

# THE NETWORK CODE

## Part A - General Provisions

### Explanatory Note

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

### 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 code shall be interpreted or construed as compromising that objective.

In this code, unless the context otherwise requires:

- (a) *This code*

References to this code means this code as modified from time to time. References to The Railtrack Track Access Conditions shall be treated as references to this code.

- (b) *Parts, Conditions and paragraphs*

References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of this code.

- (c) *Definitions in the Act*

Terms and expressions defined in the Act shall, unless the contrary intention appears, have the same meaning in this code.

(d) *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).

(e) *Interpretation Act*

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

(f) *Include*

The words “include” and “including” are to be construed without limitation.

(g) *Other documents etc.*

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

(h) *Conflict*

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

- (1) this code; and
- (2) the Access Agreement.

(i) *Time limits*

Where in this 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.

(j) *Headings*

The headings and references to headings shall be disregarded in construing this code.

(k) *Ruling language*

All notices served under this code shall be in the English language.

## 1.2 **Definitions**

In this code, unless the context otherwise requires:

- “Act” means the Railways Act 1993 as amended;
- “Access Agreement” means any particular access contract, whether or not entered into pursuant to any directions of the Office of Rail Regulation under the Act, incorporating this code;
- “Access Beneficiary” means, in respect of an Access Agreement, the Train Operator or Access Option Holder who is party to that Access Agreement;
- “Access Dispute Resolution Rules” means the set of rules regulating the resolution of disputes, entitled “Access Dispute Resolution Rules” and annexed to this code;
- “access option” has the meaning ascribed to it in section 17(6) of the Act;
- “Access Option Holder” means any person who may exercise an access option in respect of a railway facility:
- (a) which is not a station or a light maintenance depot; and
  - (b) in respect of which the facility owner is Network Rail;

“Access Parties”	means, in respect of an Access Agreement, Network Rail and the Access Beneficiary who are party to that Access Agreement;
“Affiliate”	<p>means, in relation to any company:</p> <p>(a) a company which is either a holding company or a subsidiary of such company; or</p> <p>(b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,</p> <p>and for these purposes, “holding company” and “subsidiary” have the meanings ascribed to them in section 736 of the Companies Act 1985;</p>
“Change of Law”	<p>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:</p> <p>(a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or</p> <p>(b) value added tax;</p>
“Class Member”	has the meaning given to that term in Part C of this code;
“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) whether of the United Kingdom or of the European Union, which has, in respect of an Access Agreement, jurisdiction over either or both of the Access Parties to, or the subject matter of, that agreement provided that “Competent Authority” shall not include Her Majesty’s Government (or any department, minister,

official or nominee of it) where acting as shareholder of the Access Party in question or other than pursuant to the Crown prerogative or a statutory function or power;

“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;

“Franchised Services”

has the meaning given to that term in Condition A1.6;

“Freight Customer  
Access Option Holder”

means an Access Option Holder whose access option is an Access Agreement with Network Rail pursuant to which that Access Option Holder can draw down rights to a Train Operator to enable it to operate services for the carriage of goods by railway for or on behalf of that Access Option Holder;

“hard copy information”

means any relevant item which it is not reasonably practicable for Network Rail to publish on its website, having regard, in particular, to whether such relevant item is, or is likely to be:

- (a) Unavailable in electronic form; or
- (b) Incapable of being downloaded and/or printed by any class of persons accessing Network Rail’s website; or
- (c) Exceptionally costly to publish on its website;

“Legal Requirement”

means (for the purpose of the definition of Change of Law), in relation to any person, any of the following:

- (a) Any enactment 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 said Commission which is binding on that person to the extent that it is so binding; and

- (c) 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 to that in which it previously had effect;

“Network”	means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;
“Network Change”	has the meaning ascribed to it in Part G of this code;
“Network Code”	means the document entitled “Network Code”;
“Network Rail”	means Network Rail Infrastructure Limited, incorporated in England and Wales under registered number 2904587;
“non-sensitive version”	means a version of a relevant item: <ul style="list-style-type: none"><li>(a) from which sensitive information has been excised; and/or</li><li>(b) in which sensitive information has been replaced by a summary containing no sensitive information;</li></ul>
“Passenger Transport Executive”	has the meaning ascribed to it in section 9 of the Transport Act 1968;
“Potential Access Party”	means any person who proposes in good faith to enter into an Access Agreement or become an Access Option Holder provided that such person has first undertaken to Network Rail to be bound by the relevant provisions of the Network Code and the ADRR;

- “publish on a website” means, in relation to any specified information to be published on a website, placing such specified information on the relevant website in a prominent position and with links which enable visitors to that site to locate it quickly and without difficulty;
- “railway funding authority” has the meaning as defined in section 45 of the Railways Act 2005;
- “Railway Group Standards” means technical standards and operating procedures authorised pursuant to the Railway Group Standards Code issued by Rail Safety and Standards Board Limited and approved by the Office of Rail Regulation;
- “relevant ADRR Panel” means the Panel established under Part E of the Access Dispute Resolution Rules which is to determine a relevant dispute in accordance with the principles and procedures set out in Part A of the Access Dispute Resolution Rules;
- “relevant item” means, in respect of any specified information, the whole or part of any information, statement, proposal, draft, instrument or other document which constitutes or forms part of that specified information;
- “Restriction of Use” means, for the purposes of the Network Code, a restriction of use of all or any part of the Network;
- “Routes” means, in respect of an Access Agreement, those parts of the Network which a Train Operator has permission to use pursuant to that agreement;

“Secretary”	has that meaning given to it in the ADRR;
“secure information”	means a relevant item, the publication of which may, in the reasonable opinion of Network Rail, create any risk to the safety or security of the Network.;
“sensitive information”	means a relevant item, the publication of which by Network Rail: <ul style="list-style-type: none"> <li>(a) is likely materially to compromise or otherwise prejudice the commercial interests of any Access Party or any of its Affiliates; or</li> <li>(b) may reasonably be expected seriously and prejudicially to affect the interests of any person;</li> </ul>
“Services”	means, in respect of an Access Agreement: <ul style="list-style-type: none"> <li>(a) the services for the carriage of passengers by railway;</li> <li>(b) the services for the carriage of goods by railway; and</li> <li>(c) any other train movement for the purpose of testing the physical or operational characteristics or capabilities of any railway asset,</li> </ul> in each case as provided for in that agreement;
“specified information”	means any information, statement, proposal, draft, instrument or other document;
“Track Access Contract Parties” or “TAC Parties”	means, in respect of any Access Agreement other than an access option, Network Rail and the Train Operator who are party to that Access Agreement;
“Train Crew”	means those persons on a train responsible for the operation of that train;
“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 track pursuant to that agreement;

“Working Day” means each of Monday to Friday (inclusive) excluding common law and statutory public holidays; and

“Working Timetable” means as set out in Condition D2.1 and 2.1.6.

### **1.3 References to Train Operator**

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

### **1.4 Notices**

1.4.1 Any notice, consent or approval to be given under this code by any person may be given by:

- (a) personal delivery, express postal delivery or prepaid first class post to the intended recipient’s registered address or principal business address within the UK; or
- (b) facsimile to the intended recipient’s advertised facsimile number; or
- (c) e-mail to the e-mail address of the intended recipient most recently provided by the intended recipient to the sender.

1.4.2 Where any notice, consent or approval is given by e-mail in accordance with Condition A1.4.1 (c), the recipient shall be entitled, within 5 Working Days of receipt of the e-mail, to request that a hard copy of the notice, consent or approval be provided. Where such a request is made, the sender shall provide the recipient with the hard copy within 5 Working Days of the request being received.

1.4.3 Any notice, consent or approval given in accordance with Condition A1.4.1 shall be deemed to have been received in accordance with Condition A4.2.

## **1.5 Good faith**

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

## **1.6 Franchised services**

References to Franchised Services include:

- (a) railway passenger services which the appropriate designating authority has designated as eligible for provision under franchise agreements pursuant to section 23 of the Act;
  - (b) railway passenger services provided by a person appointed as a concessionaire or concession operator by a railway funding authority;
- and
- (c) 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.

## **CONDITION A2 - STANDARDS OF DOCUMENTATION**

Where in this 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 code which requires its preparation, production or publication, and this Condition A2 is without prejudice to any further or other requirements specified in this code in relation to the specified information (including in Part K).

## **CONDITION A3 - PUBLICATIONS**

### **3.1 General Obligation**

3.1.1 Where in this code Network Rail is required to publish any specified information, that obligation is an obligation to ensure that the specified information:

- (a) is, subject to Condition A3.1.3, brought to the notice of every Train Operator, every Access Option Holder, every Passenger Transport Executive, Transport for London, the Scottish Ministers and the Welsh Assembly Government, the Office of Rail Regulation and the Secretary of State.
- (b) is published on its website.

3.1.2 The obligation of Network Rail under Condition A3.1.1 shall have full effect on and from the date on which Condition A3 comes into effect unless the Office of Rail Regulation has given a notice stating:

- (a) a later date on which Condition A3.1.1 shall have effect; and
- (b) its reasons,

in which event Condition A3.1.1 shall have effect on and from the date stated in the notice.

- 3.1.3 (a) Any person to whom Network Rail owes an obligation under Condition A3.1.1(a) may give notice to Network Rail at any time stating that it does not wish to have information of any type or class brought to its notice under Condition A3.1.1(a).
- (b) If a person gives notice under Condition A3.1.3(a) Network Rail's obligation under Condition A3.1.1(a) to such person shall not apply to the extent stated in the notice.
- (c) A person who has given notice under Condition A3.1.3(a) may revoke or modify its notice at any time by further notice to Network Rail.

### **3.2 Sensitive information**

Where in this code Network Rail is required to publish any specified information which includes relevant items which are sensitive information on its website, that obligation shall be satisfied in respect of any relevant item if it publishes a non-sensitive version of that relevant item.

### **3.3 Secure Information**

Where in this code Network Rail is required to publish on its website any specified information which includes relevant items which are secure information, that obligation shall be satisfied if it:

- (a) indicates on its website:
  - (i) in general terms, the nature of the relevant item; and
  - (ii) that it will comply with all reasonable requests to supply any person to whom Network Rail owes an obligation under Condition A3.1.1(a), subject to Condition A3.1.3, with a paper copy of the relevant item; and
- (b) complies with requests of the kind specified in Condition A3.3(a)(ii).

### **3.4 *Hard copy information***

Where in this code Network Rail is required to publish on its website any specified information which includes relevant items which are hard copy information, but are not sensitive information, that obligation shall be satisfied if it:

- (a) indicates on its website:
  - (i) the nature of the relevant item; and
  - (ii) that it will comply with all reasonable requests to supply any person with a paper copy of the relevant item; and
- (b) complies with requests of the kind specified in Condition A3.4(a)(ii).

### **3.5 *Hard copy sensitive information***

Where in this code Network Rail is required to publish on its website any specified information which includes relevant items which are hard copy information and are sensitive information, that obligation shall be satisfied if it:

- (a) indicates on its website:
  - (i) the nature of the relevant item; and
  - (ii) that it will comply with all reasonable requests to supply any person with a paper copy of the non-sensitive version of the relevant item; and
- (b) complies with requests of the kind specified in Condition A3.5(a)(ii).

### **3.6 *Determination***

- 3.6.1 A determination as to whether any relevant item is sensitive information may be made:

- (a) in relation to a relevant item submitted to Network Rail by another person, by the person submitting the relevant item, in the exercise of his rights under Condition A3.7.1; and
- (b) in relation to any other relevant item, by Network Rail.

3.6.2 A determination as to whether any relevant item is secure information or hard copy information may be made by Network Rail.

### **3.7 *Non-sensitive versions***

3.7.1 Any person who is obliged to submit specified information to Network Rail may submit a non-sensitive version of particular relevant items, provided that he also submits such relevant items in their entirety and Network Rail shall publish the non-sensitive version of those relevant items.

3.7.2 If no non-sensitive version of a particular relevant item is submitted to Network Rail, Network Rail shall be entitled to assume that the relevant item does not contain any sensitive information and shall publish that relevant item in its entirety.

### **3.8 *Appeals***

3.8.1 If any Access Party is dissatisfied with a determination made by:

- (a) Network Rail under Condition A3.6.1(b) or A3.6.2; or
- (b) any other person under Condition A3.6.1(a),

it may refer the matter for determination in accordance with the ADRR.

3.8.2 If any Access Party or Potential Access Party is dissatisfied with any decision of the relevant ADRR Panel in relation to any matter referred to it under Condition A3.8.1, that Access Party may refer the matter to the Office of Rail Regulation for determination under Part M.

## **CONDITION A4 - NOTICE BY THE OFFICE OF RAIL REGULATION**

### **4.1 *Giving of Notice***

Where in this code there is provision for a notice to be given by the Office of Rail Regulation for any purpose, such notice:

- (a) may be given from time to time; and

- (b) shall only have effect if it has been:
  - (i) given to every Access Party, every Passenger Transport Executive, Transport for London, the Scottish Ministers and the Welsh Assembly Government, the Secretary of State, and every other person who has notified the Office of Rail Regulation that it wishes to receive any such notice; and
  - (ii) published on its website and placed on the register maintained under section 72 of the Act (as a document issued or made by it under an access agreement).

#### **4.2 Deemed Receipt**

A notice given under this code shall be deemed to have been received:

- (a) if sent by hand or express postal delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, 3 Working Days after posting unless otherwise proven;
- (c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 17.00 hours on a Working Day, on the day of transmission and, in any other case, at 09.00 hours on the first Working Day following the day of transmission; and
- (d) if sent by e-mail;
  - (i) upon sending if sent before 17:00 hours on a Working Day; or
  - (ii) in any other case, at 09:00 hours on the first Working Day following the day of transmission.

#### **4.3 Reasons for decisions**

An express provision of this code which requires or contemplates that the Office of Rail Regulation should give reasons for its decision in any case does not affect the right of any person to be given reasons for any other decision of the Office of Rail Regulation in any other case.

### **CONDITION A5 - LIMITATION ON LIABILITY**

#### **5.1 General**

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

## **5.2 *Saving***

Condition A5.1 does not apply to an obligation to pay compensation under Condition F3, G2 or G4.

## **CONDITION A6 - CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

### **6.1 *Application to third parties***

Except as provided in this Condition A6, 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 code.

### **6.2 *Application to Network Code***

Where in this 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.

## **CONDITION A7 - CONSULTATION**

### **7.1 *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.

