

Draft for consultation on 5 June 2008

Network Licence
granted to
Network Rail Infrastructure Limited

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Scope

1. The Secretary of State, in exercise of the powers conferred by section 8 of the Railways Act 1993 (as amended) ("the Act"), hereby grants to Railtrack PLC¹ ("the licence holder") a licence authorising the licence holder:
 - (a) to be the operator of a network;
 - (b) to be the operator of a train being used on a network for any purpose comprised in the operation of that network; and
 - (c) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in (b) above.

subject to the conditions set out in Part III hereof ("the conditions").

2. This licence shall come into force on 1 April 1994 and shall continue in force unless and until revoked in accordance with the provisions of the Schedule hereto or by not less than 10 years' notice given to the licence holder by the Secretary of State, such notice not to be given earlier than 25 years after the date on which this licence comes into force.

31 March 1994

Signed by authority of
the Secretary of State for Transport

¹ Network Rail Infrastructure Limited since 3 February 2003.

Interpretation

1. In this licence:

- “access charge” means any amount payable or proposed to be paid under an access contract or an installation access contract.
- “affiliate” in relation to the licence holder means any holding company or subsidiary of the licence holder or any subsidiary of a holding company of the licence holder, in each case within the meaning of sections 736, 736A and 736B of the Companies Act 1985.
- “control” shall be construed in accordance with sub-sections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 with the following modifications namely:
- (i) for the words "the greater part" wherever they occur in sub-section (2) there shall be substituted the words "30 per cent or more"; and
 - (ii) in sub-section (6), for the word "may" there shall be substituted the word "shall", the words from "and such attributions" onwards shall be omitted and in the other provisions of that sub-section any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary.
- “funder” means any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) and each Passenger Transport Executive or other person who provides money by way of grant or loan with the primary purpose of securing the provision of services relating to railways.
- “licence holder's network” means the network of which the licence holder is the operator pursuant to this licence.
- “licensed activities” means things authorised to be done by the licence holder in its capacity as operator of a network or trains pursuant to this licence.
- “LTUC” means the London Transport Users' Committee and any successor to LTUC which performs the same functions.

- “network” includes, where the licence holder has any estate or interest in, or right over a station or light maintenance depot, such station or light maintenance depot.
- “Network Business” means
- (i) the business of providing and operating the licence holder's network, including the maintenance, renewal, replacement, improvement, enhancement and development of the network; and
 - (ii) any ancillary service related to the business and activities in paragraph (i);
- and, without limitation, includes:
- (a) the purpose of financing the business in paragraph (i) and the services in paragraph (ii); and
 - (b) any payment or transaction lawfully made or undertaken by the licence holder for a purpose within conditions 4.14(b)(i) to (vii).
- “ORR” means the Office of Rail Regulation.
- “Permitted Business” means the Network Business and the Permitted Non-Network Business.
- “Permitted Non-Network Business” means any business, other than the Network Business and the exploitation of land (which includes the disposal of land within the meaning of condition 7), of the type transferred to the licence holder pursuant to the Railtrack Transfer Scheme.
- “Railtrack Transfer Scheme” means the transfer scheme in respect of which the licence holder is the transferee made by the Board under section 85 of the Act and as varied pursuant to section 97 of, and Schedule 8 to, the Act.
- “related undertaking” in relation to the licence holder means any undertaking in which the licence holder has a participating interest (and for this purpose "undertaking" has the meaning given by section 259 of the Companies Act 1985, and "participating interest" is to be construed in accordance with section 260 of that Act).
- “RPC” means the Rail Passengers’ Council and any successor or delegated body which performs the functions of the RPC.
- “TfL” means Transport for London.
2. Any reference in this licence to a numbered paragraph is a reference to the paragraph bearing that number in the condition in which the reference occurs.

3. In interpreting this licence, headings shall be disregarded.
4. Where in this licence the licence holder is required to comply with any obligation within a specified time limit, that obligation shall be deemed to continue after that time limit if the licence holder fails to comply with that obligation within that time limit.
5. Where this licence provides for anything to be done by any person within a particular period of time or on or by a particular day or date, ORR may vary that period, day or date by giving notice to the licence holder and such other persons as appear to it likely to be affected by the variation.
6. Where in this licence there is a provision for ORR to give its consent, ORR may give such consent subject to conditions.
7. The provisions of section 149 of the Act shall apply for the purposes of the service of any document pursuant to this licence.
8. The Interpretation Act 1978 shall apply to this licence as if it were an Act.
9. Terms and expressions defined in the Railways Act 1993, the Transport Act 2000 and the Railways Act 2005 shall, unless the contrary intention appears, have the same meanings in this licence.

Conditions

Part A Network management and timetabling

1 Network management

Purpose

1.1 The purpose is to secure:

- (a) the operation and maintenance of the network;
- (b) the renewal and replacement of the network; and
- (c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or funders, in respect of:

- (i) the quality and capability of the network; and
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.

General duty

1.2 The licence holder shall achieve the purpose in condition 1.1 to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.

Specific obligations

1.3 The following obligations in this condition are without prejudice to the generality of the general duty in condition 1.2 and compliance with those obligations shall not be regarded as exhausting that general duty. In fulfilling each of those obligations, the licence holder shall at all times comply with the general duty in condition 1.2.

Planning

- 1.4 The licence holder shall plan the means by which it will comply with the general duty in condition 1.2 over the short, medium and long term to meet reasonably foreseeable future demand for railway services.
- 1.5 In complying with condition 1.4, the licence holder shall consult, and take into account the views of, persons providing services relating to railways and funders so as to facilitate effective industry wide planning.
- 1.6 In complying with condition 1.4, the licence holder shall prepare and provide to ORR plans, strategies or other documents demonstrating its compliance and proposed compliance with the general duty in condition 1.2, including:
 - (a) the delivery plan referred to in condition 1.10;
 - (b) the route utilisation strategies referred to in condition 1.14;
 - (c) other plans, strategies or documents that ORR may require from time to time;
 - (d) revisions of the plans, strategies and other documents referred to in condition 1.6 (a) to (c) that ORR may require from time to time.
- 1.7 Each of the plans, strategies and other documents referred to in condition 1.6 shall demonstrate the position, as appropriate, on a network-wide basis and at a suitably disaggregated level of detail.
- 1.8 Each of the plans, strategies and other documents prepared in compliance with condition 1.6 shall be provided to ORR and published on such date, in respect of such period, in such format and structure, to such standard and level of detail and in accordance with such requirements as ORR may, from time to time, specify by notice or in guidelines to the licence holder.
- 1.9 Any notice or guidelines to the licence holder issued under condition 1.8 may include a procedure under which ORR may object to the contents of a plan, strategy or other document on grounds specified in the notice or guidelines.

Delivery plan

- 1.10 In complying with the duty in condition 1.4, the licence holder shall prepare, provide to ORR and publish a delivery plan setting out what the licence holder proposes to do to comply with the general duty in condition 1.2. The delivery plan shall be prepared in such format and structure, to such standard and level of detail and in accordance with such requirements as ORR shall specify by a notice given to the licence holder under condition 1.8.
- 1.11 No notice of ORR under condition 1.8 shall be effective in relation to the delivery plan unless:
- (a) it is given on or before the date which is 5 months before the delivery plan is to be published; and
 - (b) ORR has first consulted the licence holder and taken into consideration any representations or objections timeously made and not withdrawn.
- 1.12 If ORR has not given a notice under condition 1.8 in respect of any year, the notice last given under that condition shall apply to that year.
- 1.13 The licence holder shall be excused from the obligation to publish any part of the delivery plan to the extent that ORR:
- (a) is satisfied, after consultation with the licence holder, that publication would or might seriously and prejudicially affect the interests of the licence holder or any other person; and
 - (b) gives notice to the licence holder to that effect.

Route Utilisation Strategies

- 1.14 In complying with condition 1.4 the licence holder shall establish and maintain route utilisation strategies to promote the route utilisation objective in accordance with guidelines issued by ORR under condition 1.8.
- 1.15 The licence holder shall have due regard to the route utilisation strategies when carrying out its licensed activities.
- 1.16 Each route utilisation strategy shall be established:
- (a) by such dates as are specified in a programme or programmes proposed by the licence holder and approved by ORR;

(b) in accordance with:

- (i) the policies and criteria referred to in condition 1.19(a); and
- (ii) guidelines issued by ORR under condition 1.8.

1.17 The licence holder shall from time to time and when so directed by ORR review and, if necessary, propose amendments to each route utilisation strategy to ensure that it:

(a) continues to promote the route utilisation objective; and

(b) remains in accordance with the policies and criteria referred to in condition 1.19(a).

Capacity allocation

1.18 In complying with the general duty in condition 1.2, the licence holder shall cooperate with any potential provider or funder so as to identify ways in which its reasonable requirements in respect of the allocation of capacity on the network could be satisfied.

Asset management

1.19 In complying with the general duty in paragraph 1.2, the licence holder shall:

- (a) develop and publish the policies and criteria it will apply in respect of the maintenance, renewal, replacement, improvement, enhancement and development of the relevant assets, which shall demonstrate how the licence holder will comply with the general duty in condition 1.2, and justify why those policies and criteria are the most effective way of complying with that duty;
- (b) apply those policies and criteria; and
- (c) keep appropriate, accurate and readily accessible information about the relevant assets, including their condition, capability and capacity.

1.20 ORR may permit the licence holder to exclude from the definition of “relevant assets” assets of such description or classes as shall be provided to and approved by ORR.

1.21 The licence holder shall from time to time and when so directed by ORR:

- (a) review and, if necessary, revise the policies and criteria provided for in condition 1.19 to ensure that they remain sufficient to comply with the general duty in paragraph 1.2; and
- (b) publish any such revised policies and criteria.

Timetable planning

1.22 In complying with condition 1.2 the licence holder shall:

- (a) run an efficient and effective process, reflecting best practice, for establishing a timetable, and any changes to it; and
- (b) where necessary and appropriate, initiate changes to relevant industry processes,

so as to enable persons providing railway services and other relevant persons to plan their businesses with a reasonable degree of assurance and to meet their obligations to railway users.

Interpretation

1.23 In this condition:

“excluded assets”	means assets which are the subject of an exclusion granted under condition 1.21.
“network code”	means the set of rules called the “Network Code” which is incorporated by reference into, and therefore forms part of, each bilateral access contract between the licence holder and the beneficiary under that access contract.
“relevant assets”	means assets, other than excluded assets, in which the licence holder has an interest, legal or beneficial, including as owner, occupier, operator, lessee (of whatever rank) or as the holder of any other right.
“relevant industry processes”	means arrangements, whether contractual, regulatory or voluntary, to which the licence holder is a party, or is subject, which involve establishing, or making changes to, a timetable.
“relevant person”	means each train operator, each holder of an access option and each other person who has

been allowed to participate in the procedure for developing the timetable under Part D of the network code.

“route utilisation objective”

means the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or is likely to become, available during the period of the route utilisation strategy and with the licence holder’s performance of the duty in condition 1.2.

“potential provider or funder”

means any person who has expressed in writing to the licence holder a serious and credible:

- (a) interest in providing or intention to provide; or
- (b) interest in providing or intention to provide finance for or in connection with

either or both of:

- (i) services relating to railways; and
- (ii) a railway facility or a network, including one which is proposed to be constructed or is in the course of construction.

2 Timetable information for passengers

General duty

2.1 The licence holder shall provide access to appropriate, accurate and timely information relating to planned movements of trains on the licence holder's network, to enable railway passengers to plan their journeys.

Publication of national timetable

2.2 In complying with condition 2.1, the licence holder shall, except in so far as ORR may otherwise consent, publish, or procure the publication of, a national timetable of railway passenger services no later than 9 weeks before the date on which the national timetable is due to come into effect.

Changes to the national timetable

2.3 In complying with condition 2.1, the licence holder shall:

- (a) establish and maintain efficient and effective processes reflecting best practice; and
- (b) apply those processes to the greatest extent reasonably practicable having regard to all relevant circumstances,

so as to provide appropriate, accurate and timely information on relevant changes to holders of passenger licences so that the latter can in turn provide information to railway passengers on the planned movements of the trains concerned.

For the purposes of this condition 2, "relevant changes" are changes to the national timetable occasioned by:

- (i) any renewal, maintenance and enhancement of the network; or
- (ii) any restriction of use of which the licence holder is, or reasonably ought to be, aware.

2.4 The licence holder shall be in compliance with condition 2.3 where it has provided holders of passenger licences with access to information about relevant changes not less than 12 weeks before the date such changes are to have effect.

- 2.5 In relation to relevant changes notified less than 12 weeks before such changes are to have effect, the licence holder shall nonetheless be in compliance with condition 2.3 to the extent that it has provided holders of passenger licences with access to information about relevant changes by such time as enables them to provide information to rail passengers on the planned movement of trains not less than 9 weeks before such changes are to have effect.
- 2.6. In circumstances where the licence holder is not in compliance with condition 2.3 by virtue of condition 2.4 or condition 2.5, the licence holder shall not be in breach of condition 2.3 to the extent that:
- (a) it provides access to information about relevant changes to holders of passenger licences as soon as is reasonably practicable having regard to all relevant circumstances; and
 - (b) providing the information 9 weeks or more before the relevant changes are to have effect would conflict, to a significant degree, with its duty under condition 1.2.

Access to information for enquiry services

- 2.7 The licence holder shall grant access to information it holds on the planned movement of trains on its network to persons providing credible enquiry services relating to the operation of railway passenger services on the licence holder's network. The licence holder shall grant access to such information as these persons may reasonably require for the proper carrying out of their operations. The licence holder shall grant access to the information on reasonable terms (including the prices charged, means of access and confidentiality).

Part B Restrictions on activities

3 Financial indebtedness

3.1 Except with the written consent of ORR, the licence holder shall ensure that as at the end of the financial year to which the financial statements prepared under condition 11 relate:

- (a) the total amount of financial indebtedness of Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance shall not exceed 90 per cent of the Regulatory Asset Base of the licence holder applicable at that time; and
- (b) the total amount of financial indebtedness of the licence holder, any subsidiaries of the licence holder, Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance shall not exceed 100 per cent of the Regulatory Asset Base of the licence holder applicable at that time.

3.2 Without prejudice to condition 3.1:

- (a) the licence holder shall use reasonable endeavours to ensure that the total amount of financial indebtedness of Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance shall not at any time exceed 85 per cent of the Regulatory Asset Base of the licence holder applicable at that time;
- (b) if the total amount of financial indebtedness of Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance exceeds 85 per cent of the Regulatory Asset Base of the licence holder applicable at that time, the licence holder shall, within such time periods as ORR may notify as being appropriate in the circumstances:
 - (i) provide to ORR details of the steps it intends to take to reduce the amount to 85 per cent or below;
 - (ii) take those steps; and
 - (iii) provide to ORR evidence that it has taken those steps.

3.3 The licence holder shall provide, from time to time as requested by ORR and in any event every year in the regulatory financial statements it prepares pursuant to condition 11, confirmation that, in respect of the financial year to which the statements relate, it has complied, and, in respect of the following

financial year, it is likely to comply, with condition 3.1 and (where applicable) with condition 3.2(b) and, if so requested by ORR, evidence in support of that confirmation.

3.4 In this condition:

“financial indebtedness”

means any indebtedness of a financial nature of the relevant entity, for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance credit;
- (c) any bond, note, debenture, loan stock or other similar instrument;
- (d) any redeemable preference share;
- (e) any finance or capital lease;
- (f) any foreign currency derivative transaction protecting against or benefiting from fluctuations in foreign exchange rates;
- (g) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- (h) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; and
- (i) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in paragraphs (a) to (g) above,

and for the purposes of this condition 3:

- (a) financial indebtedness:
 - (i) is calculated by reference to the principal amount outstanding of any such financial indebtedness (and no mark to market value will be used to calculate its amount);

- (ii) excludes any financial indebtedness between the licence holder or any of the licence holder's subsidiaries and Network Rail Infrastructure Finance or any of Network Rail Infrastructure Finance's subsidiaries;
 - (iii) excludes any financial indebtedness between the licence holder and any of its subsidiaries;
 - (iv) excludes any financial indebtedness between any of the licence holder's subsidiaries;
 - (v) excludes any financial indebtedness between Network Rail Infrastructure Finance and any of its subsidiaries;
 - (vi) excludes any financial indebtedness between any of Network Rail Infrastructure Finance's subsidiaries; and
 - (vii) excludes any derivative transaction other than as set out in paragraph (f) above;
- (b) where financial indebtedness denominated in a foreign currency is hedged by a derivative of the type set out in paragraph (f) above, the principal amount outstanding shall be calculated by reference to the sterling amount payable under the relevant derivative; and
- (c) total financial indebtedness shall be calculated net of any cash or cash equivalents held by the licence holder and Network Rail Infrastructure Finance or their subsidiaries.

“Network Rail
Infrastructure
Finance”

has the meaning given to it by condition 4.34.

“Regulatory Asset
Base”

has the meaning given to it by condition 11.

4 Ring-fencing

Restriction of activities and financial ring-fence

4.1 Subject to conditions 4.5 to 4.13, except with the written consent of ORR, the licence holder shall not, and shall procure that its subsidiary undertakings shall not, conduct any business or carry on any activity other than the Permitted Business.

4.2 The licence holder shall, unless ORR otherwise consents:

(a) procure from Network Rail Infrastructure Finance a legally enforceable undertaking or undertakings in favour of the licence holder which shall provide that Network Rail Infrastructure Finance will not conduct any business or carry on any activity other than for the purpose of financing:

(i) the Permitted Business;

(ii) business or activities which the licence holder and any subsidiary of the licence holder are entitled to conduct or carry on under condition 4.10; or

(iii) any other business or activity of the licence holder for which ORR has given written consent under this condition 4

and shall ensure that all such undertakings, or undertakings with like effect, remain in force for so long as the licence holder remains the holder of this licence; or

(b) otherwise procure that Network Rail Infrastructure Finance does not conduct any business or carry on any activity other than for the purpose of financing those matters referred to in conditions 4.2(a)(i), (ii) and (iii).

4.3 The undertaking or undertakings referred to in condition 4.2 may be part of a contract to which the licence holder and Network Rail Infrastructure Finance are parties.

4.4 The licence holder shall not acquire or retain, without the written consent of ORR, shares in any related undertaking after the relevant date except:

- (a) shares in any body corporate which is a subsidiary of the licence holder, such shares having been acquired or retained only for a permitted purpose;
- (b) shares in a body corporate which conducts business only for a permitted purpose; and
- (c) investments acquired in the usual and ordinary course of the licence holder's treasury management operations, subject to the licence holder maintaining in force, in relation to those operations, a system of internal controls which complies with best corporate governance practice as required (or, in the absence of any such requirement, recommended) from time to time for a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority.

4.5 Nothing in this condition 4 shall prevent:

- (a) any affiliate in which the licence holder does not hold shares or any other investment from conducting any business or carrying on any activity;
- (b) the licence holder from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistently with the provisions of the licence;
- (c) the licence holder from performing the supervisory or management functions of a holding company in respect of any subsidiary in which it holds an interest consistently with provisions of the licence;
- (d) the licence holder from carrying on any business or conducting any activity to which ORR has given its consent in writing.

4.6 Where ORR has not given its consent under conditions 4.1 to 4.4, or 4.5(d), the licence holder and any subsidiary of the licence holder shall, notwithstanding conditions 4.1, 4.4 and 4.5, be entitled to conduct any business and to carry on any activity which is not for a permitted purpose (in this condition 4.6 "relevant other business") as long as such relevant other business is *de minimis* business, is not and does not involve the disposal of

land, and does not infringe any condition of any consent given by ORR under this licence.

- 4.7 The relevant other business will be “*de minimis* business” if the aggregate amount of all investments (determined in accordance with condition 4.8) made by the licence holder or any of its subsidiaries in all the relevant other business does not exceed, in the year commencing on 3 October 2002 or in any financial year ended 31 March, the indexed amount for that financial year.
- 4.8 For the purpose of condition 4.7:
- (a) “investment” means any form of expenditure or commitment to spend (whether of a capital or revenue nature) or liability (whether present, future, actual or contingent, each contingent liability being valued at the best estimate of the value of the liability that may result multiplied by the best estimate of the probability that it will result), including any liability pursuant to any guarantee or indemnity; and
 - (b) the “indexed amount” in respect of any financial year means the sum of £100 million plus the amount that is produced when £100 million is multiplied by the percentage change (whether expressed as a positive or negative figure) between the RPI as published or determined in respect of February in that financial year and as published or determined in respect of February 2004.
- 4.9 ORR may in writing designate any business or activity as not being a *de minimis* business for the purpose of the limitations in conditions 4.6 to 4.8. Such designation may be subject to conditions.

Prohibition on cross-default, encumbrances and intra-group transactions

- 4.10 From the relevant date, the licence holder shall not without the written consent of ORR:
- (a) enter into an agreement or arrangement incorporating a cross-default obligation; or
 - (b) continue or permit to remain in effect any agreement or arrangement incorporating a cross-default obligation subsisting on the relevant date

save that any cross-default obligation in existence at that date may remain in effect for so long as and provided that the cross-default obligation is solely referable to an arrangement or agreement entered into prior to the relevant date and the terms on which that loan or those facilities have been made available or of that agreement or arrangement as subsisting on that date are not materially varied to the detriment of the licence holder or otherwise made more onerous or, where there is such material variation of those terms, such change is outside the licence holder's effective control.

- 4.11 Condition 4.10 shall not prevent the licence holder from giving any guarantee permitted by and in compliance with the requirements of condition 4.14(a).
- 4.12 The licence holder shall procure from Network Rail Infrastructure Finance a legally enforceable undertaking or undertakings in favour of the licence holder which shall provide that Network Rail Infrastructure Finance shall not, without written consent of ORR, do any of the matters referred to in condition 4.10(a) and (b).
- 4.13 The undertaking or undertakings referred to in condition 4.12 may be part of a contract to which the licence holder and Network Rail Infrastructure Finance are parties.
- 4.14 Save with the written consent of ORR, the licence holder shall not after the relevant date:
- (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or guarantee any liability or obligation of another person other than on an arm's length basis, on normal commercial terms, for a permitted purpose and (where relevant) in accordance with condition 7; or
 - (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate of the licence holder otherwise than by way of:
 - (i) a dividend or other distribution out of distributable reserves, subject to conditions 4.29 to 4.32;

- (ii) repayment of capital;
- (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
- (iv) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis and on normal commercial terms;
- (v) repayment of any loan or payment of any interest on a loan not prohibited by condition 4.14(a);
- (vi) payments for the surrender of group corporation tax relief on a basis not exceeding the value of the benefit received; or
- (vii) an acquisition of shares in conformity with the restriction on the acquisition of shares set out in this licence, made on an arm's length basis and in accordance with normal commercial terms,

and provided always that (where relevant) such transfer, lease, licence or loan is made in accordance with condition 7.

Sufficiency of resources

4.15 The licence holder shall at all times act in a manner calculated to secure that it has sufficient management resources, financial resources and financial facilities to enable it to carry on the Permitted Business and to comply with its obligations under the Act and this licence.

Credit rating

4.16 The licence holder shall use all reasonable endeavours to ensure that the licence holder as issuer of any corporate debt maintains at all times an issuer credit rating which is an investment grade rating.

4.17 For the purpose of condition 4.16 "investment grade rating" means a rating recognised as investment grade by Standard and Poor's Rating Group (or any of its subsidiaries), by Moody's Investors Service Inc. (or any of its subsidiaries) or by Fitch Ratings Limited (or any of its subsidiaries) or by any other reputable credit rating agency which, in ORR's opinion, notified in writing

to the licence holder, has comparable standing in the United Kingdom and the United States of America.

Undertakings from ultimate holding company and from Network Rail Infrastructure Finance

- 4.18 The licence holder shall, unless ORR otherwise consents, procure from each company and any other person which is at any time an ultimate holding company of the licence holder a legally enforceable undertaking in favour of the licence holder. The undertaking shall provide that the person giving that undertaking (“the Covenantor”) will refrain from any action, and will procure that every subsidiary of the Covenantor (other than the licence holder and its subsidiaries) will refrain from any action, which would then be likely to cause the licence holder to breach any of its obligations under the Act or this licence.
- 4.19 The undertaking shall be in a form specified by ORR.
- 4.20 The undertaking shall be obtained within seven days of the company or other person in question becoming an ultimate holding company of the licence holder and shall remain in force for so long as the licence holder remains the holder of the licence and the Covenantor remains the ultimate holding company of the licence holder.
- 4.21 The licence holder shall, unless ORR otherwise consents, procure from each company or any other person which is at any time an ultimate holding company of the licence holder a legally enforceable undertaking in favour of the licence holder. The undertaking shall require the person giving that undertaking (“the Covenantor”) to give to the licence holder, and to procure that each subsidiary from time to time of the Covenantor (other than the licence holder and its subsidiaries) will give to the licence holder, all such information as may be necessary to enable the licence holder to meet its obligations under the Act and under this licence to provide documents and provide information to ORR and such additional information as ORR may require about the activities of the Covenantor and its subsidiaries and the financing of them.
- 4.22 The undertaking referred to in condition 4.21 shall be in a form specified by ORR.

- 4.23 The undertaking referred to in condition 4.21 shall be obtained within seven days of the company or other person in question becoming an ultimate holding company of the licence holder and shall remain in force for so long as the licence holder remains the holder of this licence and the Covenantor remains the ultimate holding company of the licence holder.
- 4.24 The licence holder shall, unless ORR otherwise consents, procure from Network Rail Infrastructure Finance a legally enforceable undertaking in favour of the licence holder. The undertaking shall require Network Rail Infrastructure Finance to give to the licence holder all such information in its possession as may be necessary to enable the licence holder to meet its obligations under the Act and under this licence to provide documents and provide information to ORR and such additional information as ORR may require about the activities of Network Rail Infrastructure Finance.
- 4.25 The undertaking referred to in condition 4.24 shall be in a form approved by ORR. The undertaking may be part of a contract to which the licence holder and Network Rail Infrastructure Finance are parties.
- 4.26 The licence holder shall:
- (a) deliver to ORR evidence (including a copy of all such undertakings) that the licence holder has complied with the obligation to procure any undertaking pursuant to conditions 4.18, 4.21 or 4.24;
 - (b) inform ORR immediately in writing if the directors of the licence holder become aware that any undertaking procured pursuant to conditions 4.2, 4.18, 4.21 or 4.24 has ceased to be legally enforceable or that its terms have been breached; and
 - (c) comply with any direction from ORR to enforce any of the undertakings procured pursuant to conditions 4.2, 4.18, 4.21 or 4.24.
- 4.27 The licence holder shall not, save with ORR's written consent, enter (directly or indirectly) into any agreement or arrangement with any ultimate holding company of the licence holder or any subsidiary of such ultimate holding company (other than a subsidiary of the licence holder) at a time when (a) an undertaking required pursuant to conditions 4.18 or 4.21 is not in place or (b) there is an unremedied breach of such undertaking.

4.28 The licence holder shall not, save with ORR's written consent, enter (directly or indirectly) into any agreement or arrangement with Network Rail Infrastructure Finance or any subsidiary of Network Rail Infrastructure Finance at a time when (a) an undertaking required pursuant to condition 4.24 is not in place or (b) there is an unremedied breach of such undertaking.

Payment of dividends

4.29 The directors of the licence holder shall not, without ORR's consent, declare or recommend a dividend and the licence holder shall not make any other form of distribution, within the meaning of section 263 of the Companies Act 1985, unless prior to the declaration, recommendation or making of the distribution (as the case may be) the licence holder shall have issued to ORR a certificate complying with the following requirements in conditions 4.30 and 4.31.

4.30 The certificate shall be in the following form:

"After making enquiries, the directors of the licence holder are satisfied:

- (i) that the licence holder is in compliance in all material respects with all obligations imposed on it by condition 4 of its network licence;
- (ii) that the payment of a dividend or making of a distribution of [] on [] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licence holder to be in breach to a material extent of any of these obligations in the future; and
- (iii) that such payment of dividend or making of distribution will not impair the ability of the licence holder to finance the Permitted Business."

4.31 The certificate shall be signed by a director of the licence holder and approved by a resolution of the board of directors of the licence holder passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.

4.32 Where the certificate has been issued in respect of the declaration or recommendation of a dividend, the licence holder shall be under no obligation to issue a further certificate prior to payment of that dividend provided such payment is made within six months of that certificate.

4.33 ORR in deciding whether to give its consent under conditions 4.1 to 4.4 may have regard, among other matters, to the risks imported to the Network Business by the activity in question and the benefits accruing, or likely to accrue, to the Network Business out of that activity.

4.34 In this condition:

“corporate debt” means any unsecured and unsubordinated borrowing of money having an initial maturity of five years or more;

“cross-default obligation” means a term of any agreement or arrangement whereby the liability of the licence holder or of Network Rail Infrastructure Finance to:

- (a) pay or repay any debt or other sum; or
- (b) do anything pursuant to a term of any agreement or arrangement to which that person is a party

arises or is increased or accelerated or is capable of arising, increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than an excluded party, unless that liability:

- (i) can arise only as a result of a default by a subsidiary of an excluded party; and
- (ii) that excluded party holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors; and
- (iii) that subsidiary carries on business only for a permitted purpose or for the matters referred to in condition 4.2(a)(ii) and (iii) or for the purpose of financing the matters referred to in subparagraphs (a)(i) to (iii) of condition 4.2;

“excluded party”	means the licence holder, Network Rail Infrastructure Finance, the Strategic Rail Authority and any successor to the Strategic Rail Authority which provides credit support to the licence holder or to Network Rail Infrastructure Finance;
“indebtedness”	means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing on them and all costs, charges, penalties and expenses incurred in connection with them;
“information”	shall include any documents, accounts, estimates, returns, forecasts or reports (whether or not prepared specifically at the request of ORR) of any description specified by ORR;
“Network Rail Infrastructure Finance”	means: <ul style="list-style-type: none">(i) Network Rail Infrastructure Finance plc; and(ii) (unless ORR otherwise consents) any other person which carries out the same, or substantially the same, functions as Network Rail Infrastructure Finance plc in relation to the financing of the licence holder;
“permitted purpose”	means the purposes of the Permitted Business;
“relevant date”	means 1 January 2003;
“RPI”	means the general index of retail prices published by the Office for National Statistics each month in respect of all items or: <ul style="list-style-type: none">(i) if the index for any month shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may, after consultation with the licence holder, determine to be appropriate in the circumstances; or(ii) if there is a material change in the basis of such index, such other index as ORR, after consultation with the licence holder, determines to be appropriate in the circumstances;
“subsidiary”	shall bear the same meaning as that attributed to it in section 736 of the Companies Act 1985;

- “subsidiary undertaking” shall bear the same meaning as that attributed to it in section 258 of the Companies Act 1985; and
- “ultimate holding company” means each of:
- (i) a holding company of the licence holder which is not itself a subsidiary of another company;
 - (ii) where a holding company of the licence holder which is not a subsidiary of another company has entered into an agreement relating to the exercise of voting rights in or the appointment or removal of directors of the licence holder or any company of which the licence holder is a subsidiary, every party to that agreement; and
 - (iii) where the exercise of voting rights in or the appointment or removal of directors of a holding company of the licence holder which is not a subsidiary of another company is controlled by an agreement, every party to that agreement.

5 Interests in rolling stock and train operators

- 5.1 Subject to condition 5.2, the licence holder shall not, except in so far as ORR may otherwise consent, be directly or indirectly interested in the ownership or operation of any railway vehicle in Great Britain.
- 5.2 Condition 5.1 shall not apply in respect of any railway vehicle:
- (a) used for any such purpose as is mentioned in sub-paragraph 1(b) or (c) of the scope of this licence; or
 - (b) forming part of the Royal Train.
- 5.3 The licence holder shall, without limitation to the generality of condition 5.1, be regarded as directly interested in the ownership or operation of railway vehicles where the licence holder:
- (a) has any legal or beneficial interest in any railway vehicle (in whole or in part); or
 - (b) has the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.
- 5.4 The licence holder shall, without prejudice to the generality of condition 5.1, be regarded as indirectly interested in the ownership or operation of any railway vehicle which is operated by any of its affiliates or in which the licence holder or any of its affiliates has any legal or beneficial interest (in whole or in part).
- 5.5 In this condition:
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|--------------------------|--|
| “holding company” | has the meaning given in section 736 of the Companies Act 1985; |
| “a substantial minority” | means a holding of, or an interest in, 10 per cent or more of the securities or of any class of securities in a body corporate, other than a subsidiary. |
- 5.6 For the purposes of determining whether a person has a substantial minority holding in a body corporate:
- (a) it is immaterial whether that holding is direct or through a nominee or trustee;

- (b) such holdings of the subsidiaries of a body corporate shall be treated as its own; and
- (c) where a body corporate is as a consequence of this condition to be treated as having more than one such holding in another body corporate, the holdings shall be aggregated and treated as a single holding.

6 Prohibition of cross-subsidy

6.1 The licence holder shall, except in so far as ORR may otherwise determine:

- (a) not give any unfair cross-subsidy to, nor receive any unfair cross-subsidy from, any affiliate or related undertaking of the licence holder; and
- (b) ensure that there is no unfair cross-subsidy as between the Network Business and any other business or activity of the licence holder or its affiliates.

6.2 The licence holder shall:

- (a) maintain accounting records for the Network Business which are separate from those of the other businesses and activities of the licence holder and its affiliates; and
- (b) maintain such other accounting records as ORR may reasonably require for the purpose of monitoring compliance with this condition 6.

Any accounting records maintained pursuant to this condition 6.2 shall comply with such accounting policies as ORR may reasonably require. The licence holder shall, when ORR so requires, allow such records and information to be audited (at the expense of the licence holder) by a person approved by ORR for the purpose of assessing compliance with this condition 6.

6.3 In this condition 6, "unfair cross-subsidy" shall not include investment capital provided by the licence holder for any new enterprise or project which does not or is not likely to have an initial rate of return at normal commercial levels.

6.4 This condition 6 shall not apply to any access charge.

6.5 Nothing which the licence holder is required to do or not do pursuant to this licence (apart from this condition 6), or pursuant to any enactment shall be regarded as cross-subsidy for the purposes of this condition 6.

7 Land disposal

7.1 The licence holder shall not dispose of any land otherwise than in accordance with the following paragraphs of this condition 7.

7.2 Save as provided in condition 7.3, the licence holder shall give to ORR not less than 3 months' prior written notice of its intention to dispose of any land. Having given such notice, the licence holder shall supply such further information as ORR may require relating to such land or the circumstances of such intended disposal or where such a disposal to a specific person is in contemplation the known relevant intentions of the person proposing to acquire such land. The licence holder shall supply the required information within seven days of the requirement being made, or such further time as allowed by ORR.

7.3 Notwithstanding conditions 7.1 and 7.2, the licence holder may dispose of any land:

(a) where:

(i) ORR has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:

(aa) transactions of a specified description; and/or

(bb) the disposal of land specified in the directions as excluded land; and

which specifies the intervals at which the general consent can be reviewed; and

(ii) the disposal of the land in question is effected pursuant to a transaction of a description specified in any directions given under condition 7.3(a)(i) or the land in question is specified in those directions as excluded land and the disposal is in accordance with any conditions to which the general consent under condition 7.3(a)(i) is subject; or

- (b) where the disposal in question is required by or under any enactment and for these purposes a disposal shall be treated as being under an enactment if:
 - (i) the licence holder agrees to the terms of a disposal which would otherwise be required under an enactment; or
 - (ii) the disposal would have been under an enactment had the acquiring party taken all the steps which were open for it to take providing that the acquiring party has acted with reasonable expedition and diligence.

7.4 Notwithstanding condition 7.1, the licence holder may dispose of any land specified in a notice given under condition 7.2 in circumstances where:

- (a) ORR confirms in writing that it consents to such disposal (which consent may be made subject to the acceptance by the licence holder of such conditions relating to railway use, network business or the carrying out of licensed activities as ORR may specify and the licence holder shall ensure that any such disposal shall be subject to those conditions); or
- (b) ORR has not, within the notice period referred to in condition 7.2, issued a direction for the purpose of this condition 7 requiring the licence holder not to proceed with such disposal and notifying the licence holder that it is entitled to be compensated appropriately for the loss of value (if any) as a result of ORR issuing a direction under this condition 7.4(b).

7.5 In this condition:

“disposal”	includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or knowingly permitting any encumbrance to subsist (other than an encumbrance subsisting on the date when the land was acquired by the licence holder or on 15 November 2001) or any other disposition to a third party, and “dispose” shall be construed
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accordingly;

“excluded land” means any land which is specified as such in directions issued under condition 2E.3; and

“land” includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land.

Part C Dealings with third parties

8 Stakeholder relationships

Purpose

- 8.1 The purpose of this condition is to ensure that the licence holder shall treat stakeholders in ways appropriate to their reasonable requirements in their capacity as stakeholders.

General duty

- 8.2 In achieving the purpose in condition 8.1, the licence holder shall, to the greatest extent reasonably practicable, deal with stakeholders:
- (a) with due efficiency and economy and in a timely manner; and
 - (b) with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced network facility owner and operator.

Specific obligations

- 8.3 The following obligations in this condition are without prejudice to the generality of the general duty in condition 8.2 and compliance with those obligations shall not be regarded as exhausting that general duty. In fulfilling each of those obligations the licence holder shall at all times comply with the general duty in condition 8.2.

Cooperation with the Mayor of London and TfL

- 8.4 The licence holder shall cooperate with the Mayor of London and TfL for the purpose of:
- (a) ensuring the efficient provision of railway services and of railway facilities; and
 - (b) coordinating where possible anticipated investment projects

to the extent that such matters affect, or may affect, both the licence holder's provision of railway services and those in respect of the which the Mayor of London and TfL have responsibility.

Cooperation with passenger representatives

- 8.5. Whenever reasonably requested to do so by the RPC and LTUC (as relevant) in connection with its licensed activities, the licence holder shall cooperate with the RPC and LTUC (as relevant) in respect of the proper performance of their respective statutory functions, including the provision of relevant information held by the licence holder.

Dealings with stakeholders

- 8.6. The licence holder shall publish information, by code of practice or otherwise, on the principles and procedures by which it will comply with its general duty in condition 8.2 sufficient to facilitate efficient and effective dealings between the licence holder and its stakeholders. The licence holder shall review and revise the information if so required by ORR.

Exception

- 8.7. Condition 8.2 does not apply to the performance by the licence holder of a contract or the exercise of any discretion conferred by a contract.

Interpretation

- 8.8. In this condition:

“stakeholder”	means:
	<ul style="list-style-type: none">(a) any person providing services relating to railways;(b) any person providing a railway facility or a network, including one which is proposed to be constructed or is in the course of construction;(c) any funder;(d) any other person who has expressed in writing to the licence holder a serious and

credible:

(i) interest in providing or intention to provide;
or

(ii) interest in providing or intention to provide
finance for or in connection with

either or both of:

(i) services relating to railways; and

(ii) a railway facility or a network, including
one which is proposed to be constructed or is
in the course of construction;

- (e) the Mayor of London and TfL in respect of
their functions related to the provision of
services relating to railways (including but
not limited to those for which the Mayor of
London and TfL have responsibility);
- (f) RPC and LTUC in respect of their respective
statutory functions.

9 Non-discrimination

9.1 Except in so far as ORR may otherwise consent, the licence holder shall not in its licensed activities, or in carrying out any other function contemplated by this licence, unduly discriminate between particular persons or between any classes or descriptions of person.

Part D Information requirements

10 Information for ORR

- 10.1 Subject to conditions 10.3 and 10.4, the licence holder shall provide to ORR such information as ORR may reasonably require for the purpose of carrying out any of its functions under Part I of that Act.
- 10.2 Information required to be provided under this condition 10 shall be provided in such form and manner and at such times as ORR may reasonably require.
- 10.3 This condition 10 shall not require the licence holder to provide to ORR information for the purposes of any function of ORR under sections 69 and 71 of the Act.
- 10.4 Neither this condition 10 nor any other condition shall require the licence holder to produce any documents or to provide any information:
- (a) for any purpose referred to in section 58 of the Act which it could not be compelled to produce or provide under that section; or
 - (b) which it could not be compelled to produce or to give in evidence in civil proceedings in any court.
- 10.5 Subject to condition 10.4, nothing in this condition 10 shall prejudice any right of ORR to require information under or pursuant to any other condition. The right of ORR to require information pursuant to this condition shall not be affected by any right to require information under or pursuant to any other condition.

11 Regulatory accounts

Purpose

11.1 The purpose of this condition 11 is to procure the provision of annual information on the financial performance and financial position of the licence holder, Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance which:

- (a) is relevant to ORR and other persons for the assessment and determination of the licence holder's access charges; and
- (b) allows the financial performance and financial position of the licence holder to be monitored against the Determination Assumptions.

General duty

11.2 To achieve the purpose in condition 11.1, the licence holder shall prepare regulatory financial statements in relation to itself and, unless ORR otherwise consents, to Network Rail Infrastructure Finance (and shall for such purpose maintain accounting records) in accordance with the following paragraphs of this condition 11 and any Regulatory Accounting Guidelines from time to time issued by ORR.

Specific obligations

11.3 The financial statements referred to in condition 11.2:

- (a) shall be prepared in respect of the financial year ended 31 March 2002 and (save as otherwise provided in this condition 11 or the Regulatory Accounting Guidelines) on a consistent basis in respect of each financial year;
- (b) shall be prepared such that, so far as is reasonably practicable, the definition of items in primary statements; the valuation of assets and liabilities; the treatment of income and expenditure as capital or revenue; adjustments in respect of the provision, utilisation, depreciation and amortisation of assets and liabilities; and any other relevant accounting policies shall be consistent with:

(i) ORR's valuation of the Regulatory Asset Base for the purpose of determining access charges; and

(ii) the Determination Assumptions for the corresponding period;

(and so that where the presentation of an item in the primary statements departs from the basis for the Regulatory Asset Base or the Determination Assumptions, a reconciliation shall be included by way of a note);

(c) shall include, as a primary statement, a statement of regulatory financial performance comparing income, expenditure, profits and losses for the period with the Determination Assumptions;

(d) shall include all details reasonably necessary to reconcile items included in the primary statements with any corresponding items in annual statutory accounts for the same period;

(e) shall include narrative explaining the material variances from the previous year and from the Determination Assumptions; and

(f) shall include confirmation that, in respect of the financial year to which the statements relate, it has complied, and in respect of the following financial year, it is likely to comply, with condition 3.1 and (where applicable) with condition 3.2(b), and, if so requested by ORR, evidence in support of that confirmation.

11.4 The licence holder shall make a statement, which shall be approved by a resolution of the board of directors of the licence holder and signed by a director of the licence holder pursuant to that resolution, certifying the adequacy (or otherwise) of the management resources and financial resources and facilities of the licence holder for the period of 18 months commencing on the date of the statement.

11.5 The statement made under condition 11.4 shall be in one of the following terms:

either:

(a) “After making enquiries, and subject to the outcome of any access charges review which is due to be concluded within the 18 month period referred to in this statement, the directors of the licence holder have a reasonable expectation that the licence holder will have available to it, after taking into account in particular, but without limitation:

- (i) any dividend or other distribution, loan repayments or other sums due which might reasonably be expected to be declared or paid;
- (ii) any mortgage, charge, pledge, lien or other form of security or other encumbrance; and
- (iii) any indebtedness or guarantee,

sufficient management resources and financial resources and financial facilities to enable the licence holder to carry on the activities authorised by its network licence in accordance with its obligations under the Act and under its network licence for the period of 18 months referred to in this statement.”

or:

(b) “After making enquiries, and subject to the outcome of any access charges review which is due to be concluded within the 18 month period referred to in this statement, the directors of the licence holder have a reasonable expectation, subject to the factors set out below, that the licence holder will have available to it, after taking into account in particular, but without limitation:

- (i) any dividend or other distribution, loan repayments or other sums due which might reasonably be expected to be declared or paid;
- (ii) any mortgage, charge, pledge, lien, or other form of security or other encumbrance; and
- (iii) any indebtedness or guarantee,

sufficient management resources and financial resources and financial facilities to enable the licence holder to carry on the activities authorised

by its network licence in accordance with its obligations under the Act and under its network licence for the period of 18 months referred to in this statement. However, they would like to draw attention to the following factors which may cast doubt on the ability of the licence holder to do this.”

or:

- (c) “In the opinion of the directors of the licence holder, the licence holder will not have available to it sufficient management resources and financial resources and financial facilities to enable the licence holder to carry on the activities authorised by its network licence in accordance with its obligations under the Act and under its network licence for the period of 18 months referred to in this statement.”

11.6 The licence holder shall submit to ORR details of the main factors which the directors of the licence holder have taken into account in making the statement under condition 11.4. In the case of a statement of the kind contemplated by condition 11.5(b) the licence holder shall also submit with the statement a description of the factors which may cast doubt on the ability of the licence holder to carry on the activities authorised by this licence as specified within it.

11.7 The licence holder shall -

- (a) notify ORR in writing immediately if its directors become aware of any circumstance that causes them no longer to have the reasonable expectation expressed in the statement made under condition 11.4 in the terms set out in condition 11.5(a) or (b); and
- (b) subject to complying, as if it were a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority, with the listing rules of the Financial Services Authority acting in its capacity as a competent authority for the purposes of Part VI of the Financial Services and Markets Act 2000, publish its notification to ORR in such form and manner as ORR may direct.

11.8 ORR may from time to time issue Regulatory Accounting Guidelines which may:

- (a) further specify the accounting policies, format and content of the financial statements and the matters to be shown or reported in them;
- (b) provide for appropriate segmental analysis and/or further breakdown of any items contained in the primary statements;
- (c) provide for specification or description of any transactions or arrangements between the licence holder and any affiliate or related undertaking (including, without limitation, so as to enable ORR to monitor compliance with the conditions of this licence); and
- (d) further include provision requiring the licence holder to prepare and publish information in respect of proposed enhancements which the licence holder shall log up as enhancement expenditure, and annually, information on those enhancements actually made.

11.9 The licence holder shall procure a report by the Auditors addressed to ORR:

- (a) stating whether, in their opinion, the regulatory financial statements (other than those referred to in condition 11.9(c)) and information on proposed enhancements have been prepared in accordance with this condition, including Regulatory Accounting Guidelines;
- (b) stating whether, in their opinion, the regulatory financial statements present fairly the financial performance and financial position of the licence holder and (to the extent that they relate to Network Rail Infrastructure Finance) of Network Rail Infrastructure Finance in accordance with this condition and any Regulatory Accounting Guidelines; and
- (c) stating whether the information on enhancement expenditure produced in accordance with condition 11.8(d) has been prepared in accordance with the Regulatory Accounting Guidelines and is consistent with such expenditure presented in the primary financial statements.

11.10 Each statement made under condition 11.4 shall be accompanied by a report prepared by the Auditors and addressed to ORR, stating whether the Auditors are aware of any inconsistencies between that statement and either the financial statements referred to in condition 11.2 or any information which the

Auditors obtained in the course of their audit work for the licence holder and, if so, what they are.

- 11.11 The licence holder shall enter into a contract of appointment with the Auditors which shall include a term that the Auditors will provide such further explanation or clarification of their reports and such further financial information in respect of the matters which are the subject of their reports as ORR may reasonably require for the exercise of its functions, including, in relation to monitoring, compliance by the licence holder with the conditions of this licence.
- 11.12 The licence holder shall deliver to ORR a copy of the financial statements together with any information provided for in the Regulatory Accounting Guidelines, the Auditors' report referred to in condition 11.9 and the statement referred to in condition 11.4 as soon as reasonably practicable and in any event not later than 1 July following the end of the financial year to which they relate (or a later date approved by ORR). The financial statements, information, the Auditors' report referred to in condition 11.9 and the statement referred to in condition 11.4, subject to any modifications approved by ORR, (including the deletion of any information the publication of which ORR is satisfied would or might seriously and prejudicially affect the interests of the licence holder or any other person), shall be published within one calendar month of delivery to ORR and then made available to any member of the public on request.
- 11.13 With a view to enabling the licence holder to comply with its obligations under condition 11.2, the licence holder shall, unless ORR otherwise consents, procure from Network Rail Infrastructure Finance a legally enforceable undertaking or undertakings in favour of the licence holder which shall require Network Rail Infrastructure Finance to prepare and give to the licence holder financial statements in relation to Network Rail Infrastructure Finance and its subsidiaries in such a form and covering such periods as may be specified in any Regulatory Accounting Guidelines from time to time issued by ORR.
- 11.14 The licence holder shall:
- (a) deliver to ORR evidence (including a copy of all such undertakings) that the licence holder has complied with the obligation to procure any undertaking pursuant to condition 11.13;

- (b) inform ORR immediately in writing if the directors of the licence holder become aware that any undertaking procured pursuant to condition 11.13 has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from ORR to enforce any of the undertakings procured pursuant to condition 11.13.

11.15 In this condition:

“Auditors”	means the person appointed by the licence holder for the purpose of reporting on the regulatory financial statements referred to in this condition 11;
“Determination Assumptions”	means any assumptions (including their definitions and bases of measurement) from time to time notified to the licence holder by ORR as assumptions that have been used for determining access charges;
“Network Rail Infrastructure Finance”	has the meaning given to it by condition 4.34
“Regulatory Accounting Guidelines ”	means any guidelines issued by ORR from time to time in accordance with condition 11.8; and
“Regulatory Asset Base”	means the asset values as from time to time notified to the licence holder by ORR as being asset values that have been or are to be used for determining access charges.

12 Annual return

- 12.1 The licence holder shall prepare and provide to ORR an annual return by 1 July each year (or a later date approved by ORR). The annual return shall be prepared in such format and structure, to such standard and level of detail and in accordance with such requirements as ORR shall specify by notice to the licence holder.
- 12.2 No notice of ORR under condition 12.1 shall be effective unless:
- (a) it is given on or before 31 December in the year before that in which the annual return is to be published; and
 - (b) ORR has consulted the licence holder before 31 October in the year before that in which the annual return is to be published and has taken into consideration any representations or objections timeously made and not withdrawn.
- 12.3. To the extent that a notice of ORR under condition 12.1 requires the inclusion of statistical and other data, the notice shall not be effective unless it is given on or before 31 December in the year which is two years before that in which the annual return is to be provided, or such shorter period as may be agreed with the licence holder.
- 12.4 If ORR has not given an effective notice under condition 12.1 in respect of any year, the notice last given under that condition shall apply to that year.
- 12.5 Within one calendar month of delivery to ORR, subject to any modification (including deletions on the grounds of confidentiality) approved by ORR, the licence holder shall publish the annual return, except to the extent that ORR is satisfied that the information would or might seriously and prejudicially affect the interests of the licence holder or any other person and has so notified the licence holder.

Periodic returns

- 12.6 The licence holder shall prepare and provide to ORR returns for each relevant period, in a form approved by ORR, as soon as reasonably practicable and in any event not later than 21 days after the end of the relevant period (or a later

date approved by ORR). In this condition 12.6 “relevant period” shall mean each of 13 consecutive periods in each financial year commencing on 1 April, each such period being 28 days in length, save that the length of the first and last period in such financial year shall be such as shall be adopted by the licence holder for its accounting purposes generally.

13 Reporters

- 13.1 The role of the Reporter is to provide ORR with independent, professional opinions and advice relating to the licence holder's provision or contemplated provision of railway services, with a view to ORR relying on those opinions or advice in the discharge by ORR of its functions under, or in consequence of, the Act. Where appropriate, ORR shall give the licence holder an opportunity to make representations on those opinions or advice before relying on them.
- 13.2 Subject to condition 13.3, ORR may require the Reporter to inquire and report:
- (a) into any matter considered by ORR as material to the setting by ORR of access charges;
 - (b) into any matter in respect of which the licence holder shall be required, by notice, to make an annual return pursuant to condition 12; and
 - (c) into any matter relating to the condition, capacity or capability of any premises or assets used or intended to be used for the provision of railway services by the licence holder.
- 13.3 The scope and content of any inquiry proposed to be undertaken by the Reporter in accordance with condition 13.2 shall be:
- (a) discussed with the licence holder;
 - (b) defined and costed in a written proposal made by the Reporter; and
 - (c) approved by ORR, subject to such modifications (if any) as it may reasonably require, having taken into account any representations by the licence holder.
- 13.4 The contract between the licence holder and the Reporter shall:
- (a) make provision for payment by the licence holder to the Reporter; and
 - (b) contain a term that the Reporter shall owe a duty of care to ORR

in respect of any inquiry conducted and report produced pursuant to this condition 13. The terms of the contract of appointment shall be subject to approval by ORR.

13.5 The licence holder shall comply with any Reporter Guidelines notified to it by ORR. Reporter Guidelines may (without limitation):

- (a) set out the criteria for the appointment and removal of the Reporter;
- (b) establish procedures for the appointment of the Reporter;
- (c) specify particular terms of the contract between the licence holder and the Reporter;
- (d) establish procedures for specifying and approving the scope and content of any inquiry undertaken by the Reporter under this condition 13; and
- (e) set out details of what is required to comply with the licence holder's duty to co-operate referred to in condition 13.6.

13.6 The licence holder shall, and shall procure so far as it is able to do so that its affiliates and its auditors shall, co-operate fully with the Reporter, so as to enable the Reporter to complete and report on any inquiry the Reporter is required to undertake under this condition 13.

13.7 In this condition:

“auditors” has the meaning given by condition 11.

14 Restricted use of information

14.1 The licence holder shall not, without the consent of the person who has provided protected information, authorise access to or disclose protected information other than:

- (a) to employees, agents, consultants, advisers and contractors of the licence holder who need to be informed for the effective conduct of licensed activities;
- (b) to the Secretary of State, Scottish Ministers, the Welsh Assembly Government or ORR; or
- (c) in compliance with the duties of the licence holder under the Act, conditions of any licence, any other enactment, any requirement of the Stock Exchange or any regulatory authority or pursuant to any judicial or arbitral process.

14.2 The licence holder shall take all reasonable steps to ensure that any such person as is referred to in condition 14.1(a) to whom the licence holder discloses, or whom the licence holder authorises to disclose, protected information, does not use that protected information for any purpose other than that for which it was provided to such person and does not disclose the protected information other than in accordance with the provisions of this condition 14.

14.3 In this condition:

“protected information”

means any information relating to the affairs of a particular person which has been provided to or obtained by the licence holder in the course of its dealings in connection with any actual or proposed agreement for which provision is made by the Act, but excluding information that is in or enters into the public domain otherwise than as a consequence of disclosure by the licence holder (or any person to whom it is disclosed by the licence holder) in contravention of conditions 14.1 and 14.2.

X Systems code

Requirement for a systems code

- X.1 The licence holder shall comply with the provisions of the systems code as approved by ORR.
- X.2 The licence holder may from time to time amend the systems code with the prior approval of ORR.

Publication

- X.3 The licence holder shall provide a copy of the systems code and the systems catalogue:
- (a) to each user who requests a copy; and
 - (b) to any other person who requests a copy, which may be on payment of a reasonable charge.

Derogations

- X.4 The licence holder may, in so far as ORR consents, be relieved of its obligation to comply with the systems code or a part of the systems code, subject to such conditions as ORR may require.
- X.5 In this condition:

- “code system” means a system which relates to data which:
- (a) is necessary for or in connection with the operation of trains on or access rights to the licence holder's network; or
 - (b) is expedient for or in connection with such operation and in respect of which the licence holder or any affiliate or related undertaking of the licence holder is the system owner.

“system”	means a computer application (not being an operating system, proprietary database, software package or other general-purpose substrate of an application) or a statement of the structure of a message and the means of exchanging it between two computer systems.
“systems catalogue”	means a document specifying: (a) each code system and its main function and features and describing the data exchanged by use of that system; and (b) In respect of each code system the name of the system owner and whether that system is categorised as a necessary code system or an expedient code system.
“systems Code”	means a code prepared by the licence holder which sets out the arrangements for obtaining access to, using and developing code systems.
“system Owner”	Means the person who owns the intellectual property in a system or controls (other than collectively) the right to modify it or has the right to licence it to Users.
“user”	means a beneficiary or an associate (within the meaning in section 17(7)) of the Act) under an access agreement in respect of, or an operator of a train being used on, the licence holder's network or a person who has applied or intends to apply for permission to use the licence holder's network under section 17 or 18 of the Act.

Part E Corporate matters

15 Governance

- 15.1 The licence holder shall conduct the Permitted Business as if it were substantially the licence holder's sole business and the licence holder were a separate public limited company.
- 15.2 Without limiting the generality of condition 15.1:
- (a) the licence holder shall ensure that each of its directors discloses to the licence holder and ORR any conflicts that in that director's reasonable consideration do or may arise between that director's duties as a director of the licence holder and other duties that that director may have; and
 - (b) in fulfilling its obligation under condition 15.1, the licence holder shall have regard, among other matters, to the dividend policy adopted by the licence holder in the light of conditions 4.29 to 4.32.
- 15.3 The licence holder shall comply, as if it were a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority, with the Principles of Good Governance and Code of Best Practice (or any successor document having a similar purpose and content) as may from time to time be incorporated into or approved for the purposes of the listing rules of the Financial Services Authority.
- 15.4 Subject to paragraph 15.5, the licence holder shall ensure that at all times the board of directors of the licence holder contains a majority of non-executive directors who shall be persons of standing and of which at least two shall each have satisfied ORR that he or she has substantial relevant experience of working in the railway industry.
- 15.5 If at any time the licence holder is, by virtue of any person ceasing to be a director of the licence holder, unable to ensure the outcome in paragraph 15.4, the licence holder shall take such steps as are necessary to ensure that that outcome is achieved as soon as reasonably practicable after that event and in any case within one month of that event.

16 Management incentive plan

Incentive policy

- 16.1 The licence holder shall implement and comply with the incentive policy referred to in the articles of association of Network Rail Limited, as amended, supplemented or replaced at the relevant time.
- 16.2 Unless ORR otherwise consents, the licence holder shall not amend or replace the incentive policy referred to in condition 16.1.
- 16.3 The licence holder shall procure from each company, or any other person which is at any time an ultimate holding company of the licence holder, a legally enforceable undertaking or undertakings in favour of the licence holder which shall provide that that ultimate holding company and its subsidiaries:
- (a) shall implement and comply with; and
 - (b) shall not, unless ORR otherwise consents, amend or replace;
- the incentive policy referred to in condition 16.1.

Management incentive plan

- 16.4 The licence holder shall send to ORR a management incentive plan (a MIP) under which the level of remuneration of the executive directors of the licence holder and such other persons as ORR may from time to time specify is expressly related to specified standards concerning their personal performance and the performance of the licence holder, in such a way as to enhance their incentives to improve those standards. Without prejudice to conditions 16.5 and 16.7, the MIP shall be aligned with the incentive policy referred to in condition 16.1.
- 16.5 When formulating the MIP the licence holder shall ensure that it creates appropriate incentives to comply with:
- (a) the licence holder's obligations under this licence;
 - (b) any conditions in the licence holder's access agreements; and

- (c) any objectives that ORR may specify from time to time, after consulting the licence holder, in connection with the MIP.
- 16.6 In applying the MIP, the licence holder must take account of the extent to which it has complied with the matters set out in condition 16.5.
- 16.7 Every time the licence holder sends a MIP to ORR, the licence holder shall publish and send to ORR a statement summarising the principal terms of the MIP and the principles underlying it, including:
- (a) details of the categories of persons to whom the MIP applies;
 - (b) the maximum entitlement of any such category of persons;
 - (c) the criteria to be applied in determining the level of remuneration (with particular regard, and making express reference, to each of the matters set out in condition 16.5) and the relative weighting given to each such criterion.
- 16.8 The licence holder shall send the MIP to ORR at least once a year. A new MIP shall be sent to ORR whenever there is any material change to the MIP's contents during the course of the year to which it relates.
- 16.9 The licence holder shall publish at least once a year a statement summarising how the criteria in condition 16.7(c) have been applied in determining the level of remuneration of the executive directors of the licence holder and such other persons as ORR may have specified. The statement shall have particular regard, and make express reference, to each of the matters set out in condition 16.5 and any assessment of the licence holder's performance provided by ORR during the course of the year to which it relates.
- 16.10 Without prejudice to condition 12, the obligations in this condition do not entail an obligation to publish the levels of remuneration paid to specified individuals.

Employee scheme

- 16.11 The licence holder shall maintain, implement and comply with an incentive scheme for employees other than those to whom the MIP applies (an

Employee Scheme). Without prejudice to condition 16.12, the Employee Scheme shall be aligned with the incentive policy referred to in condition 16.1.

16.12 When formulating the Employee Scheme, the licence holder shall have regard in particular to the considerations described in condition 16.5.

16.13 The licence holder shall send the Employee Scheme to ORR at least once a year and a new Employee Scheme shall be sent to ORR whenever there is any material change to the Employee Scheme's contents during the course of the year to which it relates.

16.14 Information required to be sent to ORR under this condition shall be provided in such form and manner and on such dates as ORR may require.

17 Financial information

- 17.1 The licence holder shall, at such times and in such ways as would, generally applied, from time to time be required by the listing rules of the Financial Services Authority, publish such information as is by those rules required to be announced by a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority.

18 Fees

18.1 In each year beginning on 1 April, the licence holder shall render to ORR a payment which is the aggregate of the following amounts:

- (a) the annual fee applicable to this licence, as determined by ORR; and
- (b) an amount which shall represent a fair proportion as determined by ORR of the amount estimated by ORR (in consultation with the Competition Commission) as having been incurred in the calendar year immediately preceding the 1 April in question by the Competition Commission in connection with references made to it under section 13 of the Act with respect to this licence or any class of licence of which ORR determines that this licence forms part,

and the payment shall be rendered by the licence holder within such time as ORR may require, being not less than 30 days beginning with the day on which ORR gives notice to the licence holder of its amount.

19 Change of control

- 19.1 The licence holder shall, if any person obtains control of the licence holder, notify the Secretary of State and ORR as soon as practicable.

Part F Standard industry obligations

20 Insurance

20.1 The licence holder shall, in respect of licensed activities, maintain insurance against third party liabilities in accordance with any relevant ORR general or specific approval, as amended from time to time.

21 Claims allocation and handling

21.1 The licence holder shall, except in so far as ORR may otherwise consent, at all times be a party to such agreements or arrangements relating to:

- (a) the handling of claims against operators of railway assets; and
- (b) the allocation of liabilities among operators of railway assets

as may have been approved by ORR.

21.2 Except with the consent of ORR, the licence holder shall not, in relation to any of the agreements or arrangements described in condition 21.1 (the "relevant claims handling arrangements"), enter into any agreement or arrangement with any other party to the relevant claims handling arrangements:

- (a) under which the licence holder agrees not to exercise any rights which it may have under any of the relevant claims handling arrangements; or
- (b) varying the relevant claims handling arrangements,

other than as provided for under the terms of the relevant claims handling arrangements.

22 Safety and standards

22.1 The licence holder shall:

- (a) be a member of RSSB and a party to the constitution agreement;
- (b) comply with its obligations under the constitution agreement and the articles of association of RSSB; and
- (c) exercise its rights under the constitution agreement and the articles of association of RSSB so as to ensure that RSSB shall act in accordance with the constitution agreement.

22.2 The licence holder shall comply with the code and such Railway Group Standards as are applicable to its licensed activities.

22.3 In this condition:

“code”	means the Railway Group Standards Code established by RSSB,;
“constitution agreement”	means the contract of that name which sets out the purpose and governance of RSSB and to which members of RSSB must be a party;
“Railway Group Standards”	means standards authorised pursuant to the Code;
“RSSB”	means Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675).

23 Environment

- 23.1 The licence holder shall, taking due account of any relevant guidance issued to it by ORR, within 6 months beginning with the day on which this licence came into force establish a written policy designed to protect the environment from the effect of licensed activities, together with operational objectives and management arrangements to give effect to the policy. The licence holder shall review the policy, the operational objectives and the management arrangements periodically and otherwise as appropriate. Nothing contained in this condition 23 shall oblige the licence holder to undertake any action that entails excessive cost taking into account all the circumstances, including the nature and scale, of operations of the type carried out by the licence holder.
- 23.2 The licence holder shall, upon establishment and any material modification of them, promptly send ORR a copy of the policy together with a general description of the operational objectives and management arrangements.
- 23.3 The licence holder shall act with regard to the policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.

Schedule - Revocation

1. The Secretary of State may, after consultation with the Office of Rail Regulation, at any time revoke this licence by not less than 3 months' notice to the licence holder:
 - (a) if the licence holder agrees in writing with the Secretary of State that this licence should be revoked; or
 - (b) if a final order has been made, or a provisional order has been confirmed under section 55 of the Act, in respect of any contravention or apprehended contravention by the licence holder of any condition, and the licence holder does not comply with the order within a period of 3 months beginning with the day on which the Secretary of State gives notice to the licence holder stating that this licence will be revoked pursuant to this term if the licence holder does not so comply; provided that the Secretary of State shall not give any such notice before the expiration of the period within which an application could be made under section 57 of the Act in relation to the order in question or before any proceedings relating to any such application are finally determined; or
 - (c) if the licence holder ceases to carry on licensed activities for a continuous period of at least one year;
 - (d) if any person obtains control of the licence holder and:
 - (i) the Secretary of State has not approved that obtaining of control;
 - (ii) within one month of that obtaining of control coming to the notice of the Secretary of State, the Secretary of State serves notice on the licence holder stating that the Secretary of State proposes to revoke this licence in pursuance of this paragraph unless the person who has obtained control of the licence holder ceases to have control of the licence holder within the period of 3 months beginning with the day of service of the notice; and
 - (iii) that cessation of control does not take place within that period.

2. The Secretary of State may, after consultation with the ORR, revoke this licence forthwith by notice to the licence holder if the licence holder commits a serious breach of the Railways (Safety Case) Regulations 2000.