have the meaning ascribed to it in Condition D3.1.2;
"HS1 Ltd Variation Request"	means a request made by HS1 Ltd for a HS1 Ltd Variation;
"Initial Consultation Period"	shall have the meaning ascribed to it in Condition D2.3.3;
"International Operator"	means a Timetable Participant which has rights to train movements through the Channel Tunnel;

"International Path"	means any Train Slot which is contiguous with a train movement through the Channel Tunnel or any combination of Train Slots which are contiguous with each other and of which at least one is contiguous with a planned train movement through the Channel Tunnel;
"Major Timetable Change"	means any change of more than 4% in the number of scheduled train movements on HS1 in any Timetable Period;
"Network Services "	shall have the meaning ascribed to it in section 82(2) of the Railways Act 1993;
"New Working Timetable"	shall have the meaning ascribed to it in Condition D2.1.6;
"One Stop Shop Service"	means the service offered by HS1 Ltd under which an International Operator can apply to HS1 Ltd to obtain a contiguous International Path over the network of one or more adjoining infrastructure managers belonging to RailNet Europe;
"Possessions Strategy Notice"	shall have the meaning ascribed to it in Condition D6.3.1;
"Possessions Strategy Participants"	shall have the meaning ascribed to it in Condition D6.1.1;
"Possessions Strategy Proposal"	shall have the meaning ascribed to it in Condition D6.1.2;
"Principal Change Date"	shall have the meaning ascribed to it in Condition D2.1.3;
"Prior Working Timetable"	shall have the meaning ascribed to it in Condition D2.1.6;
"Priority Date"	shall have the meaning ascribed to it in Condition D2.4.4;
"RailNet Europe"	means the association of that name set up by a majority of European rail infrastructure managers and allocation bodies to enable fast and easy access to European rail networks, as well as to increase the quality and efficiency of international rail traffic;
"Rolled Over Access Proposal"	means an Access Proposal submitted in a previous revision of the Working Timetable resulting in Train Slots being included in the Prior Working Timetable which the relevant Timetable Participant does not seek to vary in the New Working Timetable in accordance with this Part D;
"Rules"	means the Timetable Planning Rules and the Engineering Access Statement;
"Short Term Plan"	shall have the meaning ascribed to it in Condition D3.7.1;
"Subsidiary Change Date"	shall have the meaning ascribed to it in Condition D2.1.3;

"Timetable Change Date"	shall have the meaning ascribed to it in Condition D2.1.3;
"Timetable Participant"	(a) a Train Operator; or (b) a person who proposes in good faith to enter into an Access Agreement, or a person referred to in paragraph (c) in the definition of "applicant" in the Railways Regulations, who is acting on behalf of such person provided that in each case the person has first undertaken to HS1 Ltd to be bound by the relevant provisions of the HS1 Network Code and the HS1 ADRR;
"Timetable Period"	shall have the meaning ascribed to it in Condition D2.1.6;
"Timetable Planning Rules"	means a document, formerly called Rules of the Plan, regulating, for any part of HS1, the standard timings and other matters necessary to enable trains to be included in the New Working Timetable or scheduled into the Working Timetable applicable to HS1, being rules which specify (amongst other matters): (a) the timings (including specified allowances) allowed for travel between specified points on HS1 for each type of train and for each type of traction used, taking into account any particular constraints imposed by railway vehicles which may form part of the train; (b) timing margins or allowances for stopping at junctions and other specified points; (c) minimum timing margins or headways between successive trains travelling on the same section of track; (d) minimum and maximum time periods for stopping at stations and other specified points; and (e) restrictions as to the speed of railway vehicles on any section of track;
"Timetable Preparation Period"	shall have the meaning ascribed to it in Condition D2.6.1;
"Timetable Variation"	shall have the meaning ascribed to it in Condition D3.1.3;
"Timetable Variation by Consent"	shall have the meaning ascribed to it in Condition D3.6.1;
"Timetable Week"	shall have the meaning ascribed to it in Condition D3.2.1;
"Timetabling Panel"	shall have the meaning ascribed to it in the HS1 ADRR;

"Timing Load"	in relation to a Service, the timing reference code which details the maximum speed and particular combination of traction type and trailing weight, together with whether any vehicles may be conveyed to which local speed restrictions will apply;
"Train Operator Variation"	shall have the meaning ascribed to it in Condition D3.1.1;
"Train Operator Variation Request"	shall have the meaning ascribed to it in Condition D3.3.1;
"Train Slot"	means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement;
"TW-X"	shall have the meaning ascribed to it in Condition D3.2.1;
"Working Hours"	means any hour during the period 09:00 to 17:00 on a Working Day; and
"Works"	means any inspection, maintenance, renewal, repair, replacement, improvement, enhancement or development of, or any other work in relation to, any part of HS1.

1.2 Transitional Provisions for the Working Timetable to take effect on the Principal Change Date in 2013

1.2.1 For the purposes of the process to revise the Working Timetable to take effect on the Principal Change Date in 2013:

- (A) **"Prior Working Timetable"** shall mean the First Working Timetable published in accordance with the process applying to the Timetable Period immediately preceding the Principal Change Date in 2013 as set out in the version of Part D which was in effect immediately before this Part D came into force (**"Previous Part D"**), and where **"First Working Timetable"** shall have the meaning ascribed to it in the Previous Part D; and
- (B) reference to **"an Access Proposal"** in the definition of "Rolled Over Access Proposal" shall be to "a Bid", where "Bid" shall have the meaning ascribed to it in the Previous Part D.

1.2.2 On the Principal Change Date in 2013:

- (A) this Condition D1.2 shall cease to have effect and shall be removed from this Part D; and
- (B) HS1 Ltd shall republish this HS1 Network Code with this Condition D1.2 deleted but shall not be obliged to carry out a Proposal for Change pursuant to Part C of this HS1 Network Code to effect such change.

2. BI-ANNUAL TIMETABLE REVISION PROCESS

2.1 Preliminary

2.1.1 The Working Timetable shall show every train movement on HS1, including:

- (A) every Service;
- (B) every Ancillary Movement;

- (C) the times of:
- (1) departure from origin and arrival at destination;
 - (2) arrival at and departure from every intermediate stopping point;
 - (3) such passing points, in accordance with the Timetable Planning Rules, as HS1 Ltd (acting reasonably) considers appropriate; and
 - (4) all relevant timing allowances.

The Working Timetable shall also include freight train planning publications and documents detailing platform arrangements.

- 2.1.2 HS1 Ltd shall re-issue the Working Timetable in revised form on two occasions in each year, after a consultation and revision process conducted by HS1 Ltd in accordance with this 2.
- 2.1.3 The implementation dates for the two annual revisions of the Working Timetable will conform with Schedule 4 of the Railways Regulations. To the extent permitted by the Railways Regulations and, following consultation with other infrastructure managers, HS1 Ltd may vary the change implementation dates from time to time, provided that all Timetable Participants have been informed of, and have not objected to, the change. Each change implementation date is referred to as a **“Timetable Change Date”**. The first and main change implementation date, occurring in the winter of a calendar year, is referred to as the **“Principal Change Date”**. The Principal Change Date shall be midnight on the second Saturday in December unless and until it is varied by HS1. The second change implementation date, occurring in the summer after the Principal Change Date, is referred to as the **“Subsidiary Change Date”**.
- 2.1.4 This 2 describes the process by which HS1 Ltd will revise the Working Timetable on each of the Timetable Change Dates. This process will be followed regardless of whether the change is to be implemented on a Principal Change Date or on a Subsidiary Change Date.
- 2.1.5 For the purposes of this Part D, a Timetable Change Date shall be designated by the letter “D”. The sequence of events culminating in the adoption of a revised Working Timetable is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to date “D”. Each week commences at 02:00 on a Sunday and expires at 01:59 on the following Sunday. So, for example, “D minus 22” (or “D-22”) refers to the 22nd week prior to date “D”. Where in this Part D any step or event is required or stated to occur by any week designated in this way, it must occur no later than 5pm on the Friday of the preceding week. So, for example, a step which is required to occur no later than “D-22” must occur no later than 5pm on Friday in the week commencing on the Sunday which occurs 23 weeks prior to a Timetable Change Date.
- 2.1.6 To produce the timetable to take effect on a Timetable Change Date, HS1 Ltd will use as the starting point the timetable published at D-22 in the process related to the immediately preceding Timetable Change Date but may delete any Train Slots in respect of which it believes, acting reasonably and after consultation with the relevant Timetable Participant (if appropriate), that the relevant Timetable Participant, or its successor, will not have the necessary access rights at the time of the intended operation of the Train Slots (**“the Prior Working Timetable”**). If any subsequent variations are made to the Prior Working Timetable as a result of the appeal process, then they shall also be incorporated into it. The Prior Working Timetable is then subject to a process of amendment under 2 and during this period

shall be referred to as the “**New Working Timetable**”. The timetable which the New Working Timetable becomes on a Timetable Change Date is the Working Timetable. The period between Timetable Change Dates is referred to as the “**Timetable Period**”.

2.1.7 Not later than D-67 in relation to the Principal Change Date only, HS1 Ltd shall publish to all Timetable Participants a calendar showing the milestone dates which will apply (for the purposes of this 2) to the process of planning the New Working Timetables to take effect as Working Timetables on the Principal Change Date and the Subsidiary Change Date.

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

2.2.1 Both the Timetable Planning Rules and the Engineering Access Statement (together referred to as “**the Rules**”) are revised on a bi-annual basis, each revised version being operative for the same Timetable Period as the Working Timetable to which they pertain. The Rules must be revised and updated, in accordance with the procedures described in this Condition D2.2, as the first stage in the preparation of a New Working Timetable.

2.2.2 Between D-64 and D-60, HS1 Ltd shall consult with Timetable Participants in respect of any proposed changes to the Rules.

2.2.3 Following consultation in accordance with Condition D2.2.2, and not later than D-59, HS1 Ltd shall provide to all Timetable Participants a draft of the revised Rules (the “**Draft Rules**”), provided that:

(A) where “D” is a Principal Change Date, the Draft Rules to be provided and finalised shall be both those for the Timetable Period commencing on that Principal Change Date and those for the Timetable Period commencing on the immediately succeeding Subsidiary Change Date; and

(B) where “D” is a Subsidiary Change Date, the Draft Rules to be provided and finalised shall pertain only to the Timetable Period commencing on that Timetable Change Date and shall contain only revisions:

- (1) which are not material; or
- (2) the need for which was not reasonably foreseeable at the time when the prior revision of the Rules was made.

2.2.4 Following provision of the Draft Rules to all Timetable Participants and by D-54:

(A) HS1 Ltd shall consult with Timetable Participants in respect of the Draft Rules provided to them in accordance with Condition D2.2.3 and in respect of any representations made pursuant to paragraph (b) below; and

(B) Timetable Participants may make representations to HS1 Ltd in respect of any changes they propose or objections they may have to the Draft Rules provided to them in accordance with Condition D2.2.3.

2.2.5 Following D-54 and by D-44, HS1 Ltd shall consider the representations and objections made to it by Timetable Participants pursuant to Condition D2.2.4 and may amend the Draft Rules. Not later than D-44, HS1 Ltd shall issue the final revised Rules to all Timetable Participants.

2.2.6 In preparing the revised Rules, HS1 Ltd shall be required and entitled to act in accordance with the duties and powers set out in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the Rules.

- 2.2.7 Between D-44 and publication of the New Working Timetable at D-22, HS1 Ltd may further revise the Rules where it considers, acting reasonably, such revision necessary or desirable in order to optimise that New Working Timetable. Before making any such further revisions to the Rules, HS1 Ltd must first consult with all Timetable Participants who may be affected by the proposed changes. HS1 Ltd will then inform all affected Timetable Participants of any such changes as soon as practicable after they are made. The amending power created by this Condition D2.2.7 is without prejudice to the amending power referred to in Condition D3.4.
- 2.2.8 Subject to Condition D2.2.9 below, any Timetable Participant dissatisfied with any decision of HS1 Ltd in respect of those Rules (including any decision to revise those Rules pursuant to Condition D2.2.7) is entitled to appeal against any part of it. Any such appeal shall be conducted in accordance with 5 and must be made by a Timetable Participant:
- (A) in respect of any decision to revise the Rules pursuant to Condition D2.2.7, within five Working Days of receipt of HS1 Ltd's decision; and
 - (B) otherwise within fifteen Working Days of receipt of HS1 Ltd's decision.
- 2.2.9 No appeal may be brought pursuant to Condition D2.2.8 in respect of any part of the Rules which conforms with any Possessions Strategy Notice which has:
- (A) not been appealed in the timeframe for appeal set out in Condition D6.4.1; or
 - (B) has been appealed but has been finally determined by a Timetabling Panel or the Office of Rail Regulation.

2.3 **Timetable consultation – D-55 to D-36**

- 2.3.1 Any Timetable Participant wishing to introduce significant new Services or to make significant changes to its Services shall consult with HS1 Ltd at the earliest opportunity and, where possible, before D-55. If HS1 Ltd considers that the introduction of such new or changed Services (either by itself or in aggregate with the introduction of new or changed Services by other Timetable Participants) may necessitate substantial timetable changes (which shall include where such new or changed Services, in aggregate, constitute or are likely to constitute a Major Timetable Change) it may commence the Initial Consultation Period, referred to in Condition D 2.3.3 below, before D-55. In any event, HS1 Ltd shall consult with Timetable Participants who may be affected by the new or changed Services and shall provide them with all available relevant information in respect of those proposals.
- 2.3.2 HS1 Ltd shall:
- (A) ensure that by no later than D-48, provisional International Paths have been established in co-operation with other relevant infrastructure managers or allocation bodies (as the case may be), in accordance with the Railways Regulations and included on a provisional basis in the New Working Timetable;
 - (B) ensure that so far as possible, provisional International Paths established in accordance with paragraph (A) above are adhered to during the relevant subsequent allocation process and are only adjusted if absolutely necessary;
 - (C) use reasonable endeavours to ensure that, by no later than D-48, provisional Domestic Paths have been established in cooperation with NRIL and included on a provisional basis in the New Working Timetable; and

- (D) ensure that, so far as possible, provisional Domestic Paths established in accordance paragraph (C) above are adhered to during the relevant subsequent allocation process.

2.3.3 During the period from D-55 to D-36 (or such extended period referred to in Condition D2.3.1):

- (A) Timetable Participants shall indicate the changes (if any) that they propose should be made in preparing the New Working Timetable; and
- (B) HS1 Ltd shall consult with Timetable Participants in respect of the New Working Timetable.

The period of consultation required by this Condition D2.3.3 is referred to as the **“Initial Consultation Period”**.

2.3.4 During the Initial Consultation Period, HS1 Ltd shall:

- (A) use its reasonable endeavours to answer enquiries made by Timetable Participants in connection with matters that may affect or relate to the New Working Timetable;
- (B) facilitate and co-ordinate dialogue with all Timetable Participants and (as may be appropriate) between Timetable Participants in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections, complementary services patterns and efficiency of operation.

2.3.5 Each Timetable Participant shall co-operate with HS1 Ltd in order to enable HS1 Ltd to co-ordinate the timetabling and operation of all services on HS1 so that all services may be scheduled to operate on HS1 and other connected networks in a co-ordinated and robust manner, such that:

- (A) at the Ashford West Boundary and the Ashford East Boundary, the relevant Service shall form a continuous through service (save that this shall not affect any rights that a Timetable Participant has to call at Ashford International);
- (B) there may be a continuous through service from HS1 to the Channel Tunnel and vice versa; and
- (C) there may be a continuous through service from HS1 to the NR Network and vice versa.

2.3.6 Not later than D-45 HS1 Ltd shall provide to the Timetable Participants a copy of the Prior Working Timetable. If any changes are made to the Prior Working Timetable as a result of the appeal process under Condition D2.7, then HS1 Ltd shall notify these changes to Timetable Participants as soon as reasonably practicable.

2.4 **Submission of Access Proposals by Timetable Participants – before and after the Priority Date at D-36**

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

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

- (B) it wishes to make changes to any Train Slot in the Prior Working Timetable; and/or
 - (C) it wishes to set out its requirements in response to a notification by HS1 Ltd under Condition D2.4.6.
- 2.4.2 Where a Timetable Participant does not intend using a Train Slot, which is included in the Prior Working Timetable, in the relevant Timetable Period, it shall notify this fact to HS1 Ltd in writing by D-36 or as soon as practicable thereafter.
- 2.4.3 Access Proposals may be submitted to HS1 Ltd during the period up to D-22. However, Timetable Participants shall submit their Access Proposals (and any revised Access Proposals) as early as reasonably practicable prior to D-22 in order to facilitate optimal planning of the New Working Timetable by HS1 Ltd and to ensure optimal consultation between HS1 Ltd and all Timetable Participants.
- 2.4.4 Access Proposals submitted by D-36 (“**the Priority Date**”) are given priority in the compilation of the New Working Timetable in certain circumstances set out in Condition D4.2. Access Proposals submitted after the Priority Date but by D-22 will be incorporated by HS1 Ltd into the New Working Timetable as far as reasonably practicable, taking into account the complexity of the Access Proposal including any reasonably foreseeable consequential impact on the New Working Timetable, the time available before the end of the Timetable Preparation Period, and in accordance with the principles set out in Condition D4.2.
- 2.4.5 Any subsequent or revised Access Proposal submitted by a Timetable Participant shall amend an Access Proposal submitted earlier where it sets out different requirements to the earlier submitted Access Proposal regarding the manner in which a right is to be exercised. In such case the date on which the subsequent or revised Access Proposal is submitted will be treated, for the purposes of Condition D4.2.2, as the date of notification of the relevant right.
- 2.4.6 Where a Timetable Participant has:
- (A) submitted an Access Proposal which cannot be accommodated in the New Working Timetable; or
 - (B) a Train Slot in the Prior Working Timetable which cannot be accommodated in the New Working Timetable; or
 - (C) submitted a proposal purporting to be an Access Proposal but which is defective or incomplete,
- HS1 Ltd must notify the Timetable Participant of this fact, as soon as possible after it has become aware of it, so that the Timetable Participant has the opportunity to submit a further Access Proposal under Condition D2.4.1(c).

2.5 **Content of an Access Proposal**

- 2.5.1 Each Access Proposal shall include as a minimum in respect of each Train Slot, save to the extent that HS1 Ltd expressly agrees in writing to the contrary:
- (A) the dates on which the Train Slots are intended to be used;
 - (B) the start and end points of the train movement;
 - (C) the intermediate calling points;
 - (D) the times of arrival and departure from any point specified under paragraphs (b) and (c) above;
 - (E) the railway vehicles or Timing Load to be used;

- (F) any required train connections with other railway passenger services;
- (G) the proposed route;
- (H) any proposed Ancillary Movements;
- (I) any required platform arrangements at the start, end and all intermediate calling points;
- (J) any relevant commercial and service codes; and
- (K) the proposed maximum train speed and length and, in relation to a freight train, the proposed maximum train weight.

2.5.2 Where an Access Proposal has been submitted by a Timetable Participant, HS1 Ltd shall be entitled to require any further information in respect of that Access Proposal that it reasonably considers to be necessary or beneficial to the preparation of the New Working Timetable.

2.6 **Timetable Preparation – D-36 to D-22**

2.6.1 During the Timetable Preparation Period (D-36 to D-22) (“**Timetable Preparation Period**”), HS1 Ltd shall compile the proposed New Working Timetable.

2.6.2 Between D-36 and D-22:

- (A) all Timetable Participants shall have access to the evolving draft of the New Working Timetable either:
 - (1) by way of “read-only” remote computer access or such other electronic means reasonably requested by a Timetable Participant; or
 - (2) to the extent that a Timetable Participant does not have the required systems to facilitate remote computer access, by read-only computer access upon attendance at such location specified by HS1 Ltd;
- (B) HS1 Ltd shall consult further with Timetable Participants in respect of their Access Proposals and the evolving draft of the New Working Timetable, and shall continue to answer enquiries and facilitate and co-ordinate dialogue as stated in Condition D2.3.4.

2.6.3 In compiling the New Working Timetable, HS1 Ltd shall be required and entitled to act in accordance with the duties and powers set out in Condition D4.2.

2.7 **New Working Timetable Publication – D-22**

2.7.1 The New Working Timetable shall be published by HS1 Ltd at D-22, subject only to variations made in the course of the appeal process described in this Condition D2.7.

2.7.2 Any Timetable Participant affected by the New Working Timetable shall be entitled to appeal against any part of it, provided that an appeal is lodged within twenty Working Days of its publication. All such appeals shall be conducted in accordance with Condition D5.

2.7.3 Where a Timetable Participant has enquiries or requires further information from HS1 Ltd regarding the published New Working Timetable, HS1 Ltd shall respond fully and promptly and where possible, taking into account the nature of the enquiry or information requested and the date this is received by HS1 Ltd, so as to enable a Timetable Participant to comply with the timescales in Condition D2.7.2.

2.7.4 HS1 Ltd shall promptly make all revisions to the New Working Timetable required by all appeal decisions, and shall notify all Timetable Participants upon completion of those changes.

2.8 Summary

- 2.8.1 A timeline, showing a summary of the bi-annual timetable amendment process, is attached at Annex 1. Where there is any conflict between the timeline and the wording of Conditions D1-7, the wording of Conditions D1-7 shall prevail.

3. VARIATIONS TO THE WORKING TIMETABLE

3.1 Overview

- 3.1.1 From D-22 and during the relevant Timetable Period, Timetable Participants may wish to vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (A) adding an additional Train Slot on one or more occasions;
- (B) amending the detail of one or more Train Slots;
- (C) removing one or more Train Slots.

Any such variation is referred to as a “**Train Operator Variation**”. The process to be followed where a Timetable Participant seeks a Train Operator Variation is set out in Condition D3.3.

- 3.1.2 From D-22 and during the relevant Timetable Period, HS1 Ltd may wish to vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (A) adding an additional Train Slot on one or more occasions;
- (B) amending the detail of one or more Train Slots;
- (C) removing one or more Train Slots,

in order to facilitate a Restriction of Use. Any such variation is referred to as a “**HS1 Ltd Variation**”. The process to be followed where a HS1 Ltd Variation is sought with more than 12 weeks notice is set out in Condition D3.4. The process to be followed where a HS1 Ltd Variation is sought with less than 12 weeks notice is set out in Condition D3.5.

- 3.1.3 Train Operator Variations and HS1 Ltd Variations are collectively referred to as “**Timetable Variations**”.
- 3.1.4 In considering or making any Timetable Variation, HS1 Ltd shall be required and entitled to act in accordance with the duties and powers set out in Conditions D4.3 and D4.4.

3.2 Timeline for the Planning of Timetable Variations

- 3.2.1 HS1 Ltd Variations are planned by HS1 Ltd on a week by week basis. Each week of a Working Timetable is referred to as a “**Timetable Week**”. Each Timetable Week commences at 00:01 on a Saturday and expires at 24:00 on the following Friday. The sequence of events by which variations are finalised is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to the commencement of Timetable Week “TW”. So, for example, “TW minus 12” (or “TW-12”) refers to the 12th week prior to the start of a given Timetable Week “TW”. Where in this Part D any step or event is required or stated to occur by any week designated in this way, it must occur no later than 5pm on Friday of the preceding week. So, for example, a step which is required to occur no later than “TW-12” must occur no later than 5pm on Friday in the week commencing on the Saturday which occurs 13 weeks prior to the commencement of week TW.

- 3.2.2 Not later than D-22, HS1 Ltd shall provide to all Timetable Participants a calendar pertaining to each Timetable Week, showing the milestone dates which will apply (pursuant to this Condition D3) to the planning of all Timetable Variations in respect of that Timetable Week.

3.3 Train Operator Variations after D-22

- 3.3.1 Where a Timetable Participant seeks a Train Operator Variation, it shall submit to HS1 Ltd a written request, referred to as a “**Train Operator Variation Request**”.

- 3.3.2 A Train Operator Variation Request shall contain a full description of the variation sought and, where it relates to the addition or amendment of any Train Slot to be included in the Working Timetable, shall provide the same information in respect of the variation as would be contained in an Access Proposal (save that where a proposed Train Slot amendment does not involve revision of any information previously supplied to HS1 Ltd in an Access Proposal for that Train Slot, the Train Operator Variation Request need not repeat that information).

- 3.3.3 From D-22 and during the relevant Timetable Period, a Timetable Participant is entitled to make a Train Operator Variation Request and HS1 Ltd shall have the power to accept, reject or modify it, subject to the timeframes set out in Conditions D3.3.6 and D3.3.7 below and acting in accordance with Condition D4.3.

- 3.3.4 Where a Train Operator Variation Request is received by HS1 Ltd:

- (A) on any day which is not a Working Day; and/or
- (B) after 10:00 hours on a Working Day;

it shall be deemed to have been received by HS1 Ltd on the next Working Day thereafter.

- 3.3.5 For the purposes of calculating HS1 Ltd’s response time to a Train Operator Variation Request set out in Condition D3.3.6, the day of HS1 Ltd’s receipt of a Train Operator Variation Request is described as day 1 and each Working Day following this adds a day onto the description. For example, the Working Day after the day of receipt of the request is day 2.

- 3.3.6 Except in relation to a Train Operator Variation Request which includes a One Stop Shop Service which is dealt with in Condition D3.3.7, HS1 Ltd shall notify its acceptance, rejection or modification of a Train Operator Variation Request, by the following latest times:

- (A) as soon as reasonably practicable, where the request is to operate a Train Slot on day 1 or day 2.
- (B) by 15:00 hours on day 1, where the request is to operate a Train Slot on day 3;
- (C) by 10:00 hours on day 2, where the request is to operate a Train Slot on day 4;
- (D) by 15:00 hours on day 2, where the request is to operate a Train Slot on day 5;
- (E) by 15:00 hours on day 3, where the request is to operate a Train Slot on day 6;
- (F) by 10:00 hours on day 4, where the request is to operate a Train Slot on day 7; and
- (G) where paragraphs (a), (b), (c), (d), (e) or (f) above do not apply, within five Working Days of receipt of the request.

- 3.3.7 In relation to a Train Operator Variation Request which includes a One Stop Shop Service, HS1 Ltd shall notify its acceptance, rejection or modification of the Train Operator Variation Request as soon as reasonably practicable.
- 3.3.8 Where HS1 Ltd fails to notify its response to a Train Operator Variation Request in accordance with Condition D3.3.6 and the request, if accepted, would not give rise to any conflict with:
- (A) the New Working Timetable after it is published at D-22; or
 - (B) the relevant Working Timetable; or
 - (C) the Rules,
- it shall be deemed to have accepted the request.
- 3.3.9 Subject to Condition D3.3.10, where a Timetable Participant is dissatisfied with any final decision of HS1 Ltd in response to a Train Operator Variation Request, it may appeal against that decision in accordance with 5, provided that it submits its appeal as soon as reasonably practicable and, in any event, no later than five Working Days after it is notified of the relevant decision by HS1 Ltd.
- 3.3.10 Any appeal regarding a Train Operator Variation Request which includes a One Stop Shop Service can only be made in relation to the part of the request concerning HS1.
- 3.3.11 Where HS1 Ltd rejects or modifies any Train Operator Variation Request it must provide written reasons for its decision.
- 3.4 HS1 Ltd Variations with at least 12 Weeks Notice**
- 3.4.1 The procedures described in this Condition D3.4 are designed to facilitate the planning of HS1 Restrictions of Use at least 12 weeks prior to the start of each Timetable Week.
- 3.4.2 HS1 Ltd shall be entitled to make a variation to the Working Timetable provided that:
- (A) the HS1 Ltd Variation is made only for the purpose of taking Restrictions of Use which are consistent with the Rules, as published following the process set out in Condition D2.2 or as amended in accordance with the procedure established pursuant to Condition D3.4.3; and
 - (B) HS1 Ltd complies with the procedure set out in this Condition D3.4.
- 3.4.3 HS1 Ltd shall include in the Rules a procedure to enable amendment of the Rules, following their finalisation in accordance with Condition D2.2. This amending power is without prejudice to the amending power referred to in Condition D2.2.7, and is to be utilised in order to facilitate changes which HS1 Ltd considers necessary to take Restrictions of Use.
- 3.4.4 The procedure referred to in Condition D3.4.3:
- (A) must require that no amendment to the Rules may be made unless HS1 Ltd has consulted with all Timetable Participants likely to be affected by the amendment;
 - (B) must require that all decisions of HS1 Ltd be made by application of the Decision Criteria in accordance with Condition D4.6; and
 - (C) may authorise changes to the procedure.

- 3.4.5 All amendments to the Rules made pursuant to the procedure referred to in Condition D3.4.3 shall be subject to the appeal procedures in 5 as if they were made pursuant to a procedure set out in this Part D.
- 3.4.6 Notwithstanding anything stated elsewhere in this Part D, where any amendment is made to the procedure referred to in Condition D3.4.3 by use of that procedure, the amendment shall not take effect until the determination of any appeal against the same.
- 3.4.7 Where HS1 Ltd proposes to make any variation to the Working Timetable consequent upon an amendment to the Rules made in accordance with this Condition D3.4, HS1 Ltd shall provide to each Timetable Participant, by TW-30, its proposals for Restrictions of Use in respect of the corresponding Timetable Week. All such proposals may be amended or supplemented by HS1 Ltd at any time prior to TW-26 and such amendments or supplements should also be provided to Timetable Participants prior to TW-26.
- 3.4.8 After TW-30 but by TW-26, HS1 Ltd shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all HS1 Ltd Variations to be made .
- 3.4.9 To facilitate the planning of any HS1 Ltd Variation, HS1 Ltd may require that any Timetable Participant shall submit a revised Access Proposal in respect of any Train Slot.
- 3.4.10 Where HS1 Ltd requires a revised Access Proposal:
- (A) the requirement must be notified to the affected Timetable Participant no later than TW-22;
 - (B) HS1 Ltd shall specify the aspects of the Access Proposal which need to be revised and its reasons for this; and
 - (C) HS1 Ltd shall specify a reasonable period in which the revised Access Proposal must be provided, and in any event the revised Access Proposal shall be submitted no later than TW-18.
- 3.4.11 HS1 Ltd may modify, accept or reject a revised Access Proposal and where it modifies or rejects any revised Access Proposal, it must provide written reasons for its decision.
- 3.4.12 Where a revised Access Proposal has not been submitted by a Timetable Participant as required by HS1 Ltd, HS1 Ltd shall be entitled to make a HS1 Ltd Variation of any Train Slot in respect of which the revised Access Proposal was required and no appeal may be made in respect of HS1 Ltd's decision.
- 3.4.13 Not later than TW-14, HS1 Ltd shall notify all Timetable Participants of its decision in respect of HS1 Ltd Variations to be made pursuant to the procedure in this Condition D3.4.
- 3.4.14 Not later than TW-13, any Timetable Participant affected by HS1 Ltd's decision notified pursuant to Condition D3.4.13 shall inform HS1 Ltd whether it accepts or disputes that decision.
- 3.4.15 At TW-12, HS1 Ltd shall record and provide to all Timetable Participants, in accordance with Condition D3.7.1, the HS1 Ltd Variations to be made pursuant to this Condition D3.4.
- 3.4.16 Subject as provided in Condition D3.4.12, any Timetable Participant which is dissatisfied with any final decision of HS1 Ltd in respect of a HS1 Ltd Variation may appeal against it in accordance with 5.

3.5 **HS1 Ltd Variations with less than 12 Weeks Notice**

3.5.1 It may be necessary for Restrictions of Use to be arranged by HS1 Ltd with less than 12 weeks notice or otherwise outside the process described in Condition D3.4. The following paragraphs of this Condition D3.5 are intended to facilitate such Restrictions of Use.

3.5.2 Where HS1 Ltd proposes to make any variation to the Working Timetable in circumstances where it is not reasonably practicable to comply with the timing requirements of Condition D3.4, HS1 Ltd shall follow the procedures set out in Condition D3.4 save that:

- (A) the timing requirements specified there; and
- (B) Conditions D3.4.13, D3.4.14 and D3.4.15,

shall not apply. In carrying out those procedures, HS1 Ltd shall be permitted (for itself) and shall prescribe (for affected Timetable Participants) such time periods for each step as are reasonably practicable in the circumstances. HS1 Ltd shall notify all affected Timetable Participants of its final decision in respect of any such change as soon as reasonably practicable.

Any variation to a Working Timetable made pursuant to this Condition D3.5.2 shall be a **“HS1 Ltd Variation”** for the purposes of this Part D.

3.5.3 Any Timetable Participant which is dissatisfied with any final decision of HS1 Ltd in respect of a HS1 Ltd Variation made pursuant to Condition D3.5.2 may appeal in accordance with 5.

3.6 **Timetable Variations by consent**

3.6.1 Notwithstanding anything stated in this 3, where HS1 Ltd and all affected Timetable Participants have so consented in writing, a Timetable Variation may be made without the need for compliance with such of the requirements of this 3 as are specified in the consent. Such a variation is referred to as a **“Timetable Variation by Consent”**.

3.7 **Publication of Timetable Variations**

3.7.1 Where, pursuant to the processes described in this 3, any Timetable Variation or Timetable Variation by Consent has been finalised, it shall be recorded by HS1 Ltd in one or more schedules (each referred to as a **“Short Term Plan”**). Each Short Term Plan shall be made available to affected Timetable Participants (by the same means as are described in Condition D2.6.2(a)) as soon as reasonably practicable after the relevant variation has been approved by HS1 Ltd, and the affected part(s) of the New Working Timetable or Working Timetable shall be annotated to refer to the relevant Short Term Plan(s).

3.8 **Operation of Part H**

3.8.1 In addition to any variation to the New Working Timetable or Working Timetable arising pursuant to the procedures set out in this 3, variations may also arise from time to time by reason of the operation of Part H of this HS1 Network Code, and this 3 is subject to the operation Part H of this HS1 Network Code.

3.9 **Summary**

3.9.1 A timeline, showing a summary of the process for variations to the Working Timetable, is attached at Annex 2. Where there is any conflict between the timeline and the wording of Conditions D1-7, the wording of Conditions D1-7 shall prevail.

4. DECISIONS BY HS1 LTD

4.1 Decisions concerning the Rules

4.1.1 In conducting the processes set out in Condition D2.2 by which the Rules are revised on a bi-annual basis (including the amendment process described in Condition D 2.2.7), HS1 Ltd shall make all decisions by application of the Decision Criteria in the manner set out in Condition D4.6.

4.2 Decisions arising in the preparation of a New Working Timetable

4.2.1 In compiling a New Working Timetable in accordance with Condition D2.6, HS1 Ltd shall apply the Decision Criteria in accordance with Condition D4.6 and conduct itself as set out in this Condition D4.2.

4.2.2 HS1 Ltd shall endeavour wherever possible to comply with all Access Proposals submitted to it in accordance with Conditions D2.4 and D2.5 and accommodate all Rolled Over Access Proposals, subject to the following principles:

- (A) a New Working Timetable shall conform with the Rules applicable to the corresponding Timetable Period;
- (B) each New Working Timetable shall be consistent with the Exercised Firm Rights of each Timetable Participant;
- (C) in compiling a New Working Timetable, HS1 Ltd is entitled to exercise its Flexing Right; and
- (D) where the principles in paragraphs (a), (b) and (c) above have been applied but HS1 Ltd is unable to include all requested Train Slots in the New Working Timetable, the Train Slots shall be allocated in the following order of priority:
 - (1) first to:
 - (a) (A) the Firm Rights of any Timetable Participant that will subsist during the whole of the Timetable Period and which have been Exercised; and
 - (b) (B) any rights HS1 Ltd has for Network Services included in the Rules;
 - (2) second to Firm Rights of any Timetable Participant, that were in force at the Priority Date but will expire prior to or during the Timetable Period and which have been Exercised, provided that HS1 Ltd considers (acting reasonably) that new Firm Rights, substantially the same as the expiring rights, will be in force during the Timetable Period;
 - (3) third to Contingent Rights or any expectation of rights of any Timetable Participant which have been Exercised, provided HS1 Ltd considers (acting reasonably) they will be Firm or Contingent Rights in force during the Timetable Period; and
 - (4) fourth to any rights (including any Firm Rights or Contingent Rights), or any expectation of rights (including any expectation of any Firm Rights or Contingent Rights) of any Timetable Participant notified in an Access Proposal submitted after the Priority Date but before D-22 in accordance with D2.4 and D2.5. Where more than one set of rights or expectation of rights are so notified, capacity is to be allocated in the order in which Access Proposals containing

details of the rights (or expectations thereof) are received by HS1 Ltd.

- 4.2.3 For the purposes of Condition 4.2.2(D)(4) an Access Proposal shall be deemed to have been received by HS1 Ltd:
- (A) if sent by hand or recorded delivery, at the time of delivery;
 - (B) if sent by prepaid first class post from and to any place in the United Kingdom, three Working Days after posting unless otherwise proven; and
 - (C) if sent by email before 17.00 on a Working Day, on the day of sending, or if sent by email after 17.00 or on a day that is not a Working Day, on the next Working Day.

4.3 Decisions concerning Train Operator Variations

4.3.1 In responding to a Train Operator Variation Request, HS1 Ltd shall conduct itself as follows:

- (A) it is entitled to exercise its Flexing Right;
- (B) when exercising its power set out in Condition D3.3.3 HS1 Ltd shall apply the Decision Criteria in accordance with Condition D4.6 except that it shall not accept a Train Operator Variation Request if to do so would give rise to any conflict with any Train Slot already scheduled in:
 - (1) the New Working Timetable after it is published at D-22 or the relevant Working Timetable; or
 - (2) the Rules;
- (C) where the Decision Criteria have been applied as set out in paragraph (b) immediately above but two or more such requests would give rise to conflict were they to be accepted, they shall be prioritised in the order in which they were received or deemed to have been received by HS1 Ltd and any conflict resolved accordingly.

4.3.2 Where a Train Operator Variation Request:

- (A) pertains to a Train Slot to be used for the carriage of passengers in connection with any sporting or other public event; and
- (B) would, if accepted, conflict with any Train Slot already scheduled in the New Working Timetable or Working Timetable; and
- (C) would in the absence of such conflict be accepted (or accepted on varied terms) by HS1 Ltd;

HS1 Ltd shall consult with the Timetable Participant entitled to the Train Slot and shall seek its consent to effect a variation of the scheduled Train Slot to the extent necessary to accommodate the relevant request (or that request as may be varied). Any Timetable Participant so consulted shall not unreasonably withhold or delay its consent to the proposed variation where the relevant request proposes the use of a Train Slot for the carriage of passengers in materially greater numbers than are usually carried on the relevant part of HS1 on the days and times in question.

4.3.3 Where any Timetable Participant consulted by HS1 Ltd in accordance with Condition D4.3.2:

- (A) consents to the proposed variation of its Train Slot; or
- (B) unreasonably withholds or delays its consent in breach of Condition D4.3.2;

HS1 Ltd shall be entitled to make a variation in respect of that Train Slot (including the removal of that Train Slot) to the extent necessary to facilitate the relevant request. Where, consequent upon such variation, HS1 Ltd is required by the terms of an Access Agreement to pay any compensation to the affected Timetable Participant, the Timetable Participant which made the relevant Train Operator Variation Request shall reimburse the amount of that payment to HS1 Ltd.

4.3.4 Notwithstanding anything stated elsewhere in this Part D, HS1 Ltd shall be entitled to reject any Train Operator Variation Request if it:

- (A) pertains to a Timetable Variation which has in substance been made previously pursuant to 3 and has been rejected; or
- (B) is substantially the same as any part of an Access Proposal made and rejected during the course of the bi-annual timetable revision process described in 2;

unless there has been a material change in circumstances which would affect HS1 Ltd's application of the Decision Criteria in Condition D4.6 when deciding whether or not to accept the Train Operator Variation Request.

4.4 Decisions concerning HS1 Variations

4.4.1 In making any decision in the course of implementing the procedures set out in Conditions D3.4 or D3.5, HS1 Ltd:

- (A) is entitled to exercise its Flexing Right when responding to an Access Proposal submitted under Condition D3.4.10;
- (B) may not effect any HS1 Ltd Variation to the extent that the variation is inconsistent with the Rules; and
- (C) shall, subject to the over-riding principles set out in paragraphs (a) and (b) above, apply the Decision Criteria in accordance with Condition D4.6.

4.5 Decisions concerning Possessions Strategy Notices

4.5.1 In making any decision concerning the content of a Possessions Strategy Notice, HS1 Ltd shall apply the Decision Criteria in accordance with Condition D4.6

4.6 The Decision Criteria

4.6.1 Where HS1 Ltd is required to decide any matter in this Part D it shall:

- (a) reflect the following order of priority in the allocation of capacity:
 - (i) first, high speed international passenger trains;
 - (ii) second, high speed domestic passenger trains;
 - (iii) third, high speed freight trains; and
 - (iv) fourth, other trains,
 (the "**Order of Priority**") and
- (b) after the satisfaction of the Order of Priority set out in Condition D4.6.1(a), apply, in accordance with Condition D4.6.2, any or all of the considerations in paragraphs (i) to (ix) below (the "**Considerations**") to Timetable Participants in the same "tier" of the Order of Priority in order to achieve the objective of sharing the capacity on HS1 for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users, providers and funders of railway services (the "**Objective**"):
 - (i) maintaining, developing and improving the capability of HS1;

- (ii) maintaining and improving train service performance;
- (iii) ensuring that journey times are as short as reasonably possible;
- (iv) maintaining and improving an integrated system of transport for passengers and goods;
- (v) avoiding, so far as possible and unless absolutely necessary, changes to provisional International Paths included in the New Working Timetable at D-48;
- (vi) that the spread of services reflects demand;
- (vii) the commercial interests of HS1 Ltd, any Timetable Participant and funder, of which HS1 Ltd is aware;
- (viii) mitigating the effect on the environment;
- (ix) recognising the complexity of assembling a contiguous train path across HS1 and networks other than HS1 and affording priority to contiguous train paths by reference to the number of networks other than HS1 that they cross and taking account of any relevant operational complexities; and
- (x) enabling operators of trains to utilise their assets efficiently.

4.6.2 When applying the Considerations, HS1 Ltd must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and HS1 Ltd. Where, in light of the particular circumstances, HS1 Ltd considers that application of two or more of the relevant Considerations will lead to a conflicting result, then it must decide which is or are the most important Considerations in the circumstances and when applying it or them, do so with appropriate weight.

4.6.3 The Order of Priority, Objective and the Considerations together form the Decision Criteria.

4.7 Finality of decisions

- 4.7.1 Save where expressly otherwise stated in this Part D, where HS1 Ltd has announced a final decision in respect of any process regulated by this Part D, that decision shall be:
- (A) binding on Timetable Participants save to the extent that it is changed by an appeal authorised by this Part D; and
 - (B) binding on HS1 Ltd save to the extent that:
 - (1) HS1 Ltd is expressly permitted by any provision of this Part D to deviate from or amend that decision; or
 - (2) a decision is changed by an appeal authorised by this Part D.

5. APPEALS

5.1 Appeal in accordance with the ADRR

5.1.1 Where an appeal is expressly authorised by this Part D, a Timetable Participant may refer a decision for determination by a Timetabling Panel in accordance with the HS1 ADRR.

5.1.2 *Grounds for making an appeal*

Without prejudice to Conditions 2.7.2, 3.3.9, 3.4.12 and if any Timetable Participant is dissatisfied with any decision of HS1 Ltd made under this Part D,

including:

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

it may refer the matter for determination by a Timetabling Panel in accordance with the ADRR.

5.1.3 Where a deadline for bringing an appeal is expressly stated in this Part D, an appeal in respect of such a decision must be made by the stated deadline. Otherwise, an appeal brought pursuant to this Part D must be made:

- (A) within five Working Days of receipt of the decision to which objection is made; or
- (B) where the period referred to in paragraph (a) includes Christmas Day, within ten Working Days of that decision.

5.1.4 Where an appeal is made against a New Working Timetable as envisaged by Condition D2.7.2 the appeal shall be determined by the Timetabling Panel within ten Working Days of final submission to it of all relevant information.

5.2 Appeal to Office of Rail Regulation

5.2.1 Where either HS1 Ltd or a Timetable Participant is dissatisfied with the decision of a Timetabling Panel under Condition D5.1, it may refer the matter to the Office of Rail Regulation for determination under Chapter L of the HS1 ADRR, provided that any such referral must be made:

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

5.3 Powers of dispute resolution bodies

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

- (A) it may give general directions to HS1 Ltd specifying the result to be achieved but not the means by which it shall be achieved;
- (B) it may direct that a challenged decision of HS1 Ltd shall stand; and
- (C) it may substitute an alternative decision in place of a challenged decision of HS1 Ltd,

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

5.3.2 Where general directions have been given in accordance with Condition D5.3.1, the relevant appeal body may, on the application of HS1 Ltd brought in accordance with Condition D5.3.3, make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

5.3.3 Any application made by HS1 Ltd pursuant to Condition D5.3.2 must be made within:

- (A) five Working Days of the relevant decision; or

- (B) where the said period of five Working Days would include Christmas Day, ten Working Days.

5.4 **Status of Decisions**

- 5.4.1 Save where expressly stated otherwise in this Part D, where an appeal to a Timetabling Panel pertaining to this Part D is pending, the relevant decision of HS1 Ltd shall remain binding until such time as the Timetabling Panel determines otherwise.
- 5.4.2 Save where expressly stated otherwise in this Part D, where an appeal to the Office of Rail Regulation pertaining to Part D is pending, the relevant decision of the Timetabling Panel shall remain binding until such time as the Office of Rail Regulation determines or orders otherwise.

5.5 **Binding effect of appeal rulings**

- 5.5.1 Where an appeal is brought pursuant to this Part D, the parties to the appeal shall be bound by:
 - (A) the ruling of the Timetabling Panel, unless or until ordered or determined otherwise by the Office of Rail Regulation; and
 - (B) the ruling of the Office of Rail Regulation.

5.6 **Implementing an appeal ruling**

- 5.6.1 HS1 Ltd shall be bound and empowered to take such steps as may be necessary to implement all rulings made by a Timetabling Panel or the Office of Rail Regulation pursuant to this 5. All such steps shall be taken promptly.

5.7 **Liability of HS1 Ltd**

Where a decision of HS1 Ltd is overturned on appeal, HS1 Ltd shall only be liable to any Timetable Participant in damages in respect of that decision where it was made in bad faith or was unreasonable.

6. **POSSESSIONS STRATEGY NOTICES**

6.1 **Possessions Strategy Proposal**

- 6.1.1 Where HS1 Ltd proposes implementing any Works which require a programme of Restrictions of Use extending over:

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

it may at its discretion elect to implement the procedure set out in this Condition D6. Where it so elects, the procedure must be implemented by HS1 Ltd issuing a Possession Strategy Proposal not later than D-90 and shall be concluded by HS1 Ltd issuing a Possession Strategy Notice not later than D-64. References in this Condition D6 to “D-x” refer to x number of weeks before the Timetable Change Date on which the Working Timetable containing the first proposed Restriction of Use will come into effect. The parties entitled to participate in that procedure shall be all Timetable Participants who may be affected by the proposed Restrictions of Use (who shall be referred to as “**Possessions Strategy Participants**”).

- 6.1.2 Where HS1 Ltd elects to implement the procedure set out in this Condition D6, it shall do so by serving written notice on all Possessions Strategy Participants, (a “**Possessions Strategy Proposal**”), not later than D-90, which shall:
 - (A) provide sufficient particulars of:

- (1) the proposed Works; and
- (2) the proposed strategy for Restrictions of Use pertaining to the Works;

as will enable each recipient to understand the likely effect of the proposed Works on its Services; and

- (B) provide an explanation of HS1 Ltd's reasons for the proposed Restrictions of Use strategy.

6.2 Consultation

6.2.1 Following service of a Possessions Strategy Proposal, HS1 Ltd shall consult with all parties on whom it has been served. Each recipient shall be afforded a reasonable period (to be specified by HS1 Ltd, having regard to the likely effect of the Possessions Strategy Proposal on each recipient's Services) in which to make submissions and counter-proposals to HS1 Ltd in respect of the proposed strategy for Restrictions of Use pertaining to the Works.

6.3 Finalisation of Possessions Strategy – Possessions Strategy Notice

6.3.1 Following the consultation process described in Condition D6.2, HS1 Ltd shall make its final decision concerning the strategy for Restrictions of Use that will be adopted in order to effect the Works, and will notify its decision to all Possessions Strategy Participants not later than D-64, by means of a formal notice detailing the strategy (to be referred to as a "**Possessions Strategy Notice**").

6.3.2 Where, in finalising a Possessions Strategy Notice, HS1 Ltd has rejected counter-proposals put to it by a Possessions Strategy Participant, it shall give to that party written reasons for that rejection when it serves its Possession Strategy Notice.

6.4 Appeal

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

6.5 Relationship with the Rules

6.5.1 The fact that the process under this Condition D6 has been followed and a Possession Strategy Notice issued does not in any way affect the applicability of the process set out in Condition D2.2 which, in those circumstances, still must be followed. However, where any part of the Rules conform with a Possession Strategy Notice then a decision of HS1 Ltd regarding that part of the Rules can not be appealed in the circumstances set out in Condition D2.2.9.

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

6.6 Relationship with Part G

6.6.1 This Condition D6 is without prejudice to Part G of this HS1 Network Code.

6.7 Amendment of Possessions Strategy Notice

6.7.1 HS1 Ltd shall include within the Timetable Planning Rules a procedure to enable amendment or withdrawal of a Possessions Strategy Notice. That procedure shall provide that:

- (A) no such change shall be made unless HS1 Ltd has consulted, to the extent reasonably practicable, with any Possessions Strategy Participant likely to be affected by that change; and
 - (B) that all decisions of HS1 Ltd made pursuant to that procedure shall be made by application of the Decision Criteria in accordance with Condition D4.6.
- 6.7.2 All amendments to a Possessions Strategy Notice made pursuant to the procedure referred to in Condition D6.7.1 shall be subject to the appeal procedures in Condition D5.

7. MISCELLANEOUS

7.1 Directions issued by the Office of Rail Regulation

- 7.1.1 Notwithstanding anything else stated in this Part D, HS1 Ltd shall be bound and entitled to make or give effect to such amendments or changes to a Working Timetable as may be directed from time to time by the Office of Rail Regulation in the exercise of its statutory powers, except in relation to any amendment or change which would be impossible to make without infringing the Firm Rights of another.

7.2 Confidentiality

- 7.2.1 HS1 Ltd shall not be required to keep confidential the identity of, or any information provided to it by, any Timetable Participant, where the material is material to the timetabling process described in this Part D.

- 7.2.2 HS1 may disclose any information to the extent required:

- (A) by any order of any court of competent jurisdiction or any competent judicial, governmental, regulatory or supervisory body;
- (B) by the rules of any listing authority, stock exchange or any regulatory or supervisory body (including the Panel on Takeovers and Mergers) with which the Recipient is bound to comply;
- (C) by the laws or regulations of any country with jurisdiction over the affairs of the Recipient; or
- (D) in connection with the commencement, pursuit or defence by the Recipient of any legal proceedings to which any Confidential Information is relevant,

and in each case before it discloses any information HS1 shall (to the extent practicable and permitted by law and regulation) inform the Timetable Participant of the full circumstances and the information required to be disclosed and consult with the Timetable Participant as to possible steps to avoid or limit disclosure and take such of those steps as the Timetable Participant may reasonably require.

7.3 Applicable Law

- 7.3.1 Where compliance by HS1 Ltd with this Part D would be inconsistent with any Applicable Law (including the Railways Regulations) HS1 Ltd shall:

- (A) comply with such Applicable Law and shall be relieved from its failure to comply with this Part D but only to the extent that it could not act in a manner compliant with this Part D in complying with such Applicable Law; and
- (B) as soon as reasonably practicable develop and submit a Proposal for Change in accordance with Part C, which would modify this Part D so that it is compliant with all Applicable Laws.

7.4 **Removal of Train Slots from Working Timetable where no Access Rights**

7.4.1 Any movements of trains operated by any person must be made pursuant to permission to use the track for the purpose of, or in connection with, the operation of those trains under an Access Agreement (“**Access Rights**”). If, by 22:00 hours on the day before a Timetable Change Date and after consultation with the person proposing to move the trains, HS1 Ltd reasonably considers that the person proposing to move the trains will not have the necessary Access Rights by the intended date of operation of the Train Slots, then HS1 Ltd may remove the Train Slot(s) for the movement of those trains from the Working Timetable due to commence the following day.

7.5 **Consultation**

7.5.1 Where in this Part D, any party is under an obligation to consult with another, the party obliged to initiate the consultation shall provide the consultee with:

- (A) sufficient information for the consultee to be able to comment on the subject matter of the consultation; and
- (B) a reasonable time in which to respond to the information provided.

Annex 1 - Timeline for the timetable development process

Milestone	What happens
D-67	HS1 Ltd issues the timetable process dates for both the Principal Change Date and the Subsidiary Change Date 67 weeks before the Principal Change Date
Revision of the Timetable Planning Rules and Engineering Access Statement (collectively known as the Rules)	
D-90	If HS1 Ltd wants to rely on a Possessions Strategy Notice it must issue a Possessions Strategy Proposal to all Possessions Strategy Participants for consultation
D-64	HS1 Ltd issues its decision in a Possessions Strategy Notice which Possessions Strategy Participants may appeal within 20 Working Days of receipt
D-64 to D-60	HS1 Ltd consults Timetable Participants on its proposed changes to the Rules and its anticipated Restrictions of Use
D-59	HS1 Ltd issues the draft Rules for consultation
D-59 to D-54	Timetable Participants may make representations or objections to the draft Rules
D-54 to D-44	HS1 Ltd considers all representations or objections and prepares revised Rules
D-44	HS1 Ltd issues revised Rules which Timetable Participants may appeal within 15 Working Days of receipt
D-44 to D-22	After consultation with any affected Timetable Participants HS1 Ltd may make minor revisions to the Rules in order to optimise the New Working Timetable. Timetable Participants may appeal these revisions within 5 Working Days of receipt
Timetable consultation, preparation and publication	
D-55	Timetable Participants planning significant new services or significant amendments to their services must notify HS1 Ltd as soon as possible and before D-55 if possible
D-55 to D-36	Initial Consultation Period. Timetable Participants discuss their proposals with HS1 Ltd which carries out a consultation and facilitation process with other Timetable Participants
D-48	HS1 Ltd consults International Operators and includes provisional paths in the New Working Timetable
D-45	HS1 Ltd issues the Prior Working Timetable which will be the starting point for the New Working Timetable
D-36	Priority Date
D-36 to D-22	Timetable Preparation Period Throughout this period a draft of the emerging New Working Timetable is available online.

	Timetable Participants may submit Access Proposals at any time and HS1 Ltd will, as far as reasonably practical, incorporate these in the New Working Timetable
D-22	New Working Timetable is published (subject to the result of any appeals which must be made within 20 Working Days of its publication)

Annex 2

Timeline for Timetable Variations under 3

Train Operator Variations

Milestone	What happens
n/a	A Timetable Participant can request variations to its Train Slots at any time between D-22 and the end of the relevant Timetable Period
n/a	If the request is to vary a Train Slot which is due to operate within 7 days, HS1 Ltd must respond within the timescales set out in D3.3.6 which increase incrementally with the number of days notice given by the Timetable Participant. If the request is to vary a Train Slot with more than 7 days notice, HS1 Ltd must respond to the request within 5 Working Days
n/a	If HS1 Ltd fails to notify its response within the specified time and the requested variation, if accepted, would not conflict with the Rules or any Train Slots already scheduled in the timetable, HS1 Ltd will be deemed to have accepted the request
n/a	If HS1 Ltd rejects or modifies a Train Operator Variation Request it must give its reasons
n/a	A Timetable Participant may appeal HS1 Ltd's decision as soon as reasonably practicable but not later than 5 Working Days after being notified of the decision
n/a	In relation to a variation request which includes a One Stop Shop Service, HS1 Ltd must respond to the request as soon as reasonably practicable

HS1 Ltd Variations with at least 12 weeks notice

Milestone	What happens
TW-30	HS1 Ltd provides to Timetable Participants its proposals for Restrictions of Use in respect of the Corresponding Week.
TW-30 to TW-26	HS1 Ltd consults with each Timetable Participant likely to be affected and seeks to agree all HS1 Ltd Variations. During this time HS1 Ltd may amend or supplement its proposals as long as they are provided to Timetable Participants by TW-26.
TW-22	HS1 Ltd may require a Timetable Participant to submit a revised Access Proposal in respect of any Train Slot within a reasonable timeframe and by no later than TW-18.
TW-18	The latest date by which a Timetable Participant can be required to submit a revised Access Proposal. If a Timetable Participant does not submit one in the required timeframe, HS1 Ltd may vary the Train Slot and the Timetable Participant may not appeal.
TW-14	HS1 Ltd notifies Timetable Participants of its decision.
TW-13	Timetable Participant to notify HS1 Ltd whether it accepts or disputes the decision.
TW-12	HS1 Ltd records the Timetable Variation in the Short Term Plan.

HS1 Ltd Variations with less than 12 weeks notice

Milestone	What happens
n/a	In such cases HS1 Ltd must follow the procedure in D3.4 but with timescales for each step as are reasonable in the circumstances.
n/a	Timetable Participant may appeal in accordance with D5

Timetable Variations by Consent

Milestone	What happens
n/a	With the written consent of HS1 Ltd and all affected Timetable Participants a timetable variation may be made without having to comply with 3.

PART E - ENVIRONMENTAL PROTECTION

Explanatory Note

- A. *Part E is concerned with environmental protection. HSI Ltd and Train Operators must each develop and update at least once a year an environmental policy which, amongst other things, is consistent with good industry practice. Train Operators are also required to develop and implement an environmental management system. Such system must be reviewed at least once a year and kept up to date.*
- B. *HSI Ltd is entitled to carry out environmental audits of a Train Operator to assess the extent to which the Train Operator is complying with its environmental policy and environmental management system and its obligation under this Part E.*
- C. *Train Operators are required to notify HSI Ltd of any materials they propose to transport which would, by virtue of their nature or the quantity transported, be likely to give rise to Environmental Damage if they were to escape, and are required to provide HSI Ltd with a copy of any relevant authority for their carriage (such as a licence or certificate of registration).*
- D. *HSI Ltd and Train Operators must promptly notify each other of any circumstances which are reasonably foreseeable as likely to give rise to Environmental Damage.*
- E. *Where HSI Ltd becomes aware or is given a direction by a Competent Authority that as a direct or indirect result of the activities of a Train Operator, Environmental Damage has occurred or is likely to occur and action is required to prevent, mitigate or remedy that damage, it must make an assessment on the best information available to it at that time as to which of HSI Ltd and the Train Operators using of HSI is or are the most appropriate persons to take such action.*
- F. *In making its assessment, HSI Ltd is obliged to have due regard to certain specified criteria. HSI Ltd is further obliged to give notice to affected Train Operators within specified time limits of its decision and the reasons therefor. If an affected Train Operator disagrees with HSI Ltd's assessment, it may refer the matter to the Disputes Resolution Procedure for determination.*
- G. *If a Train Operator fails to take any action required of it to prevent, remedy or mitigate Environmental Damage within a reasonable time or to the reasonable satisfaction of HSI Ltd or otherwise in cases of urgency, provisions exist for HSI Ltd to take the necessary action.*
- H. *Subject to HSI Ltd having complied with conditions F4 and G5 (respectively Vehicle Change and Network Change imposed by Competent Authorities) and to having given to all affected Train Operators as much notice as shall be reasonably practicable, HSI Ltd has the right to restrict track access on a temporary basis where necessary to deal with Environmental Damage but must use its reasonable endeavours to minimise those restrictions.*
- I. *This Explanatory Note does not form part of the HSI Network Code.*

DEFINITIONS

In this Part E, unless the context otherwise requires:

- "Environmental Condition"** means:
- (a) any Environmental Damage; or
 - (b) any event, circumstance, condition, operation or

	activity which it is reasonably foreseeable is likely to result in Environmental Damage,
	which (in either case) in HS1 Ltd's reasonable opinion could result in HS1 Ltd incurring any material liability or being subject to the Direction of any Competent Authority;
"Environmental Damage"	means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;
"Environmental Policy"	means a written policy regarding environmental protection and sustainability which complies with all Applicable Laws and HS1 Standards and reflects good industry practice;
"HS1 Ltd Environmental Documentation"	shall have the meaning given to it in Condition E1.1.1(B);
"relevant liability"	means the obligation of any person to make any payment or to take or secure the taking of any action in relation to an Environmental Condition or the Direction of a Competent Authority of the kind referred to in Condition E2.1.1(b);
"relevant steps"	in relation to a Train Operator, means the steps of the kind referred to in Condition E2.1.3(E); and
"Train Operator Environmental Documentation"	shall have the meaning given to it in Condition E1.1.2(c).

1. **CONDITION E1 - ENVIRONMENTAL INFORMATION REQUIREMENTS**

1.1 **General environmental obligations**

1.1.1 HS1 Ltd shall;

- (A) provide the Train Operator with a copy of its Environmental Policy. HS1 Ltd shall review its Environmental Policy from time to time and at least once every calendar year and, where applicable, update its Environmental Policy so as to ensure that it continues to comply with all Applicable Laws and HS1 Standards and reflects good industry practice;
- (B) develop and operate an environmental management system giving effect to its Environmental Policy, which has regard to the requirements of ISO 14001 (or any successor standard), which together with its Environmental Policy shall constitute the "**HS1 Ltd Environmental Documentation**";
- (C) review the HS1 Ltd Environmental Documentation from time to time and at least once every calendar year and update it as appropriate so as to ensure that it:
 - (1) complies with all Applicable Laws and HS1 Standards; and

- (2) reflects good industry practice; and
 - (D) notify each Train Operator of the person or persons who is/are responsible for managing environmental issues arising from that Train Operator's use of HS1.
- 1.1.2 Each Train Operator shall:
 - (A) develop and comply with an Environmental Policy which has due regard to the Environmental Policy of HS1 Ltd (as may be amended from time to time) and specifically with due regard to adopting good industry practice in relation to energy efficiency, recognising the desirability of improving on energy efficiency including reducing energy use, in the context of the carbon reduction commitment regime as it applies to the Train Operator's use of HS1;
 - (B) develop and operate an environmental management system giving effect to its Environmental Policy, which has regard to the requirements of ISO 14001 (or any successor standard);
 - (C) by the Effective Date have provided HS1 Ltd with a copy of its current environmental policy and environmental management system (together the "**Train Operator Environmental Documentation**");
 - (D) review its Train Operator Environmental Documentation from time to time and at least once every calendar year commencing from the date of the Access Agreement and, where appropriate, update such Train Operator Environmental Documentation so as to ensure that it:
 - (1) complies with all Applicable Laws and HS1 Standards;
 - (2) reflects good industry practice; and
 - (3) continues to have regard to the Environmental Policy of HS1 Ltd;
 - (E) by the Effective Date have notified HS1 Ltd of the member of its staff who is responsible for managing environmental issues arising from that Train Operator's use of HS1.
- 1.1.3 HS1 Ltd and each Train Operator shall respectively ensure that all of its staff (including its contractors, agents and employees) are aware of the environmental requirements that are relevant to activities carried out by them on HS1 and HS1 Ltd and each Train Operator shall work together in good faith and in a co-operative fashion with a view to continuous improvement of their respective environmental performance in relation to the operation and use of HS1.
- 1.1.4 HS1 Ltd and each Train Operator shall co-operate with the other in providing reasonable information and reasonable assistance to the other to enable any assessment (which is itself reasonably requested):
 - (A) by HS1 Ltd as to the extent to which that Train Operator is complying with its Train Operator Environmental Documentation and its obligations under this Part E;
 - (B) by the relevant Train Operator as to the extent to which HS1 Ltd is complying with HS1 Ltd Environmental Documentation and its obligations under this Part E.
- 1.1.5 HS1 Ltd shall be entitled to carry out environmental management audits of a Train Operator from time to time so as to assess the extent to which that Train Operator is complying with its Train Operator Environmental Documentation and its obligations under this Part E.

1.2 Information as to materials to be transported

1.2.1 Each Train Operator shall from time to time, and within a reasonable time of being requested to do so by HS1 Ltd, provide HS1 Ltd with:

- (A) information as to any materials it proposes to transport on HS1 Ltd which would by virtue of their nature or the quantity transported be likely to give rise to Environmental Damage if those materials were to be discharged or emitted or to escape or migrate;
- (B) in relation to such materials as are referred to in sub-paragraph (A) above, a copy of any licence, authorisation, consent or certificate of registration required for their carriage.

1.3 General Information – Train Operator

Each Train Operator shall promptly notify HS1 Ltd (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which the Train Operator is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage as a result of or affecting the activities of the Train Operator. Each Train Operator shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

1.4 General information – HS1 Ltd

HS1 Ltd shall promptly notify a Train Operator (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which HS1 Ltd is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage which may affect the Train Operator. HS1 Ltd shall at all times exercise due diligence to inform itself of any circumstances which would require notification.

1.5 Information following Environmental Damage

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

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

2. CONDITION E2 - REMEDIAL ACTION

2.1 Assessment as to appropriate persons to take relevant steps

2.1.1 *HS1 Ltd's assessment*

Where:

- (A) HS1 Ltd becomes aware that, as a direct or indirect result of the activities of a Train Operator, an Environmental Condition exists or has occurred and HS1 Ltd reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
- (B) HS1 Ltd is given a Direction by a Competent Authority that some action is required to prevent, mitigate or remedy an Environmental Condition resulting directly or indirectly from the activities of a Train Operator,

HS1 Ltd shall make an assessment, on the best information available to it at the relevant time, as to which of HS1 Ltd and the Train Operator is or are the

persons who would be the most appropriate to take any relevant steps, and, if more than one is appropriate, in what proportions.

2.1.2 *Relevant criteria*

In making an assessment under Condition E2.1.1, HS1 Ltd shall have due regard:

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

2.1.3 *Notice of HS1 Ltd's assessment*

Within 60 days of making its assessment, HS1 Ltd shall give notice to each affected Train Operator of:

- (A) the Environmental Condition or Direction of Competent Authority in question;
- (B) the assessment;
- (C) its reasons for reaching the assessment;
- (D) the availability for inspection by the Train Operator of such information as HS1 Ltd shall have used in making the assessment; and
- (E) the steps HS1 Ltd reasonably considers:
 - (1) will be necessary to prevent, mitigate or remedy the Environmental Condition or the events or circumstances giving rise to the Direction of the Competent Authority in question, or to comply with the Direction in question; and
 - (2) should be taken by the Train Operator in question.

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

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

2.1.5 *Disagreement with HS1 Ltd's assessment*

If an affected Train Operator is dissatisfied with the assessment of HS1 Ltd or with any other statement or information provided by HS1 Ltd pursuant to Condition E2.1.3, it shall be entitled to refer the matter to the Disputes Resolution Procedure for determination. It shall lose that entitlement if it fails to make the reference within 120 days of the later of:

- (A) the date of its receipt of HS1 Ltd's assessment; and
- (B) the date upon which it receives any further information to which it is entitled pursuant to this Condition E2.1.

2.2 **Requirement to take relevant steps**

2.2.1 *Obligation*

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

- (A) take the steps of which HS1 Ltd gives it notice pursuant to Condition E2.1.3(E), provided that HS1 Ltd shall have given it a reasonable opportunity to do so; and
- (B) bear the costs of taking those steps.

2.2.2 *HS1 Ltd's assistance and supervision*

In cases where the Train Operator reasonably requires access to any part of HS1 in order to take any relevant steps, HS1 Ltd shall provide the Train Operator with such assistance and co-operation as shall be reasonable and/or necessary in that respect.

2.3 **HS1 Ltd's right to take relevant steps**

If:

- (a) the Train Operator fails to take any relevant step within a reasonable time or to the reasonable satisfaction of HS1 Ltd; or
- (b) in HS1 Ltd's reasonable opinion, either:
 - (i) it is necessary to take any relevant step urgently; or
 - (ii) it is not reasonably practicable in the circumstances for the Train Operator to take any relevant step,

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

2.4 **Liability of HS1 Ltd**

Where HS1 Ltd takes any steps in accordance with Condition E2.3, it shall not be liable to the Train Operator for any direct physical damage which is caused as a result of the taking of such steps except to the extent that HS1 Ltd, or any person acting on behalf of or on the instructions of HS1 Ltd, has been negligent or has failed to perform any obligation.

2.5 **Access to land**

Each Train Operator shall use all reasonable endeavours to procure that HS1 Ltd shall be given such right of access to any land upon which plant, equipment, rolling stock or machinery of the Train Operator is located as may be reasonably necessary to enable HS1 Ltd to take any relevant steps.

2.6 **General right to restrict access to HS1**

2.6.1 Subject to having complied with Conditions F4 and G5 and to having given to all affected Train Operators as much notice as shall be reasonably practicable, HS1 Ltd shall have the right to restrict permission to use HS1 to the extent and for such period as is reasonably necessary to prevent, mitigate or remedy an Environmental Condition or to comply with a relevant Direction of a Competent Authority in respect of an Environmental Condition.

2.6.2 Where permission to use HS1 is restricted pursuant to Condition E2.6.1, HS1 Ltd shall use all reasonable endeavours to keep the extent and duration of such a restriction to a minimum and shall keep all affected Train Operators reasonably and regularly informed of the steps being taken by HS1 Ltd to remove the restriction.

2.7 **Payments to be made on without prejudice basis**

Payments by a Train Operator under this Condition E2 shall be made without prejudice to the Train Operator's right to recover the whole or any part of the amounts in question from HS1 Ltd or any other person, whether under an Access Agreement or in any other way.

2.8 Action taken will not prejudice later claim

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

PART F - VEHICLE CHANGE

Explanatory Note

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

DEFINITIONS

In this Part F, unless the context otherwise requires:

- "Authorised Variation"** means a Variation to an Established Vehicle Change, where:
- (a) the terms and conditions on which the Vehicle Change in question was established contain a Variation Procedure;
 - (b) that Variation Procedure has been followed in accordance with its terms; and
 - (c) the result of the operation of that Variation Procedure is that the Established Vehicle Change has been varied;
- "Compatibility Review Forum"** means a meeting convened by the Sponsor with affected parties to exchange information and review the proposal for Vehicle Change;
- "Established Vehicle Change"** means a Vehicle Change which a Sponsor is entitled by this Part F to carry out;

"Relevant Response Date"

means, in relation to a proposal for a Vehicle Change, the date reasonably specified by HS1 Ltd under Condition F2.5.1(b) as the date on or before which HS1 Ltd intends to give notice of its response to that proposal under Condition F3.1, having regard to:

- (a) the size and complexity of the Vehicle Change; and
- (b) the likely impact of the Vehicle Change on the operation of HS1, other Train Operators and the operators of other railway assets,

and which shall not be:

- (i) less than 75 days; or
- (ii) unless HS1 Ltd and the Sponsor agree otherwise in writing, more than 90 days,

from the date on which:

- (x) HS1 Ltd's notice under Condition F2.5.1(b) is given; or
- (y) notice is given by HS1 Ltd, the affected Train Operator or the affected operator of railway assets (as the case may be) under Condition F2.3.2,

whichever is the later;

"Specified Equipment"

means, in respect of an Access Agreement, any railway vehicle the use of which is permitted on all or part of HS1 pursuant to that Access Agreement;

"Sponsor"

means a Train Operator who wishes to implement a Vehicle Change;

"Variation"

means any modification to the terms or conditions (including as to the specification of the works to be done, their timing, the manner of their implementation, the costs to be incurred and their sharing, and the division of risk) on which an established Vehicle Change is to be carried out, and "varied" and any other cognate words shall be construed accordingly;

"Variation Procedure"

means a procedure which:

- (a) forms part of the terms and conditions on which a Vehicle Change is established; and
- (b) provides for an Established Vehicle Change itself to be varied after it has been first established;

"Vehicle Change"

means, in respect of a Train Operator:

- (a) any change to the Specified Equipment including by way of:
 - (i) any alteration (not being a change within paragraph (b) or (c) below) to the physical characteristics of the Specified Equipment;

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

which, in respect of any of the preceding paragraphs, is likely materially to affect the maintenance or operation of HS1 or operation of trains on HS1, but excluding Authorised Variations.

1. CONDITION F1 – FACILITATION AND COMPLIANCE

1.1 HS1 Standards

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

1.2 Applicable Laws

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

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

1.2.2 the Railways (Interoperability) Regulations 2006,

1.3 Obligation to facilitate Vehicle Change

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

1.4 Facilitation

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

1.4.1 the provision to a Train Operator of such information concerning the condition, capacity and/or capability of HS1 as:

- (a) HS1 Ltd possesses in a reasonably accessible form; and
- (b) that Train Operator may reasonably request in connection with the development of a proposal for Vehicle Change by that Train Operator;

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

- (a) every proposal for Vehicle Change made under Condition F2.1;
- (b) every response to a proposal for Vehicle Change made by HS1 Ltd under Condition F3.1;
- (c) every Authorised Variation;

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

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

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

2. CONDITION F2 - INITIATION OF VEHICLE CHANGE PROCEDURE

2.1 Notice of proposal

If a Train Operator wishes to make a Vehicle Change, that Train Operator shall as soon as reasonably possible:

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

- 2.1.2 provide details to HS1 Ltd of all Train Operators and other operators of railway assets to which the proposal for Vehicle Change has been submitted under Condition F2.1.1; and
- 2.1.3 permit HS1 Ltd to consult with the persons specified in Condition F2.1.1 to the extent provided for under Condition F2.5 subject to such requirements as to confidentiality as are reasonable.

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

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

2.2.1 state:

- (i) the reasons why it proposes to make the Vehicle Change;
- (ii) the nature of the Vehicle Change, including:
 - (a) any material change which the Sponsor proposes to make to the physical characteristics of any vehicle which is already included within the Specified Equipment; and
 - (b) a description of any vehicle which is not already included within the Specified Equipment, but which the Sponsor proposes to include within the Specified Equipment;
- (iii) in the case of any vehicle referred to in Condition F 2.2.1(ii)(a):
 - (a) whether it is proposed that such vehicle will be operated on any part of HS1 on which it is not already operated; and
 - (b) whether it is proposed that such vehicle will be operated at higher speeds or tonnages or to a larger gauge than it has previously been operated over any part of HS1 on which such a vehicle already operates;
- (iv) in the case of any vehicle of the kind referred to in Condition F2.2.1(ii)(b), over what parts of HS1, and at what speeds, it proposes that such vehicle will be operated;
- (v) the proposed timetable for the implementation of the Vehicle Change;
- (vi) the Sponsor's proposals (if any) for the division of the costs of carrying out the Vehicle Change, including any proposals in relation to the calculation or payment of compensation to HS1 Ltd, any Train Operator and/or any other operator of railway assets in respect of the Vehicle Change;
- (vii) any additional terms and conditions which the Sponsor proposes should apply to the Vehicle Change, including any proposed variation procedure;
- (viii) whether the Sponsor intends to convene a Compatibility Review Forum in accordance with Condition F2.3.1; and

2.2.2 be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of HS1 Ltd and other Train Operators to enable them to assess the likely effect of the proposed Vehicle Change on their business, assets and performance of any obligations or the exercise of any rights or discretions which they have in relation to railway services.

2.3 **Compatibility Review Forum**

2.3.1 A Sponsor shall be entitled to convene a Compatibility Review Forum if it

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

- 2.3.2 If the Sponsor does not propose to convene a Compatibility Review Forum but HS1 Ltd, an affected Train Operator and/or an affected operator of railway assets reasonably considers that such a forum is the most appropriate forum to understand a proposal for Vehicle Change, HS1 Ltd, the affected Train Operator or the affected operator of railway assets shall be entitled to request, by giving written notice to the Sponsor and HS1 Ltd (unless HS1 Ltd is giving the notice) no later than 7 days from the date on which HS1 Ltd's notice under Condition F2.5.1(b) is given, that a Compatibility Review Forum be convened.
- 2.3.3 Where HS1 Ltd, an affected Train Operator or the affected operator of railway assets gives notice to a Sponsor in accordance with Condition F2.3.2, the Sponsor shall no later than 7 days from receipt of such notice, notify each of the affected parties described in Condition F2.1 of the date and location of the Compatibility Review Forum.
- 2.3.4 The date of any Compatibility Review Forum notified pursuant to this Condition F2.3 shall not be earlier than 37, or later than 30 days before the date specified in HS1 Ltd's notice under Condition F2.5.1(b) for submission of comments to HS1 Ltd.
- 2.3.5 A Compatibility Review Forum convened in accordance with this Condition F2.3 shall be chaired by HS1 Ltd. The Sponsor shall assist all participants in understanding the proposed Vehicle Change. HS1 Ltd shall produce formal minutes of the Compatibility Review Forum and, subject to Condition A6, publish them on its website.

2.4 **Compatibility Information**

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

2.5 **Evaluation of proposal for Vehicle Change**

- 2.5.1 HS1 Ltd shall, following receipt of any proposal for Vehicle Change pursuant to Condition F2.1:
- (a) evaluate and discuss that proposal with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed Vehicle Change on HS1, other Train Operators and other operators of railway assets; and
 - (b) within 30 days of the date on which the Sponsor's notice under Condition F2.1 was given, give a notice to the persons specified in Condition F2.1.1 (with the exception of HS1 Ltd), with a copy to the Sponsor, inviting them to submit comments to HS1 Ltd on the proposed Vehicle Change by a specified date, which shall not be earlier than 15, or later than 7 days before the Relevant Response Date. The notice given by HS1 Ltd pursuant to this Condition F2.5.1(b) shall state:
 - (i) the Relevant Response Date and the obligations of Train

Operators and other operators of railway assets under Conditions F2 and F3;

- (ii) so far as reasonably practicable, HS1 Ltd's estimate of the likely impact of the Vehicle Change on the operation and performance of HS1 including the operation of trains on HS1 (such estimate to be binding on HS1 Ltd unless stated to the contrary by HS1 Ltd); and
- (iii) HS1 Ltd's own proposals (if any) as to:
 - (A) the arrangements for, and any proposed terms applicable to, the implementation of the Vehicle Change;
 - (B) the arrangements for determining and paying any compensation in respect of the Vehicle Change;
 - (C) the timetable for implementation of the Vehicle Change;
 - (D) the division of the costs of carrying out the Vehicle Change;
 - (E) the additional terms and conditions (if any) which should apply to the Vehicle Change, including any variation procedure; and
 - (F) any changes which will need to be made to any Access Agreements as a consequence of the implementation of the Vehicle Change,
- (c) send the proposal for Vehicle Change to any Train Operator and/or other operators of railway assets that may be affected by the implementation of the proposed Vehicle Change if the Sponsor has not already done so in accordance with Condition F2.1.1; and
- (d) provide details to the Sponsor of all Train Operators and/or other operators of railway assets (if any) to which HS1 Ltd has sent the proposal for Vehicle Change under Condition F2.5.1(c).

2.5.2 In preparing a notice under Condition F2.5.1(b), HS1 Ltd:

- (a) shall comply with the standard specified in Condition F2.2.2; and
- (b) in respect of each of the matters specified in Condition F2.5.1(b)(iii) (if applicable):
 - (i) shall have regard to any relevant statements and proposals contained in the Sponsor's notice under Condition F2.1;
 - (ii) shall give reasons for any differences between those statements and proposals and its own proposals under Condition F2.5.1(b)(iii); and
 - (iii) may annex to its notice any proposal contained in the Sponsor's notice under Condition F2.1 with which it agrees, stating its agreement, and, where appropriate, that it has no proposals of its own on the matter concerned.

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

- (a) evaluate and discuss the proposal with HS1 Ltd for such period as is reasonable having due regard to the likely impact of the proposed

Vehicle Change on that Train Operator; and

- (b) within 10 days of receipt of a request from HS1 Ltd notify HS1 Ltd of whether it considers that it is entitled to compensation from the Sponsor in relation to the implementation of the Vehicle Change and an estimate (which shall be binding on that Train Operator unless stated to the contrary by that Train Operator) of the amount of such compensation determined in accordance with Condition F3.2, together with all information reasonably necessary to show how such estimate has been calculated.

2.6 **Obligation to provide preliminary response**

2.6.1 HS1 Ltd shall, if requested to do so in writing by the Sponsor, provide at no cost to the Sponsor, as soon as practicable and in any event within a period of 28 days commencing on the date of the request for a preliminary response:

- (a) a preliminary estimate (which shall be binding on HS1 Ltd unless stated to the contrary by HS1 Ltd) of any compensation which HS1 Ltd considers that it is entitled to in relation to the implementation of the proposed Vehicle Change, determined in accordance with Condition F3.2, together with all information reasonably necessary to show how such estimate has been calculated; and
- (b) a preliminary written response in respect of the proposed Vehicle Change (unless HS1 Ltd indicates otherwise, shall be binding on HS1 Ltd) and if such response is negative, include reasons therefor.

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

- (a) unless:
 - (i) the Relevant Response Date is 90 or more days after the date on which HS1 Ltd's notice under Condition F2.5.1(b) was given; and
 - (ii) the request is made within 7 days of the Sponsor receiving HS1 Ltd's notice under Condition F2.5.1(b); or
- (b) to the extent that HS1 Ltd is unable to comply with such a request, having regard to the information reasonably available to it.

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

2.7 **Reimbursement of costs**

Subject to Conditions F2.4 and F3, HS1 Ltd and all Train Operators and other operators of railway assets who received a proposal for Vehicle Change under Condition F2.1 or Condition F2.5.1(c) shall be entitled to reimbursement by the Sponsor of all of its costs incurred by it in assessing and responding to any Vehicle Change proposed by the Sponsor in accordance with Condition F2.1. Those costs shall be the minimum reasonably necessary for HS1 Ltd or the affected Train Operator or other operator of railway assets (as the case may be) to carry out that assessment and response (excluding any loss of revenue, any consequential loss and any costs and expenses incurred in providing a preliminary response pursuant to Condition F2.6).

2.8 **Provision of estimate of costs**

HS1 Ltd and each Train Operator and other operator of railway assets who would be entitled to receive or who has received a proposal for Vehicle Change under Condition

F2.1 or Condition F2.5.1(c) shall:

- (a) upon request from the Sponsor, provide the Sponsor and HS1 Ltd (save where HS1 Ltd is providing the written estimate) with a written estimate of the costs it would incur in assessing and responding to a proposal for Vehicle Change submitted by the Sponsor including its estimated costs of the work to be carried out;
- (b) be entitled to require from the Sponsor reasonable assurances of payment in respect of any material work to be carried out for the purposes of that evaluation before commencing such work; and
- (c) upon request from the Sponsor from time to time, provide the Sponsor or its agents with such information as may be reasonably necessary to enable the Sponsor to assess the reasonableness of any estimate.

2.9 Accuracy of estimates

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

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

2.10 Obligation to incur no further costs

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

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

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

2.11 Relationship with Network Change

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

2.12 Vehicle Change for safety reasons

To the extent that a Vehicle Change is required to be made by a Train Operator for safety reasons, the Train Operator shall be obliged to submit a proposal for Vehicle Change in accordance with the procedure set out in this Part F within 5 days of being notified by HS1 Ltd or the relevant Competent Authority that the requirement has come into full force and effect.

3. CONDITION F3 - RESPONSE TO VEHICLE CHANGE PROPOSAL

3.1 Obligation to give notice of response

HS1 Ltd shall give notice to the Sponsor of a Vehicle Change on or before the Relevant Response Date if:

- (a) it considers that one or more of the following conditions has been satisfied:

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

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

3.2 Amount of compensation

Subject to Condition F3.3, the amount of the compensation referred to in Conditions F2.5.3(b) and F3.1 shall be an amount equal to the amount of the costs, direct losses and expenses (excluding any loss of revenue and consequential loss) which can reasonably be expected to be incurred by HS1 Ltd or other Train Operators and other operators of railway assets (as the case may be), as a consequence of the implementation of the proposed Vehicle Change other than any such costs, losses or expenses which are attributable to the Sponsor improving its ability to compete with other Train Operators.

3.3 Benefits to be taken into account

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

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

4. CONDITION F4 - CHANGES IMPOSED BY COMPETENT AUTHORITIES

4.1 Where a Train Operator or other operator of railway assets is required (other than at the request or instigation of another Train Operator) to implement a Vehicle Change as a result of any Change of Law or any Direction of any Competent Authority other than the ORR exercising any of its functions which do not fall within the definition of "safety functions" as defined in Section 4 of the Act:

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

5. CONDITION F5 - APPEAL PROCEDURE

5.1 Right of reference to the Disputes Resolution Procedure

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

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

it may refer the matter to the Disputes Resolution Procedure.

5.2 In relation to any matter which is referred to the Disputes Resolution Procedure pursuant to this Condition F5, the relevant Forum (as the case may be) shall have the power:

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

period as the relevant Forum shall allow), to make such further orders as they/he shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

6. CONDITION F6 - ESTABLISHMENT AND IMPLEMENTATION

6.1 Implementation of a proposed Vehicle Change

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

- (a) HS1 Ltd does not consider that any of the conditions specified in Condition F3.1(a) have been satisfied and HS1 Ltd has not received any notice from a Train Operator or other operator of railway assets in accordance with Condition F3.1(b);
- (b) where HS1 Ltd has given notice to the Sponsor that Condition F3.1(c) applies, either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5;
- (c) where HS1 Ltd has received notice from a Train Operator or other operator of railway assets under Condition F3.1(d) either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5;
- (d) there is no other unresolved dispute under this Part F (whether under this Condition F6 or otherwise) as regards the proposed Vehicle Change between the Sponsor, HS1 Ltd and/or any other Train Operator or operator of railway assets; and
- (e) the continuing compatibility of the Specified Equipment the subject of the proposal for Vehicle Change and HS1, if the Vehicle Change was implemented, has been confirmed in accordance with the relevant HS1 Standards and, where applicable, has been approved by a Notified Body (as defined under the Railways (Interoperability) Regulations 2006) and/or a Competent Person (as defined under the Railways and Other Guided Transport Systems (Safety) Regulations 2006).

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

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

- (a) HS1 Ltd gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons; or
- (b) HS1 Ltd receives notice from a Train Operator within 21 days of the notice served by HS1 Ltd, disputing the Sponsor's entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons.

6.1.4 If the Sponsor does not agree with the contents of a notice served by HS1 Ltd, an affected Train Operator or other affected operator of railway assets in accordance with Condition F6.1.3, the Sponsor may:

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

6.1.5 Where as a consequence of a Vehicle Change it is necessary to amend an Access Agreement to reflect that Vehicle Change, HS1 Ltd shall provide to the other party to such Access Agreement and to the ORR written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the date of approval of such amendment by the ORR.

6.2 **When a Vehicle Change may not be implemented**

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

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

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

7. **CONDITION F7 – TRAIN OPERATOR'S DUTIES**

7.1 **Compliance with other Requirements**

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

PART G - NETWORK CHANGE

Explanatory Note

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

DEFINITIONS

In this Part G, unless the context otherwise requires:

- "**Authorised Variation**" means a variation to an Established Network Change where:
- (a) the terms and conditions on which the Network Change in question was established contain a

- variation procedure;
 - (b) that variation procedure has been followed in accordance with its terms; and
 - (c) the result of the operation of that variation procedure is that the Established Network Change has been varied;
- "change"** includes:
- (a) improvement or deterioration, enlargement or reduction; and
 - (b) for the purposes of paragraph (b) of the definition of Network Change, a series of changes;
- "Effective Date"** means the date specified in a notice of proposal of a Short Term Network Change upon which the Short Term Network Change is proposed to become effective;
- "Established Date"** means the first date upon which a Short Term Network Change can be implemented in accordance with Condition G7, whether or not the change is implemented on that day;
- "Established Network Change"** means a change falling within the definition of "Network Change" and which:
- (a) in the case of a Network Change proposed by HS1 Ltd, HS1 Ltd is entitled to carry out having complied with the procedural and other requirements of this Part G; and
 - (b) in the case of a Network Change proposed by a Train Operator, HS1 Ltd is required by this Part G to carry out;
- "Expiry Date"** means the date specified in a notice of proposal in relation to a Short Term Network Change which shall not be more than two years, or such longer period as is agreed between HS1 Ltd and each Train Operator that may be affected by the implementation of the proposed Short Term Network Change or determined in accordance with Condition G6, from the later of the Effective Date and the Established Date;
- "Governmental Body"** means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the Office of Rail Regulation);
- "method of delivery"** includes the means of securing access to an operational document and the ability to make use of the data contained in an operational document;
- "modification"** includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;
- "Network Change"** means, in relation to a Train Operator,
- (i) any change in or to any part of HS1 (including

its layout, configuration or conditions) which is likely materially to affect the operation of:

- (a) HS1; or
 - (b) trains operated, or anticipated as being operated in accordance with the terms of any Access Agreement, by any Train Operator on HS1; or
- (ii) any change to the operation of HS1 (being a change which does not fall within paragraph (a) above) which:
- (a) is likely materially to affect the operation of trains operated, or anticipated as being operated in accordance with the terms of any Access Agreement, by any Train Operator on HS1; and
 - (b) has lasted or is likely to last for more than six months; or
- including any such change arising from:
- (x) a temporary speed restriction;
 - (y) a material change to the location of any of the specified points referred to in Condition B1.1.1; or
 - (z) a change to the method of delivery of any operational documentation (other than HS1 Standards) owned or used by HS1 Co and/or any Train Operator; or
- (iii) any material variation to an Established Network Change other than an Authorised Variation,

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

"Relevant Costs"

means, in respect of any Network Change implemented in accordance with Condition G5, all costs, losses and expenses (including loss of revenue, loss of profit and consequential losses) incurred by HS1 Ltd and/or any train operator using HS1 (including the Train Operator) as a consequence of the implementation of that Network Change provided that there shall be no double counting of such costs, losses or expenses;

"Relevant Response Date"

means:

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

on the Train Operator,

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

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

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

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

and which shall not be:

(A) less than 60 days; or

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

"Short Term Network Change"

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

"Sponsor"

means a Train Operator who wishes to implement a Network Change under Condition G3.

CONDITION GA – FACILITATION AND COMPLIANCE

A1 HS1 Standards

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

A2 Applicable Laws

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

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

A2.2 the Railways (Interoperability) Regulations 2006.

A3 Obligation to facilitate Network Change

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

A4 Facilitation

The obligation of HS1 Ltd under Condition GA3 means:

(a) the provision to a Train Operator of such information concerning the condition, capacity and/or capability of HS1 as:

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

1. CONDITION G1 - NETWORK CHANGE PROPOSAL BY HS1 LTD

1.1 Notice of proposal

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

- (a) give notice of its proposal for Network Change to each Train Operator and that may be affected by the implementation of the proposed Network Change together with particulars of the proposed Network Change which are reasonably necessary to enable that person to assess the effect of the proposed Network Change and to enable each Train Operator to assess the effect of the proposed Network Change on the operation of its trains;
- (b) where HS1 Ltd considers it appropriate, publish on its website a summary of its proposal for Network Change; and
- (c) invite the submission of comments from the persons specified in Condition G1.1(a) within such period as is reasonable in the circumstances having due regard to the likely impact of the proposed Network Change on those persons.

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

1.2 Content of notice of proposed Network Change

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

- (a) state the Relevant Response Date and the obligations of the Train Operator under Conditions G1 and G2;
- (b) indicate whether the proposed Network Change is a Short Term Network Change;
- (c) invite the persons specified in Condition G1.1(a) to submit comments by the Relevant Response Date;
- (d) contain:

- (i) the reasons why it is proposed to make the Network Change, including the effect it is intended or may reasonably be expected to have on the operation of HS1 or on trains operated on HS1;
- (ii) a specification of the works to be done (including a plan showing where the work is to be done and the parts of HS1 and associated railway assets likely to be affected);
- (iii) the proposed times within which the works are to be done and when they are intended or may reasonably be expected to be begun and completed;
- (iv) HS1 Ltd's proposals (if any) for the division of the costs of carrying out the Network Change, including any proposals in relation to the calculation or payment of compensation to Train Operators and/or the calculation of any increases in access charges (including any additional investment recovery charges and operations, maintenance, renewals and replacements charges (as applicable)) in respect of the Network Change;
- (v) in the case of a Short Term Network Change:
 - (A) HS1 Ltd's proposals as to the Effective Date;
 - (B) HS1 Ltd's proposals as to the Expiry Date;
 - (C) the estimated timescale in which the Network Change could reasonably be reversed if so requested by a Train Operator based on its reasonable expectations as to future use of HS1; and
 - (D) the capability of the relevant section of HS1 before the proposed Short Term Network Change (and any Short Term Network Change which it succeeds) and the proposed reduction to that capability;
- (i) any additional terms and conditions which HS1 Ltd proposes should apply to the Network Change, including any proposed variation procedure; and
- (ii) describe any changes which will need to be made to any Access Agreement as a consequence of the implementation of the Network Change; and
- (e) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition G1.1(a), to enable any such person to assess the likely effect of the proposed Network Change on its business and its performance of any obligations or the exercise of any discretions which it has in relation to railway services.

1.3 Consultation and Provision of estimate of costs

- 1.3.1 HS1 Ltd shall after giving notice of any proposal for Network Change under Condition G1.1(a) consult with all the Train Operators likely to be materially affected by the proposed Network Change and the ORR to the extent reasonably necessary so as properly to inform those persons of the proposed Network Change and to enable each of those persons to assess the consequences for it of the proposed Network Change.
- 1.3.2 After consultation under this Condition G1.3 HS1 Ltd may notify a later Relevant Response Date to the persons to whom the notice of proposal for Network Change was given.
- 1.3.3 Any Train Operator consulted by HS1 Ltd in accordance with Condition G1.3.1 shall, as soon as and so far as reasonably practicable, provide to HS1 Ltd an estimate of the costs, direct losses and expenses (excluding any loss of revenue

and consequential loss) which can reasonably be expected to be incurred by that Train Operator as a consequence of the implementation of the proposed Network Change by HS1 Ltd.

1.4 **Reimbursement of costs**

Subject to Conditions G1.3.3 and G2, each Train Operator shall be entitled to reimbursement by HS1 Ltd of the reasonable costs incurred by it in assessing and responding to any Network Change proposed by HS1 Ltd in accordance with Condition G2.1. Those costs shall be the minimum reasonably necessary for the Train Operator to carry out that assessment and response (excluding any loss of revenue, any consequential loss and any costs and expenses incurred in providing a preliminary response pursuant to Condition G1.5).

1.5 **Obligation to provide preliminary response**

A Train Operator shall, if requested to do so in writing by HS1 Ltd, provide at no cost to HS1 Ltd, as soon as practicable and in any event within a period of 28 days commencing on the date of the request for a preliminary response, a preliminary written response in respect of the proposed Network Change (which, unless a Train Operator indicates otherwise, shall be binding on it) and if such response is negative, include reasons therefore.

1.6 **Further information regarding costs**

Each Train Operator shall upon request from HS1 Ltd from time to time provide HS1 Ltd with written estimates of the costs of assessing and responding to a proposal for Network Change proposed by HS1 Ltd (as referred to in Condition G1.4) including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that evaluation before commencing such work; and
- (b) upon request from HS1 Ltd from time to time, provide HS1 Ltd with such information as may be reasonably necessary to enable HS1 Ltd to assess the reasonableness of any estimate.

1.7 **Accuracy of estimates**

Each Train Operator shall ensure that:

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

1.8 **Obligation to incur no further costs**

A Train Operator shall:

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

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

1.9 **Changes to the operation of HS1**

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

comply with that procedure as if that change were a Network Change proposed by HS1 Ltd.

1.10 Network Change for safety reasons

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

2. CONDITION G2 - RESPONSE TO HS1 LTD SPONSORED NETWORK CHANGE PROPOSAL

2.1 Obligation to give notice of response

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

- (a) one or more of the following conditions has been satisfied:
 - (i) the implementation of the proposed Network Change would necessarily result in HS1 Ltd breaching an Access Agreement to which that Train Operator is a party; or
 - (ii) HS1 Ltd has failed, in respect of the proposed Network Change, to provide sufficient particulars to that Train Operator under Condition G1.1, provided that HS1 Ltd shall first have been given a reasonable opportunity to remedy that failure; or
 - (iii) the implementation of the proposed Network Change would result in a material deterioration in the performance of that Train Operator's trains which cannot adequately be compensated under this Condition G2 or, in respect of a Restriction of Use in connection with the implementation of the proposed change, under that Train Operator's Access Agreement save where the scale of the consequences which cannot adequately be compensated under this Condition G2 or under the Train Operator's Access Agreement are outweighed by the benefits which would arise or are likely to arise from the implementation of the Network Change; or
- (b) it should be entitled to compensation from HS1 Ltd for the consequences of the implementation of the proposed Network Change either:
 - (i) in accordance with the compensation terms proposed under Condition G1.2(d)(iv); or
 - (ii) on terms other those proposed (if any) under Condition G1.2(d)(iv).

2.1.2 Any notice of the kind referred to in Condition G2.1.1(a) above shall include the reasons for the Train Operator's opinion. Any notice of the kind mentioned in Condition G2.1.1(b)(ii) above shall include reasons why the Train Operator considers that any compensation terms proposed under Condition G1 are inappropriate and shall detail:

- (a) the amount of compensation required and the methodology used to calculate the amount of compensation required; or

- (b) if the Train Operator is not reasonably able to provide details of the amount of compensation required, the methodology to be used to calculate the amount of compensation required; and in either case;
- (c) the means by which the compensation should be paid, including any security or other assurances of payment which HS1 Ltd should provide.

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

2.2 Amount of compensation

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

2.3 Benefits to be taken into account

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

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

2.4 Restrictions of Use

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

2.5 Implementation of Network Change proposed by HS1 Ltd

- (a) HS1 Ltd shall be entitled to implement a proposed Network Change if:
 - (i) it has not received a notice from any Train Operator under Condition G2.1.1 by the Relevant Response Date or it has received notice under Condition G2.1.1 by the Relevant Response Date but the matter has been agreed or resolved;
 - (ii) there is no other unresolved dispute under this Part G (whether under this Condition G2.5 or otherwise) as regards the proposed change between HS1 Ltd and any affected Train Operator; and
 - (iii) the continuing compatibility of the Specified Equipment operated on HS1 if the Network Change (and any associated changes to the Specified Equipment) was implemented has been confirmed in accordance with the relevant HS1 Standards and, where applicable, has been approved by a Notified Body as defined under the Railways (Interoperability) Regulations 2006 and/or a Competent Person (as defined under the Railways and Other Guided Transport Systems (Safety) Regulations 2006).

- (b) HS1 Ltd may, if it considers it expedient to do so in order to confirm whether or not Condition G2.5(a) has been satisfied, issue a notice to all affected Train Operators when it reasonably believes it is entitled to implement a proposed Network Change.
 - (c) HS1 Ltd's entitlement to implement a proposed Network Change shall be treated as confirmed 21 days after it has served a notice in respect of that Network Change in accordance with Condition G2.5(b) unless it receives notice from a Train Operator within those 21 days disputing HS1 Ltd's entitlement to implement that proposed Network Change under Condition G2.5(a) and giving full particulars of its reasons.
 - (d) If HS1 Ltd does not agree with the contents of a notice served by an affected Train Operator in accordance with Condition G2.5(c), HS1 Ltd may:
 - (i) refer the matter to the Disputes Resolution Procedure and Condition G6 shall apply; or
 - (ii) withdraw the proposed Network Change.
 - (e) HS1 Ltd shall not be entitled to implement a proposed Network Change unless it is so entitled to implement that Network Change under Condition G2.5(a).
 - (f) For the purposes of the Conditions G2.5(a), unresolved disputes shall include:
 - (i) a notice has been served under Condition G2.1.1(a) which has not been withdrawn, resolved under Condition G6 or agreed not to apply; and
 - (ii) a notice has been served under Condition G2.1.1(b) which has not been agreed, resolved or withdrawn.
 - (g) When HS1 Ltd receives a notice referred to in Condition G2.1.1, it shall refer the matter to the Disputes Resolution Procedure and Condition G6 shall apply. Within 21 days of a determination to the effect that HS1 Ltd is entitled to implement the proposed Network Change, HS1 Ltd may implement the Network Change.
- 2.6 Where as a consequence of a Network Change proposed by HS1 Ltd, it is necessary to amend an Access Agreement to reflect that Network Change, HS1 Ltd shall provide to the other party to such Access Agreement and the ORR written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the date of approval of such amendment by the ORR.

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

3.1 Submission of proposal

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

- (a) submit to HS1 Ltd a proposal for such change; and
- (b) permit HS1 Ltd to consult to the extent provided for under Condition G3.3.1(b) subject to such requirements as to confidentiality as are reasonable.

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

3.2 Content of Sponsor's notice of proposal

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

- (a) contain:
 - (i) the reasons why it is proposed to make the Network Change, including the effects it is intended or expected to have on the operation of HS1 or

- on trains operated on HS1;
 - (ii) a specification of the works to be done (including a plan or plans showing where the work is to be done and the parts of HS1 and associated railway assets likely to be affected);
 - (iii) the proposed times within which the works are to be done and when they are intended or expected to be begun and completed;
 - (iv) the Sponsor's proposals (if any) for the division of the costs of carrying out the Network Change including any proposals in relation to the calculation or payment of compensation to HS1 Ltd or any Train Operator in respect of the Network Change; and
 - (v) the additional terms and conditions (if any) which the Sponsor proposes should apply to the Network Change, including any variation procedure; and
- (b) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition G3.3.1(b), to enable HS1 Ltd and any person specified in Condition G3.3.1(b) to assess the likely effect of the proposed Network Change on its business and its performance of any obligations or exercise of any discretions which it has in relation to railway services.

3.3 Evaluation of proposal and consultation

- 3.3.1 HS1 shall following receipt of any proposal for Network Change from the Sponsor:
- (a) evaluate and discuss the proposal for Network Change with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed Network Change on either or both of HS1 Ltd and other Train Operators;
 - (b) consult with the ORR and other Train Operators to the extent reasonably necessary so as properly to inform them of the proposed Network Change and to enable them to assess the consequences for them of the proposed Network Change;
 - (c) for the purpose of the consultation under Condition G3.3.1(b), within 30 days of the date on which the Sponsor's notice under Condition G3.1 was given, give a notice to other Train Operators, with a copy to the Sponsor, inviting them to submit comments by the Relevant Response Date and stating:
 - (i) the Relevant Response Date and the obligations of Train Operators under Conditions G3 and G4;
 - (ii) the reasons given by the Sponsor under Condition G3.2(a)(i) for proposing to make the change;
 - (iii) so far as reasonably practicable HS1 Ltd's estimate of the likely impact of the change on the operation and performance of HS1 (such estimate not to be binding on HS1 Ltd); and
 - (iv) HS1 Ltd's own proposals (if any) as to:
 - (A) the arrangements for, and any proposed terms applicable to, the implementation of the change;
 - (B) the specification of the works to be done (including a plan or plans showing where the work is to be done and the parts of HS1 and associated railway assets likely

to be affected);

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

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

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

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

3.4 **Provision of Estimate of Compensation by Train Operators**

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

3.4.2 HS1 Ltd shall as soon as and so far as reasonably practicable, provide to the Sponsor, an estimate of the costs, direct losses and expenses (excluding any loss of revenue and consequential loss) which can reasonably be expected to be incurred by HS1 Ltd or other Train Operators as a consequence of the implementation of the proposed Network Change by the Sponsor.

3.5 **Obligation to provide preliminary response**

3.5.1 HS1 Ltd shall, if requested to do so in writing by the Sponsor, provide at no cost to the Sponsor, as soon as practicable and in any event within a period of 28 days commencing on the date of the request for a preliminary response, a preliminary written response in respect of the proposed Network Change (which, unless HS1 Ltd indicates otherwise, shall be binding on HS1 Ltd) and if such response is negative, including reasons therefor.

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

- (a) unless:
 - (i) the Relevant Response Data is 90 or more days after the date on which HS1 Ltd's notice under Condition G3.3.1(c) was given; and
 - (ii) the request is made within 7 days of the Sponsor receiving HS1 Ltd's notice under Condition G3.3.1(c); or
- (b) to the extent that HS1 Ltd is unable to comply with such a request, having regard to the information reasonably available to it.

3.5.3 After consultation with the Sponsor HS1 Ltd may notify a later Relevant Response Date to the Sponsor and the persons to whom it gave its notice under Condition G3.3.1(c).

3.6 Reimbursement of costs

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

3.7 Provision of estimate of costs by HS1 Ltd

HS1 Ltd shall, upon request from time to time from the Sponsor, provide to the Sponsor with written estimates of the costs of assessing and responding to a proposal for Network Change submitted by that Sponsor (as referred to in Condition G3.5) including estimated costings of the work to be carried out and shall:

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

3.8 Accuracy of estimates

HS1 Ltd shall ensure that:

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

3.9 Obligation to incur no further costs

HS1 Ltd shall:

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

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

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

PROPOSAL BY THE SPONSOR**4.1 Obligation to give notice of response**

4.1.1 HS1 Ltd shall give notice to the Sponsor if:

- (a) HS1 Ltd considers that one or more of the following conditions has been satisfied:
 - (i) the implementation of the proposed Network Change would necessarily result in HS1 Ltd breaching any Access Agreement; or
 - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition G3 provided that HS1 Ltd shall first have given the Sponsor a reasonable opportunity to remedy that failure; or
 - (iii) the implementation of the proposed change would result in a material adverse effect on the maintenance or operation of HS1 or the operation of any train on HS1 which in any such case cannot adequately be compensated under this Condition G4 or, in respect of a Restriction of Use in connection with the implementation of the proposed change, under the relevant Train Operator's Access Agreement; or
 - (iv) the proposed Network Change does not adequately take account of the reasonable expectations of a Train Operator (other than the Sponsor) as to the future use of the relevant part of HS1; and/or
 - (b) any Train Operator shall have given notice to HS1 Ltd that it considers that any of the conditions specified in paragraph (a) above has been satisfied; and/or
 - (c) HS1 Ltd considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the Network Change proposed by the Sponsor:
 - (i) in accordance with compensation terms proposed under Condition G3; or
 - (ii) on terms other than those proposed (if any) under Condition G3; and/or
 - (d) any Train Operator shall have given notice to HS1 Ltd that it considers that such Train Operator should be entitled to compensation from the Sponsor for the consequences of the implementation of the Network Change proposed by the Sponsor:
 - (i) in accordance with compensation terms proposed under Condition G3; or
 - (ii) on terms other than those proposed (if any) under Condition G3.
- 4.1.2 Any notice of the kind referred to in Conditions G4.1.1(a) or G4.1.1(b) shall include the reasons for the opinion in question. Any notice of the kind mentioned in Conditions G4.1.1(c) (ii) and (d) (ii) above shall include the reasons why HS1 Ltd or the relevant Train Operator considers that any compensation terms proposed under Condition G3 are inappropriate and shall detail:
- (i) the amount of compensation required and the methodology used to calculate the amount of compensation required; or
 - (ii) if HS1 Ltd or the relevant Train Operator is not reasonably able to provide details of the amount of compensation required, the methodology to be used to calculate the amount of compensation required; and in either case
 - (iii) the means by which the compensation should be paid, including any

security or other assurances of payment which the Sponsor should provide.

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

4.2 **Amount of compensation**

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

4.3 **Benefits to be taken into account**

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

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

4.4 **Restrictions of Use**

4.4.1 The amount of the compensation referred to in Condition G4.2 shall in respect of any Train Operator exclude the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by that Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed change.

4.4.2 The benefits taken into account in determining the amount of the compensation for the proposed change under Condition G4.3 shall in respect of any Train Operator exclude the benefit (if any) to be obtained or likely in the future to be obtained by that Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed change (with that exclusion including any compensation payable to that Train Operator in respect of that Restriction of Use under its Access Agreement).

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

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

- G4.1.1(d) or HS1 Ltd has received notice from a Train Operator under Condition G4.1.1(d) and either the amount of any compensation referred to in Condition G4.2 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G6;
- (iv) there is no other unresolved dispute under this Part G (whether under this Condition G4.5 or otherwise) as regards the proposed change between the Sponsor and any other Access Party; and
 - (v) the continuing compatibility of the Specified Equipment operated on HS1 if the Network Change was implemented has been confirmed in accordance with the relevant HS1 Standards and, where applicable, has been approved by a Notified Body as defined under the Railways (Interoperability) Regulations 2006 and/or a Competent Person (as defined under the Railways and Other Guided Transport Systems (Safety) Regulations 2006).
- (b) The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition G4.5(a) has been satisfied, instruct HS1 Ltd to issue a notice to all affected Train Operators when the Sponsor reasonably believes that it is entitled to instruct HS1 Ltd to implement a proposed Network Change and HS1 Ltd shall then serve such a notice within 7 days of the instruction.
 - (c) The Sponsor's entitlement to instruct HS1 Ltd to implement a proposed Network Change shall be treated as confirmed 35 days after HS1 Ltd has served a notice in respect of that Network Change in accordance with Condition G4.5(b) unless:
 - (i) HS1 Ltd gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G4.5(a) and giving full particulars of its reasons; or
 - (ii) HS1 Ltd receives notice from a Train Operator within 21 days of the notice served by HS1 Ltd disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G4.5(a) and giving full particulars of its reasons.
 - (d) If the Sponsor does not agree with the contents of a notice served by HS1 Ltd or an affected Train Operator in accordance with Condition G4.5(c), the Sponsor may:
 - (i) refer the matter to the Disputes Resolution Procedure and Condition G6 shall apply; or
 - (ii) withdraw the proposed Network Change.
 - (e) A Sponsor shall not be entitled to require HS1 Ltd to implement a proposed Network Change unless it is so entitled to require the implementation of that Network Change under Condition G4.5(a).
 - (f) For the purposes of the Conditions G4.5(a), unresolved disputes shall include:
 - (i) a notice has been served under Condition G4.1.1(a) or (b) which has not been withdrawn, resolved under Condition G6 or agreed not to apply; and
 - (ii) a notice has been served under Condition G4.1.1(c) or (d) which has not been agreed or resolved as referred to in Condition G4.5(a)(ii) or G4.5(a)(iii) or otherwise agreed, resolved or withdrawn.
 - (g) Where as a consequence of a Network Change proposed by a Train Operator it is necessary to amend an Access Agreement to reflect that Network Change, HS1 Ltd shall provide to the other party to such Access Agreement and the ORR

written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the date of approval of such amendment by the ORR.

5. CONDITION G5 - CHANGES IMPOSED BY COMPETENT AUTHORITIES

5.1 Obligations following imposition of changes

Where HS1 Ltd is required (other than at its own request or instigation) to implement a Network Change as a result of any Change of Law or any Direction of any Competent Authority other than the ORR exercising any of its functions which do not fall within the definition of "safety functions" as defined in Section 4 of the Act:

- (a) HS1 Ltd shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 (other than Condition G1.2(d)(iv)) in respect of that Network Change;
- (b) each Train Operator shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that Network Change and shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1 and F2.2 (except F2.2.1(vi));
- (c) subject to Condition G5.1(d), each Access Party shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof;
- (d) where HS1 Ltd recovers compensation in respect of that Network Change from a Competent Authority or some other Governmental Body, it shall pay to the Train Operators:
 - (i) where any compensation paid to HS1 Ltd in relation to that Network Change is sufficient to cover the Relevant Costs of the Train Operators and of HS1 Ltd, the relevant Costs of the Train Operators; and
 - (ii) where such compensation is not so sufficient, such proportion of that compensation as the Train Operator's Relevant Costs bears to the sum of HS1 Ltd's Relevant Costs and all the Train Operator's Relevant Costs in respect of that Network Change; and
- (e) HS1 Ltd shall use reasonable endeavours to negotiate with the relevant Competent Authority or Governmental Body (as applicable) a level of compensation in respect of that Network Change which is sufficient to ensure that the Train Operators receives compensation for all of its Relevant Costs which have been notified to HS1 Ltd pursuant to condition G5.1(d). HS1 Ltd shall from time to time consult with the Train Operators and keep the Train Operators informed in reasonable detail of the progress of such negotiations.

6. CONDITION G6 - APPEAL PROCEDURE

6.1 Right of reference to the Disputes Resolution Procedure

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

6.2 In relation to any matter which is referred to the Disputes Resolution Procedure pursuant to this Condition G6, the relevant Forum shall have the power:

- 6.2.1 to make any interim order as to the conduct or the positions of the parties pending final determination of the matter;
- 6.2.2 in determining the matter in question:

- (a) to direct the parties to the dispute to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions");
 - (b) to direct the parties to accept any submissions made by HS1 Ltd or Train Operator/Sponsor (as the case may be) as to the relevant Network Change; and
 - (c) to specify the matters which HS1 Ltd should have determined in giving any notice pursuant to condition G2.1 or G4.1 or to specify the matters which the Sponsor should have determined in giving any notice pursuant to Condition G.3.1,
- any such directions being either by interim order or final determination;
- 6.2.3 having given general directions, on the application of any party to the dispute within 7 days of the determination of the matter in question (or such longer period as the relevant Forum shall allow), to make such further orders as they/he shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

7. CONDITION G7 - SHORT TERM NETWORK CHANGE

7.1 Reversal of a Short Term Network Change

- 7.1.1 A Train Operator may request in writing that HS1 Ltd reverse the effect of a Short Term Network Change before its Expiry Date if the effect of the Short Term Network Change would prevent the Train Operator using HS1 in a manner consistent with the reasonable expectations of that Train Operator as to the future use of the relevant part of HS1.
- 7.1.2 The Train Operator shall include with any notice requesting the reversal of the effect of a Short Term Network Change served under Condition G7.1.1 evidence to support the Train Operator's claim of reasonable expectations as to the future use of the relevant part of HS1 which requires that reversal.
- 7.1.3 The Train Operator shall provide HS1 Ltd with such further information as HS1 Ltd may reasonably require to enable HS1 to assess the reasonableness of the Train Operator's request to reverse the effect of a Short Term Network Change.
- 7.1.4 Upon receipt of a notice to reverse the effect of a Short Term Network Change served under Condition G7.1.1, HS1 Ltd shall:
 - (a) reverse the effect of the Short Term Network Change at its own cost by the later of the following:
 - (i) the earlier of:
 - (A) the estimated timescale for reversal set out in the notice of proposed Network Change served under Condition G1.1; and
 - (B) the timescale within which HS1 Ltd can complete the reversal without incurring any greater cost than would have reasonably been incurred by HS1 Ltd had the effect of the Short Term Network Change been reversed in accordance with the estimated timescale for reversal set out in the notice of proposed Network Change served under Condition G1.1; or
 - (ii) the earliest use for which the Train Operator can demonstrate a reasonable expectation as to future use; or
 - (b) respond to the Train Operator in writing within 30 days of the request of

the Train Operator stating that HS1 Ltd does not believe that the effect of the Short Term Network Change is preventing the Train Operator using HS1 in accordance with the reasonable expectations of that Train Operator as to the future use of the relevant part of HS1 and giving reasons for its decision.

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

7.2 Expiry of a Short Term Network Change

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

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

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

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

8. CONDITION G8 – NETWORK CHANGE

8.1 Relationship with Vehicle Change

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

8.2 Compatibility Information

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

PART H - OPERATIONAL DISRUPTION

Explanatory Note

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

DEFINITIONS

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

- "Appropriate Location"** means the nearer of:
- (a) the nearest point at which it is reasonably

	practicable to attach an alternative locomotive to a Failed Train; and
	(b) (i) in respect of a Failed Train which is a passenger train, the nearest point at which it is reasonably practicable for its passengers to alight so as to continue with their forward journeys; and
	(ii) in respect of a Failed Train which is a non-passenger train, the nearest point at which it is reasonably practicable to stable it;
"Code of Practice"	means, in relation to any Route, a code of practice established pursuant to Condition H4 and designed to deal with a Disruptive Event in circumstances where either: <ul style="list-style-type: none"> (a) no Contingency Plan has been developed; or (b) an existing Contingency Plan does not adequately deal with the Disruptive Event in question;
"Contingency Objective"	has the meaning ascribed to it in Condition H3.1;
"Contingency Plan"	means a plan of action developed in accordance with the procedures set out in Condition H5;
"Control Point"	means that person or section within a Train Operator's organisation whose responsibility includes dealing with the Operational Disruption;
"deal with"	in relation to a Disruptive Event or an Extended Disruption, includes dealing with the consequences of the disruption in question;
"Disruptive Event"	means any event or circumstance which materially prevents or materially disrupts the operation of trains on any part of HS1 in accordance with the relevant Working Timetable;
"Extended Disruption"	has the meaning ascribed to it in Condition H7.1;
"Failed Train"	means a train which is the subject of a Train Failure;
"first consultation notice"	means the notice given pursuant to Condition H11.4.1;
"HS1 Control Centre"	means in relation to HS1, that part of HS1 Ltd's organisation, which is responsible for dealing with the Operational Disruption;
"Minor Disruption"	means the occurrence or existence of an event or circumstance which prevents or disrupts the operation of trains on any part of HS1 in accordance with the relevant Working Timetable (including an amended Working Timetable established pursuant to Condition H7.3) and which is not a Disruptive Event;
"non-passenger train"	means a train which is not a passenger train;

"Operational Disruption"	means a Disruptive Event, an Extended Disruption or a Minor Disruption, as the case may be;
"passenger train"	means a train which provides services for the carriage of passengers by railway;
"through journey"	means a journey during which the passenger in question will require to change trains at least once;
"time sensitive goods"	means goods carried by railway in respect of which the time at which they are delivered to their intended destination is a matter of material importance: <ul style="list-style-type: none"> (a) to either or both of the consignor and the consignee, whether because of their perishable nature, the terms of the contract for their sale, other disposal or transportation, or in any other respect; or (b) in the interests of safety or security;
"Train Failure"	means any failure of a train to move under its own power (including as a result of breakdown or any failure properly to load the train) which adversely affects either the operation of other trains on HS1 or any works carried out or to be carried out by or on behalf of HS1 Ltd during a possession to which HS1 Ltd is entitled pursuant to this HS1 Network Code or any Access Agreement; and
"Train Regulation Statement"	means a policy and set of procedures established pursuant to Condition H11.1.

1. CONDITION H1 – DISRUPTIVE EVENTS AND ESTABLISHMENT OF COMMUNICATIONS

1.1 Notification by Train Operators

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

1.2 Notification by HS1 Ltd

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

1.3 Notification of Disruptive Events

The Access Parties shall each use their reasonable endeavours to:

- (a) provide one another with as much notice as is reasonably practicable of any Disruptive Event which they believe is likely to occur; and
- (b) provide one another with regular updates regarding the status and consequences of the Disruptive Event and the steps taken or to be taken as a consequence of the Disruptive Event.

1.4 Information to be provided in notices of Disruptive Events

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

1.5 Designation of HS1 Control Centres

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

1.6 Train Operator's Control Points

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

1.7 Conflict with HS1 Standards

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

1.8 Relationship with performance regimes

The provisions of this Condition H shall have effect without prejudice to any regime established between HS1 Ltd and a Train Operator in or pursuant to their Access Agreement in relation to any incentives and payments associated with the performance of their respective obligations under that Access Agreement.

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

2.1 Determination by HS1 Ltd

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

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

2.2 Disruptive Events affecting only one operator of trains

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

2.3 Minor Disruptions

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

3. CONDITION H3 - CONTINGENCY OBJECTIVE

3.1 Definition

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

3.2 Relevant considerations

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

- (a) the need to maintain the Working Timetable, the European Passenger Timetable and the European Freight Timetable including transit slots through the Channel Tunnel, train slots on HS1 and train slots on the NR Network;
- (b) obligations under any agreed performance regime;
- (c) the minimisation of journey times;
- (d) the completion of through journeys;

- (e) the need to keep passengers moving towards their destinations by such means as are appropriate (including by diversion and, if appropriate, change of mode of transport);
- (f) the need to keep time sensitive goods moving towards their destinations by such means as are appropriate (including by diversion and, if appropriate, change of mode of transport);
- (g) the minimisation of costs to each Train Operator affected by the Disruptive Event in question; and
- (h) safety and security.
- (i) the need to minimise overall delay to train movements;
- (j) the need to minimise overall delay to passengers travelling or intending to travel by railway, both in respect of the aggregate delay to any one of them and the aggregate numbers of passengers delayed;
- (k) the need to maintain connections between railway passenger services including Train Slots which are contiguous with train movements on the NR Network;
- (l) the need to protect the commercial interests of HS1 Ltd and each Train Operator;
- (m) the need to minimise delays to the trains of International Train Operators which (subject to the factors set out in paragraphs (i) to (vii) below) are to have priority over the trains of Domestic Train Operators and shall provide that in deciding whether or not the train of an International Train Operator is to be delayed, HS1 Ltd shall have regard to:
 - (i) the performance of trains in terms of their acceleration and maximum speed;
 - (ii) the stopping pattern of trains;
 - (iii) circumstances applicable on the day of the delay including (without limitation) temporary speed restrictions or reduced power on the trains concerned;
 - (iv) regulating points and loop lines along the routes of the trains;
 - (v) platform capacity at relevant stations;
 - (vi) the Performance Regimes of relevant Train Operators; and
 - (vii) the need to ensure the punctual presentation of trains at the interface with the NR Network and the Eurotunnel network.

4. CONDITION H4 - CODE OF PRACTICE

4.1 Development and establishment

- 4.1.1 Each Train Operator shall, as soon as reasonably practicable following the date on which its Access Agreement comes into effect, participate in conjunction with HS1 Ltd, in the development and establishment of a Code of Practice complying with Condition H4.2. HS1 Ltd shall consult on an ongoing basis with Eurotunnel and Network Rail in the development and establishment of the Codes of Practice with their respective train operators.
- 4.1.2 HS1 Ltd shall, in conjunction with the relevant Train Operators, review and, where applicable, update the Code of Practice from time to time in order that such Code of Practice continues to comply with Condition H4.2.

4.2 Contents

Each Code of Practice shall:

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

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

5.1 Development and establishment

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

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

5.2 Conformity with Contingency Objective

Each Contingency Plan shall conform with the Contingency Objective.

5.3 Information

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

5.4 Copies

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

6. **CONDITION H6 - APPLICATION OF CONTINGENCY PLANS**

6.1 Implementation

Subject to any determination by HS1 Ltd to the contrary pursuant to Condition H2.1, the Access Parties shall, on the occurrence of a Disruptive Event for which a Contingency Plan

has been established, proceed to implement that plan so far as reasonably practicable.

6.2 **Train Crew knowledge**

Each Train Operator shall ensure that its Train Crews have adequate route and traction knowledge of any diversion set out in an applicable Contingency Plan to the extent that the Contingency Plan in question so provides. HS1 Ltd shall not unreasonably object to cooperating in the implementation of diversionary training of Train Crews.

6.3 **Adoption of plan**

Each of the Access Parties shall use all reasonable endeavours to adapt the Contingency Plan to the specific circumstances arising out of a Disruptive Event.

6.4 **Application of Code of Practice**

Subject to any determination by HS1 Ltd to the contrary pursuant to Condition H2.1, where no Contingency Plan exists or the Contingency Plan fails to deal with a particular Disruptive Event adequately, HS1 Ltd shall apply the applicable Code of Practice (if any) in such a manner as it considers reasonable and appropriate in the circumstances.

6.5 **Contingency Objective**

Subject to any determination by HS1 Ltd to the contrary pursuant to Condition H2.1, where no Contingency Plan exists or the Contingency Plan fails to deal with a particular Disruptive Event adequately and no Code of Practice exists, HS1 Ltd shall use all reasonable endeavours to secure the Contingency Objective in such a manner as it considers reasonable and appropriate in the circumstances.

7. **CONDITION H7 - EXTENDED DISRUPTION - EMERGENCY TIMETABLING PROCEDURE**

7.1 **Definition**

An Extended Disruption is a Disruptive Event which is likely to be of sufficient duration as to make it necessary in the reasonable opinion of HS1 Ltd to adopt a revised timetable.

7.2 **Agreed amendment of Working Timetable**

In the event of an Extended Disruption, HS1 Ltd shall determine whether to proceed with an amendment to the relevant Working Timetable convening, if necessary, an emergency planning committee comprising representatives of all interested parties to agree the onward strategy. HS1 Ltd and each affected Train Operator shall nominate representatives to the emergency planning committee. The emergency planning committee will decide if the relevant Working Timetable should be amended in line with the Train Regulation Statement and the Contingency Plan after consideration of all relevant factors. If such an amended Working Timetable shall have been agreed, the provision of Condition H7.3 shall have effect accordingly.

7.3 **HS1 Ltd to establish amended Working Timetable**

7.3.1 Subject to Condition H7.2, where an amended Working Timetable shall have been agreed, in the case of an Extended Disruption, HS1 Ltd shall promptly produce a revised Working Timetable:

- (a) complying, to the extent reasonably practicable, with the procedures set out in Part D and having due regard, in particular, to the Decision Criteria (as defined in Part D); and
- (b) consulting, to the extent reasonably practicable, with each Train Operator affected or likely to be affected by the Extended Disruption.

7.3.2 The revised Working Timetable shall be implemented in accordance with the relevant HS1 Standard.

7.3.3 HS1 Ltd shall keep the operation of the revised Working Timetable under review, modifying it, where it reasonably considers necessary and after due consultation with the Train Operators affected or likely to be affected by the Extended Disruption as far as reasonably practicable, to comply with the Decision Criteria.

7.4 **Rights of appeal**

The procedures set out in Condition D7 shall apply mutatis mutandis to any changes or proposed changes to a Working Timetable pursuant to this Condition H7.

8. **CONDITION H8 - CLEARANCE OF TRACK BLOCKAGES**

8.1 **Failure of Train Operator's Train**

8.1.1 *Notification of Train Failure*

If a Train Failure occurs in respect of a train operated by a Train Operator, the Train Operator shall require its Train Crew to promptly notify HS1 Ltd of the location of the Failed Train and any other details reasonably required by HS1 Ltd in respect of the Failed Train.

8.1.2 *HS1 Ltd's obligation to consult operators*

On becoming aware of a Train Failure, HS1 Ltd shall promptly:

- (a) consult with the Train Operator of the Failed Train in order to ascertain the reason for the Train Failure and to obtain such other information as may be necessary in order to effect a safe and expeditious removal of the Failed Train; and
- (b) consult with other Train Operators whose trains are or are likely to be in the vicinity of the Failed Train in order to assess the capability of those trains or the locomotives coupled to them to move the Failed Train.

8.1.3 *Movement of Failed Train by its operator*

If, after consultation in accordance with Condition H8.1.2, HS1 Ltd reasonably believes that the Train Failure in question can be remedied by action taken by or on behalf of the Train Operator's Train Crew at the site of the Train Failure, it may permit the Train Operator to take such action as is necessary to move the Failed Train. Such permission may be subject to such time limits as HS1 Ltd shall reasonably specify to the Train Operator having due regard to the effect of the Train Failure on trains on the same or adjoining sections of track.

8.1.4 *Consultation where assistance required*

If, after consultation in accordance with Condition 8.1.2 and, if relevant, the expiry of any time limit specified by HS1 Ltd pursuant to Condition H8.1.3, HS1 Ltd reasonably believes that the Failed Train can only be moved with the assistance of another train or locomotive or other equipment, HS1 Ltd shall consult with the Train Operator operating the Failed Train as to the capabilities of any trains or locomotives which are available to assist the Failed Train or the nature of other assistance.

8.1.5 *Compliance with HS1 Ltd's instructions*

The Train Operator shall, subject to HS1 Ltd having consulted with it in

accordance with Conditions H8.1.2 and H8.1.4, comply with any reasonable instructions of HS1 Ltd for the purpose of ensuring, with any such assistance as is referred to in Condition H8.1.4, the prompt removal of the Failed Train to an Appropriate Location.

8.2 Assistance to a Failed Train

8.2.1 *Use of following train*

If, after consultation in accordance with Condition H8.1, HS1 Ltd reasonably believes that the train, or the locomotive coupled to a train, immediately following a Failed Train is able to move the Failed Train by pushing or pulling it, HS1 Ltd may commission the Train Operator of such train or locomotive to use it to push or pull the Failed Train under the guidance and control of the Train Operator of the Failed Train to such Appropriate Location as HS1 Ltd shall notify to that Train Operator.

8.2.2 *Commission of other trains*

If a Failed Train cannot, in the opinion of HS1 Ltd, be moved by the train or locomotive immediately following the Failed Train, HS1 Ltd may commission any Train Operator in control of a train or locomotive in the vicinity of the Failed Train to move the Failed Train to such Appropriate Location as HS1 Ltd shall notify to it. HS1 Ltd may only commission the Train Operator's train or locomotive if, having had due regard to all relevant factors (including the factors set out in Condition H8.2.3), it reasonably believes the Train Operator's train or locomotive is the most appropriate means to move the Failed Train.

8.2.3 *Relevant factors*

The factors referred to in Condition H8.2.2 are, in relation to the relevant locomotive or train:

- (a) its fuel reserves;
- (b) the current use of the train or, in the case of a locomotive, the train to which it is coupled and, if relevant, the goods carried on the train;
- (c) the route knowledge of its Train Crew;
- (d) the length of any delay to any assisting train or train to which an assisting locomotive is coupled (taking account of the time necessary to return an assisting locomotive or to provide a suitable replacement locomotive);
- (e) its capability safely to couple to and move the Failed Train within its own technical limits.

8.2.4 *Consent to commissioning required*

HS1 Ltd may commission the train or locomotive of a Train Operator under this Condition H8 only with the consent of that Train Operator (which consent may not be unreasonably withheld or delayed).

8.2.5 *Compliance with directions*

Where it provides an assisting train or locomotive, a Train Operator shall comply with any directions given by HS1 Ltd to move that Failed Train to such Appropriate Location as has been notified to it and, subject to such directions that Train Operator's Train Crew shall, during the course of moving the Failed Train, act under the guidance and control of the Train Operator of the Failed

Train. Nothing in this Condition H8.2.5 shall oblige any Train Operator to contravene any HS1 Standard.

8.2.6 *Movement to Appropriate Location*

HS1 Ltd shall use all reasonable endeavours to ensure that a Failed Train is moved to the Appropriate Location notified to the Train Operator in accordance with this Condition H8.2. A Train Operator commissioned to move a Failed Train under this Condition H8.2 shall be obliged to move such Failed Train only to an Appropriate Location notified to the Train Operator in accordance with this Condition H8.2.

8.2.7 *Timely release of assisting train*

HS1 Ltd shall use all reasonable endeavours to release the assisting train or locomotive to the assisting Train Operator within a period of 3 hours from the time at which such train or locomotive was commissioned by HS1 Ltd in accordance with this Condition H8.2.

8.2.8 *Assistance in reaching intended destination*

HS1 Ltd shall use all reasonable means to assist a Train Operator whose train or locomotive has been commissioned to move a Failed Train, to reach its intended destination, as soon as reasonably practicable.

8.2.9 *Transbordement of passengers*

If it is not possible to assist the Failed Train, which is a passenger train, by pushing or pulling with another train, the Train Operator of the Failed Train shall arrange for transbordement of passengers. If traction current has been lost in the immediate area as a result of which transbordement of passengers is not possible, the Train Operator of the Failed Train shall arrange road transport to clear the passengers.

8.3 **Compensation for moving Failed Trains**

8.3.1 *Obligation to reimburse HS1 Ltd*

Except as provided for in Condition H8.3.3, if one of a Train Operator's trains is subject to Train Failure due to a mechanical defect or other cause attributable to the Train Operator and such train is moved in accordance with Conditions H8.1 and H8.2, the Train Operator shall pay HS1 Ltd the sum of the amounts payable under Condition H8.3.2.

8.3.2 *Right to payment for assisting Failed Train*

Except as provided for in Condition H8.3.3, if a Train Operator is commissioned to use one of its trains or locomotives to assist a Failed Train in accordance with Condition H8.2.2, HS1 Ltd shall pay to the Train Operator such fees as may be agreed between the parties from time to time.

8.3.3 *Liability of assisting Train Operator for payments to HS1 Ltd*

Without prejudice to any liability arising as a result of its failure to perform any obligation or its negligence, no Train Operator shall be liable to pay to HS1 Ltd any amount (whether in respect of permission to use track, signalling or other equipment or the provision of electricity or any service otherwise) which it would, but for this Condition H8.3.3, have become liable to pay as a result of assisting a Failed Train.

9. CONDITION H9 - ADVERSE WEATHER CONDITIONS AND OBSTRUCTIONS

9.1 Provision of equipment and assistance

Subject to Condition H9.2, if a Train Operator holds any equipment which, in the reasonable opinion of HS1 Ltd, may assist it in dealing with disruption to the operation of trains on HS1 caused by either or both adverse weather conditions and obstructions of the track, it shall, where reasonably requested to do so by HS1 Ltd, make that equipment available and otherwise provide reasonable assistance to HS1 Ltd in remedying that disruption where requested to do so.

9.2 Payment

Any equipment or assistance referred to in Condition H9.1 shall only be made available or provided to, or used in the assistance of, HS1 Ltd provided that HS1 Ltd has agreed to pay the relevant Train Operator such fees as shall be agreed between the parties from time to time no later than 30 days after the later of:

- (a) the date when HS1 Ltd ceases to use the equipment made available, or no longer requires the assistance provided, by the Train Operator; and
- (b) the date when the Train Operator and HS1 Ltd agree the fee for the equipment or assistance made available or provided by the Train Operator.

10. CONDITION H10 - RESTORATION OF WORKING TIMETABLE

10.1 Obligation to restore normal operation

Subject to Condition H10.2, as soon as reasonably practicable after the end of a Disruptive Event or Extended Disruption, HS1 Ltd shall:

- (a) procure that the operation of HS1 shall be restored so as to permit the operation of trains in accordance with the relevant Working Timetable; and
- (b) give to each Train Operator affected by the disruption in question as much notice of such restoration as is reasonably practicable.

10.2 Continuation of emergency timetable

As soon as reasonably practicable after HS1 Ltd has reasonable grounds for believing that it is not likely to be reasonably practicable for it to procure that the operation of HS1 shall be restored so as to permit the operation of trains in accordance with the relevant Working Timetable after the end of a Disruptive Event or Extended Disruption, HS1 Ltd shall:

- (a) give to each Train Operator affected or likely to be affected by the disruption in question notice of its opinion together with its reasons;
- (b) take into account any representations or objections which any Train Operator shall make in relation to the matter; and
- (c) having regard to the fact that the amended timetable established pursuant to Condition H2 or H7 is likely to be in operation for a period which is longer than the period of operation expected when it was established, reconsider that timetable and re-comply with the procedures specified in Condition H2 or H7 (as the case may be).

The timetable established after compliance by HS1 Ltd with this Condition H10.2 shall become the Working Timetable.

11. CONDITION H11 - TRAIN REGULATION STATEMENT

11.1 HS1 Ltd's obligation to establish and comply with the Train Regulation Statement

HS1 Ltd shall establish in relation to HS1 and thereafter comply with a Train Regulation Statement in accordance with the provisions of this Condition H11 and the relevant HS1 Standard.

11.2 Contents of the Train Regulation Statement

Each Train Regulation Statement:

- (a) shall conform to the Contingency Objective;
- (b) shall contain the procedures which HS1 Ltd shall follow in cases of Operational Disruptions when signalling and otherwise controlling train movements over or along any part of HS1;
- (c) may contain provision for its amendment provided that in all cases due regard shall be had to the Contingency Objective.

11.3 Consultation with Train Operators prior to notice of proposed Train Regulation Statement

11.3.1 No later than 150 days before the Timetable Change Date first occurring in each calendar year, HS1 Ltd shall give notice to each Train Operator inviting it to make representations to it in relation to the manner in which train regulation should be carried out in cases of Operational Disruption in the year beginning on such Timetable Change Date in respect of each part of HS1.

11.3.2 Each Train Operator so consulted shall use all reasonable endeavours to provide to HS1 Ltd such representations as it shall wish to make in respect of such train regulation within 30 days after receipt of the first consultation notice.

11.4 Notice of proposed Train Regulation Statement

11.4.1 No later than 60 days after giving the first consultation notice, HS1 Ltd shall give notice to each Train Operator of its proposed Train Regulation Statement and invite submissions to it of representations or objections in respect of it. Each such notice shall include:

- (a) the text of the proposed Train Regulation Statement;
- (b) the part or parts of HS1 to which it shall be intended to apply;
- (c) a statement of HS1 Ltd's reasons for the proposed Train Regulation Statement; and
- (d) such other information as it shall be reasonable for HS1 Ltd to provide in order properly to inform Train Operators of the proposed Train Regulation Statement and its likely effect on their operations.

11.4.2 No later than 30 days after the receipt of a copy of the proposed Train Regulation Statement from HS1 Ltd, each Train Operator may submit its representations or objections in respect of it to HS1 Ltd.

11.5 Establishment of the Train Regulation Statement

HS1 Ltd shall:

- (a) take into account all representations or objections received from Train Operators pursuant to Condition H11.4;

- (b) make such modifications to the proposed Train Regulation Statement as it shall reasonably consider appropriate so as to ensure, so far as reasonably practicable, that the proposed Train Regulation Statement complies with the Contingency Objective; and
- (c) not later than 120 days after the date of the first consultation notice, establish the applicable Train Regulation Statement by sending a copy of it to each Train Operator.

11.6 **Duration of the Train Regulation Statement**

- 11.6.1 A Train Regulation Statement established pursuant to this Condition H11 shall have effect for a period of 12 months beginning with the first Timetable Change Date first occurring after the issue of such Train Regulation Statement.
- 11.6.2 HS1 Ltd shall have due regard to any reasonable request by a Train Operator that a Train Regulation Statement established pursuant to this Condition H11 should be modified.

11.7 **Right of reference to the Disputes Resolution Procedure**

- 11.7.1 If any Train Operator is dissatisfied as to any decision of HS1 Ltd not to take into account any representations or objections submitted by that Train Operator to HS1 Ltd under Condition H11.4.2, it may refer the matter to the Disputes Resolution Procedure.
- 11.7.2 In relation to any matter which is referred to the Disputes Resolution Procedure pursuant to this Condition H11, the relevant Forum shall have the power:
 - (a) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter;
 - (b) in determining the matter in question to direct the parties to the dispute to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("**general directions**"), any such directions being either by interim order or final determination; and
 - (c) having given general directions, on the application of any party to the dispute within 7 days of the determination of the matter in question (or such longer period as the relevant Forum shall allow), to make such further orders as they/he shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

PART I - DISPUTE RESOLUTION PROCEDURE

1. CONDITION I1 –DETERMINATION OF DISPUTES

- 1.1 Save to the extent expressly provided otherwise, any dispute arising under, out of, or in connection with, an Access Agreement shall be resolved in accordance with the Disputes Resolution Procedure.
- 1.2 HS1 Ltd shall ensure that all Train Operators are required to accede to the Disputes Resolution Agreement as a condition of such Train Operator having access to HS1 pursuant to the terms of an Access Agreement.

2. CONDITION I2 -MATTERS TO BE TAKEN INTO ACCOUNT

In making any determination under the HS1 Access Dispute Resolution Rules, the relevant Forum shall be required to act in a manner which is fair and reasonable taking into account the interests of the parties to the dispute and in particular shall be required to act in a manner which is not inconsistent with or will impede the performance of the Concession Agreement.

PART J – CHANGES TO ACCESS RIGHTS

Explanatory Notes

- A. *Part J provides a mechanism for a use it or lose it regime for HS1 which enables HS1 Ltd to alter access rights where access rights are not being used. It also establishes a regime for the modification of a Train Operator's access right where all or part of HS1 has been declared congested in accordance with the Railways Regulations.*
- B. *Condition J1 sets out a mechanism whereby capacity can be made available to other users if the train operator fails to exercise its access rights as part of a timetabling process. Condition J2 requires the surrender of train slots where they are not being utilised and such non-use exceeds certain thresholds.*
- C. *This Explanatory Note does not form part of the HS1 Network Code.*

Definitions

In this Part J, unless the context otherwise requires:

"Exercised" has the meaning specified in Condition D1.1.10 in Part D;

"Failure to Exercise" has the meaning specified in Condition J1.1.1;

"Failure to Use" has the meaning specified in Condition J2.2;

"Failure to Use Notice" has the meaning specified in Condition J2.3;

"First Train Operator" has the meaning specified in Condition J2.2;

"Forfeited Rights" has the meaning specified in Condition J2.5.1;

"Surrendered Rights" has the meaning specified in Condition J1.1.2;

"Suspended Rights" means any Firm Rights held by a Train Operator which have been suspended in accordance with Condition J3.1; and

"Unused Capacity" means, where a Failure to Exercise has occurred, the difference between:

- (a) the capacity reserved for the applicable Service (as represented by the number of Train Slots specified in Schedule 5 of the Access Agreement for the relevant Train Operator); and
- (b) the quantum of Train Slots for the applicable Service contained in the Rolled Over Access Proposal or the Access Proposal made by the Train Operator in either case, in respect of the second consecutive Timetable Year in respect of which the relevant Failure to Exercise occurred.

1. CONDITION J1 - FAILURE TO EXERCISE ACCESS RIGHTS

1.1 Failure to Exercise in Consecutive Timetable Years

- 1.1.1 Where in relation to a Service a Train Operator has not, in accordance with Part D, Exercised the full quantum of capacity reserved for that Service (as represented by the number of Train Slots specified in Schedule 5 of the Access Agreement for that Train Operator) for two consecutive Timetable Years commencing on or after the Timetable Change Date in December 2010 (a **"Failure to Exercise"**) unless the Train Operator has a reasonable commercial need for the Unused Capacity (or part of it), HS1 Ltd may, by giving written notice to the Train Operator, require such Train Operator to refrain from submitting Access Proposals and otherwise exercising any rights it may have for some or all of the Unused Capacity for the remainder of the term of its Access

Agreement and such notice shall only have effect from the date on which the ORR consents to such suspension and the ORR may elect to give its consent to part of that suspension.

- 1.1.2 Where a Train Operator is required by HS1 Ltd to refrain from submitting Access Proposals or otherwise exercising any rights it may have in relation to any Unused Capacity in accordance with Condition J1.1.1 ("**Surrendered Rights**"):
- (a) that Train Operator shall comply with that requirement;
 - (b) any Access Proposal submitted by a Train Operator and/or other exercise of such Surrendered Rights in contravention of this Condition J1.1.2 shall be deemed to have no effect;
 - (c) HS1 Ltd shall not be liable to such Train Operator for any direct or indirect losses (including any loss of profit, loss of revenue and/or loss of goodwill), cost or expenses suffered or incurred by that Train Operator arising from the Failure to Exercise, it refraining to submit Access Proposals for any Unused Capacity and/or its inability to exercise any Surrendered Rights; and
 - (d) that Train Operator shall not be entitled to any form of compensation from HS1 Ltd or any other person and/or any relief from its obligations under its Access Agreement other than in relation to any charges payable by that Train Operator under Schedule 7 of its Access Agreement in connection with such Surrendered Rights, which with effect from the date that HS1 Ltd serves notice on that Train Operator in accordance with Condition J1.1.1 shall be deemed to be zero.

1.2 **Train Operator Variations**

Condition J1.1 shall not limit a Train Operator's right to submit a Train Operator Variation Request for the allocation of capacity on HS1 provided that such capacity is not the subject of a Firm Right of another Train Operator and HS1 Ltd shall consider any such Train Operator Variation Request in accordance with Part D of this HS1 Network Code.

2. **CONDITION J2 - FAILURE TO USE TIMETABLED TRAIN PATH**

2.1 **Surrender of Train Path**

A Train Operator shall surrender a Train Slot in the event of a Failure to Use.

2.2 **Failure to Use**

A Failure to Use in relation to a Train Slot of a Train Operator (the "**First Train Operator**") occurs:

- 2.2.1 where HS1 Ltd considers (acting reasonably based on reasonable evidence) that:
- (a) another Train Operator would utilise the First Train Operator's Train Slot on 50% or more of the occasions when it is available in any 28 day period; and
 - (b) the First Train Operator utilises that Train Slot on less than 50% of the occasions when it is available in any 28 day period; or
- 2.2.2 where the Train Slot can be utilised on an ad hoc basis by another Train Operator without material disruption to the First Train Operator;
- 2.2.3 where the First Train Operator utilises that Train Slot on less than 10% of the occasions when it is available in any 28 day period; or

2.2.4 where the First Train Operator does not have a reasonable commercial need for the Train Slot.

2.3 **Service of Failure to Use Notice**

If HS1 Ltd considers there is a Failure to Use by the First Train Operator, it shall serve a notice (a "**Failure to Use Notice**") on the First Train Operator requiring the First Train Operator to surrender the Train Slot.

2.4 **Contents of a Failure to Use Notice**

A Failure to Use Notice shall specify:

2.4.1 the Failure to Use by the First Train Operator which HS1 Ltd has determined has occurred;

2.4.2 the Train Slot which HS1 Ltd requires the First Train Operator to surrender; and

2.4.3 the date from which the First Train Operator shall surrender the Train Slot.

2.5 **Effect of Surrender**

With effect from the date specified in the Failure to Use Notice:

2.5.1 the First Train Operator shall cease to have Firm Rights in respect of the Train Slot which is the subject of the Failure to Use Notice for the remainder of that Timetable Year ("**Forfeited Rights**") unless the Failure to Use Notice has been contested in good faith by the First Train Operator with timely recourse to all appropriate measures and procedures;

2.5.2 any attempt by the First Train Operator to exercise such Forfeited Rights during the Timetable Year in which the Failure to Use occurred shall have no effect other than where the First Train Operator has Exercised such Forfeited Rights in accordance with Part D in connection with the preparation of the Working Timetable which will take effect in respect of the next Timetable Year commencing on a Principal Change Date;

2.5.3 HS1 Ltd shall not be liable to the First Train Operator for any direct or indirect losses (including any loss of profit, loss of revenue and/or loss of goodwill) costs or expenses suffered or incurred by the First Train Operator arising from the Failure to Use and/or the inability to exercise any Forfeited Rights; and

2.5.4 the First Train Operator shall not be entitled to any form of compensation from HS1 Ltd or any other person and/or any relief from its obligations under its Access Agreement other than in relation to any charges payable by the First Train Operator under Schedule 7 of its Access Agreement in connection with such Forfeited Rights which with effect from the date specified in the Failure to Use Notice shall be deemed to be zero for the remainder of the applicable Timetable Year.

Where as a consequence of this Condition J2.5 it is necessary to amend an Access Agreement to give effect to the surrender of a Train Slot, HS1 Ltd shall provide to the other party to such Access Agreement and to the ORR written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the date of approval of such amendment by the ORR, and in accordance with the terms of that approval and the ORR may elect to give its approval to only part of that surrender.

2.6 **Seasonal factors**

Where a Train Operator has a Train Slot which it does not use for seasonal reasons, non-use by the Train Operator outside the recognised season will not give rise to surrender of a

Train Slot.

2.7 Non-use for non-economic reasons

2.7.1 The Train Operator may object to the Failure to Use Notice where the non-use was for non-economic reasons beyond the control of the Train Operator.

2.7.2 For the purposes of this Condition "**non-economic reasons**" includes, but is not limited to:

- (a) non-availability of another network on which the Train Operator's service would, but for the non-availability, operate; and
- (b) a Force Majeure Event.

3. CONDITION J3 – MODIFICATIONS TO ACCESS RIGHTS ARISING FROM CONGESTED INFRASTRUCTURE

HS1 Ltd and the Train Operator shall work together with a view to developing amendments to this HS1 Network Code (which may be reflected in a Proposal for Change) the purpose of which is to ensure that HS1 Ltd is not in breach or default where HS1 is declared Congested.

4. CONDITION J4 – REASONABLE COMMERCIAL NEED

4.1.1 A Train Operator will have a reasonable commercial need for any capacity or Train Slot if it can demonstrate that:

- (a) it has a commitment with a third party which cannot be satisfied, in whole or in part, without use of such capacity or Train Slot, or it has a reasonable prospect of entering into such a commitment in respect of an identifiable traffic flow which is suitable for conveyance by rail;
- (b) it can demonstrate a justifiable reason for its failure to use the capacity or Train Slot, including seasonal factors, non-economic reasons beyond its control or a strike or industrial action;
- (c) it has the necessary committed resources, including suitable locomotives and wagons and traincrew with relevant route and traction knowledge, to satisfy the commitment referred to in paragraph (a) above, or that it has a reasonable prospect of obtaining such resources in the relevant timescales; and
- (d) it has a reasonable prospect of using the relevant capacity or Train Slot, including reasons for such reasonable prospect, within 90 days from the issue of HS1 Ltd's notice pursuant to Condition J1.1.1 or Condition J2.3 (as the case may be).

5. CONDITION J5 – DETERMINATION OF DISPUTES

5.1 Any disputes arising in respect of this Part J shall be resolved in accordance with the Dispute Resolution Procedure.

5.2 If any Access Party is dissatisfied with any decision of the relevant Forum in relation to any matter referred to it under Condition J5.1, that Access Party may refer the matter to the ORR for determination under Chapter L of the Rules.

PART K – INFORMATION (not used)

Explanatory Notes

The provision of information requirements will be addressed within Access Agreements

PART L – PERFORMANCE

Explanatory Note

- A. *Part L sets out a process for the Access Parties to work together in order to improve, on a continuous basis, the performance of the Access Parties and the rail industry as a whole.*
- B. *This Explanatory Note does not form part of the HSI Network Code.*

DEFINITIONS

In this Part L, unless the context otherwise requires:

"JPIP"	has the meaning ascribed to it in Condition L1.2;
"JPIP Party"	means HS1 Ltd or any Train Operator with whom a JPIP has from time to time been agreed in accordance with this Part L and "JPIP Parties" means both of them;
"Performance Objective"	has the meaning ascribed to it in Condition L1;
"Remedial Plan"	means a plan agreed pursuant to Condition L2.

1 CONDITION L1 – OBJECTIVE

1.1 Performance Objective

The objective of this Part L (the **"Performance Objective"**) is to provide for the improvement, on a continuous basis, of performance both as between HS1 Ltd and each Train Operator, through a process for liaison and cooperation in performance improvement to be applied between those parties.

1.2 Achievement of Performance Objective

HS1 Ltd and each Train Operator shall participate in performance reporting, planning, monitoring and reviewing with a view to agreeing and implementing a joint performance improvement plan (a **"JPIP"**) in order to achieve the Performance Objective.

1.3 Period

Each JPIP shall specify the period to which it relates. It is anticipated that elements of a JPIP may relate to differing periods, reflecting the short, medium or long term nature of the plans concerned.

1.4 Contents of a JPIP

A JPIP shall contain such matters as are agreed as being designed to achieve the Performance Objective for the period covered by that JPIP, including:

- (a) performance metrics to be used for reporting on performance, the information to be provided by each party to the other for the purpose of such reporting, the format for regular reporting of performance and any more detailed process required to support the compilation, review and agreement of such reports;
- (b) performance targets in respect of the JPIP Party or JPIP Parties, which may include,
 - (i) stretch targets;
 - (ii) performance levels at which a Remedial Plan will be established; and

- (iii) performance levels at which a shortfall in performance shall be notified to the ORR and (where the relevant JPIP Party is a franchised passenger train operator) the appropriate franchising authority.
- (c) specific actions planned to be taken by one or both of the JPIP Parties (either together or separately and whether or not involving third parties) which are designed to help improve performance generally or to help achieve any stretch performance targets in the JPIP or (where these targets have been met) to maintain performance at least at these levels and to achieve further performance improvements which are reasonably practicable.

1.5 **Review of JPIP**

The JPIP Parties shall maintain the JPIP under regular ongoing review as part of the JPIP and shall make such amendments as are agreed as being designed to maintain or improve the achievement of the Performance Objective.

1.6 **Compatibility of JPIPs**

Without prejudice to the Performance Objective, each JPIP Party shall endeavour to ensure, so far as is reasonable, that:

- (a) no JPIP contains actions, targets or performance levels that are incompatible with actions, targets or performance levels included in other JPIPs, or which are known, or could reasonably be expected to be known, by it to conflict with any other obligations of that JPIP Party; and
- (b) a JPIP shall not be inconsistent with the continued development of performance arrangements where the JPIP spans, or ends upon, the end of a franchise.

1.7 **Information for the ORR**

HS1 Ltd shall, except to the extent that the ORR may otherwise request, provide the ORR with copies (which may be in electronic format) of all JPIPs and any modifications of them made from time to time.

2 **CONDITION L2 - REMEDIAL PLANS AND FAILURE TO AGREE**

If at any time:

- (a) one or more of the performance targets (other than any which is described as a stretch performance target) contained in a JPIP is not achieved;
- (b) in the opinion of either JPIP Party, acting reasonably, any performance target (other than any which is described as a stretch performance target) contained in a JPIP will not be achieved within the time periods set out in that JPIP;
- (c) the JPIP specifies that a Remedial Plan is required at a particular level of performance and that level has been reached; or
- (d) paragraph 5 of Part 2 of Section 8 of an Access Agreement applies in respect of a party's performance,

then the JPIP Parties shall use all reasonable endeavours to agree specific actions for inclusion in the JPIP which are designed to restore the level of performance as soon as reasonably practicable (with the timescales for the restoration being specified) to at least the level of that performance target or Remedial Plan trigger point as specified to be achieved by that time (a "**Remedial Plan**"). HS1 Ltd shall send a copy of the Remedial Plan to the ORR promptly following its production.

3 CONDITION L3 - PERFORMANCE REPORTING

- 3.1 Subject to any confidentiality obligations, HS1 Ltd and each Train Operator shall provide to the other information in its possession or under its control reasonably required by the other for the purposes of any JPIP or the agreement of any JPIP to which that Train Operator is a party.
- 3.2 The parties to each JPIP shall keep under regular review the terms of that JPIP relating to the regular reporting and review of performance, recognising that there are efficiencies and other benefits to be secured through the adoption of common formats and processes of such reporting across HS1 and that these are expected to evolve over time. Accordingly and without prejudice to any arrangements in a JPIP which are specific to monitoring initiatives or aspects of performance particular to that JPIP, a Train Operator shall not unreasonably withhold its consent to proposals for change to the JPIP insofar as they relate to changes to such common formats and processes of reporting in circumstances where such changes have been agreed between HS1 Ltd and a majority of other Train Operators.

4 CONDITION L4 – FRANCHISING AUTHORITY

- 4.1 HS1 Ltd shall, except to the extent that a franchising authority may otherwise request, provide such franchising authority with copies (which may be in electronic format) of all JPIPs and any modifications of them made from time to time, and of any Remedial Plan, in respect of any franchised passenger train operator.
- 4.2 Any JPIP Party may, where it is a franchised passenger train operator, provide to the relevant franchising authority:
- (a) any JPIP or Remedial Plan; and
 - (b) any other information regarding the matters contemplated by this Part L.

5 CONDITION L5 – FAILURE TO COMPLY WITH JPIP

In the event that either HS1 Ltd or any of the Train Operators fails in any material respect to comply with a JPIP or a Remedial Plan, either a Train Operator or HS1 Ltd (as the case may be) shall be entitled to send a notice to the ORR providing details of such failure.