

Notice of modification of Network Rail Infrastructure Limited's network licence

Schedule 1: Mark-up of Network Rail's network licence showing the modifications.

DEPARTMENT OF TRANSPORT

NETWORK LICENCE

granted to

~~**RAILTRACK PLC**~~

~~**(now known as**~~

NETWORK RAIL

INFRASTRUCTURE LIMITED)

~~**(formerly**~~

~~**RailtrackRAILTRACK PLC)**~~

[Including modifications
up to ~~16 August 2005~~ **12 April 2007**]

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Part I - Scope of the Licence

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](#)

Part II - 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”	<p>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:</p> <p>(i) for the words "the greater part" wherever they occur in the said sub-section (2) there shall be substituted the words "30 per cent or more"; and</p> <p>(ii) in the said 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;</p>
“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 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 sub- paragraph (i);
	and, without <u>limitation</u> prejudice to the generality of the foregoing , 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 sub-paragraphs (i) to (vii) of paragraph 7(b) of Condition <u>12.7(b)(i) to (vii)</u> ;
<u>“ORR”</u>	<u>means the Office of Rail Regulation;</u>
“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 26), 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;
<u>“TfL”</u>	<u>means Transport for London.</u>

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 in this licence there is a provision for ~~the Office of Rail Regulation~~ORR to give its consent, ~~the Office of Rail Regulation~~ORR may give such consent subject to conditions.
6. The provisions of section 149 of the Act shall apply for the purposes of the service of any document pursuant to this licence.
7. The Interpretation Act 1978 shall apply to this licence as if it were an Act.
8. 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.

Part III - Conditions

Condition 1: Insurance ~~against Third Party Liability~~

~~1.1. The licence holder shall, in respect of licensed activities, maintain insurance (including self insurance) against third party liabilities on terms approved by the Office of Rail Regulation (including, but without limitation, with respect to the type, cover, level and identity of insurer) with any such modification as may be required pursuant to Condition 1.3 ~~paragraph 3~~.~~

~~1.2. The licence holder shall, except as the Office of Rail Regulation may otherwise consent, procure that every insurance policy maintained pursuant to Condition 1.1 ~~paragraph 1~~ shall bear an endorsement to the effect that 30 days' notice shall be given to the Office of Rail Regulation by the insurer or insurance broker of any lapse or cancellation of, or material change to, the policy.~~

~~1.3. Where the Office of Rail Regulation notifies the licence holder that the Office of Rail Regulation reasonably requires any modification of the insurance approved by the Office of Rail Regulation pursuant to ~~paragraph 1~~ Condition 1.1 the licence holder shall, no later than 60 days (or such longer period as the Office of Rail Regulation may approve) from the date of the notice, procure that such modification is made.~~

~~1.4. In this Condition:~~

“self insurance”	means the licence holder's financial capacity to meet any liability to a third party in respect of which the licence holder does not otherwise have insurance.
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1.1 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.

Condition 2: Claims Allocation and Handling

2.1:- The licence holder shall, except in so far as ~~the Office of Rail Regulation~~ ORR may otherwise consent, at all times be a party to such agreements or arrangements relating to:

~~(a) — the allocation, among operators of railway assets, of liabilities to persons other than such operators; and~~

~~(ba)~~ the handling of claims ~~by or on behalf of such persons~~ against ~~such~~ operators of railway assets; and

(b) the allocation of liabilities among operators of railway assets

as may have been approved by ~~the Office of Rail Regulation~~ ORR.

2.2:- Except with the consent of ~~the Office of Rail Regulation~~ ORR, the licence holder shall not, in relation to any of the agreements or arrangements described in Condition 2.1 paragraph 1 ~~paragraph 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 those arrangements.

Condition 3: ~~Provision of Timetable Information [Deleted]~~

- ~~1. The licence holder shall, except in so far as the Secretary of State may otherwise consent, publish or procure the publication of a national timetable of railway passenger services.~~
- ~~2. The licence holder shall grant to any such persons operating telephone enquiry bureaux relating to the operation of railway passenger services on the licence holder's network as may be designated or approved under a scheme approved by the Secretary of State, access to such information held by the licence holder relating to planned movements of trains on the licence holder's network as they may reasonably require for the proper carrying on of their operations, on such terms (including the prices charged, means of access and confidentiality) as may be agreed or (in the absence of agreement) as the Secretary of State may require.~~
- ~~3. Subject to paragraph 4, the licence holder shall provide access to information in accordance with paragraph 2 in relation to all such changes to the national timetable not less than 12 weeks prior to the date such changes are to have effect.~~
- ~~4. The licence holder shall not be in breach of its obligation under paragraph 3 to the extent that any delay in determining particular changes which are reasonable and appropriate occurs:~~
 - ~~(a) wholly in consequence of a train operator's delay or failure to provide information reasonably required by the licence holder to determine such changes provided always that the licence holder shall have taken all reasonable steps to obtain that information; and~~
 - ~~(b) the licence holder is and continues to be reasonably satisfied that, having regard to the interest of passengers in having timely and accurate information in respect of such changes, the delay will better satisfy those interests.~~

Condition 4: [Deleted]

Condition 5: Rail Passengers' Council (RPC) and London Transport Users' Committee (LTUC)

5.1.- Whenever reasonably requested to do so in connection with its ~~functions under Part I of the Act~~licensed activities by ~~either the Rail Passengers' Council or and~~ LTUC (where relevant) for any area in which the licence holder carries on licensed activities in respect of their respective statutory functions, the licence holder shall attend and participate in any meeting between ~~such the~~ RPC and, where ~~appropriate~~relevant, LTUC (on the one hand) and (on the other hand) any passenger service operator who may be or may have been affected by licensed activities. The licence holder shall not under this Condition be obliged to attend more than 2 meetings with the RPC and LTUC (as relevant) in any calendar year.

5.2.- The licence holder shall provide the ~~Rail Passengers' Council~~RPC ~~or and~~ LTUC (as relevant) such information as satisfies all the following conditions:

- (a) the RPC and, ~~where appropriate,~~ LTUC (as relevant) reasonably requests the information for the purpose of the proper performance of ~~their respective statutory~~its ~~functions under Part I of the Act;~~
- (b) no undue burden is imposed on the licence holder in procuring or furnishing the information; and
- (c) unless the RPC and, ~~where appropriate,~~ LTUC (as relevant) considers the information essential to enable ~~them~~it to exercise ~~its~~their relevant statutory ~~functions under Part I of the Act,~~ the information would normally be available to the licence holder.

5.3.- Where:

- (a) the licence holder and the RPC ~~and, where appropriate, or~~ LTUC or both disagree as to the reasonableness of a request made to the licence holder by the RPC and LTUC (as relevant) under Condition 5.1 or 5.2 paragraph 1 or paragraph 2; and
- (b) either any party refers the dispute;

- (i) ~~to the Regulator in the case of a reference prior to 1 February 2001;~~
- (ii) ~~to the Strategic Rail Authority in the case of a reference on or after 1 February 2001 and prior to 24 July 2005;~~
- (iii) ~~to the Office of Rail Regulation~~ORR, ~~in case of a reference on or after 24 July 2005; and~~
- (c) ~~— prior to 1 February 2001 the Regulator determines that the request is reasonable, on or after 1 February 2001 and prior to 24 July 2005 the Strategic Rail Authority determines that the request is reasonable, and thereafter the Office of Rail Regulation~~ORR determines that the request is reasonable.

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the licence holder shall promptly ~~thereafter~~ comply with the request.

- 5.4. Where the licence holder also holds another licence ~~in respect of any area in which the licence holder is the operator of a network pursuant to this licence~~, the number specified as a maximum in this Condition 5 shall apply jointly to meetings under this Condition and to meetings under any corresponding condition of that other licence.

Condition 6: Safety and Standards

Establishment and constitution

- ~~1. The licence holder shall procure the transfer to RSSB of (or the making available of a sufficient interest in) the property and rights owned or used by, and the liabilities of, Railway Safety (a company limited by guarantee and registered in England and Wales under number 03937800) relevant to the functions of RSSB at such time and upon such terms and conditions as the Office of Rail Regulation shall determine and notify to the licence holder.~~
- ~~2. The corporate governance and activities of RSSB shall be regulated by its memorandum and articles of association and an agreement to be entered into by RSSB and its members to be known as the "Constitution Agreement".~~

Primary Obligations

~~3.6.1~~ The licence holder shall:

- ~~(a) do all things within its power to bring the Constitution Agreement into effect;~~
- ~~(b)(a) become and remain 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.

The Constitution Agreement

Primary objective and principles of operation

~~4. The Constitution Agreement shall set out the primary objective of RSSB as specified in paragraph 5 of this Condition and shall require that primary objective to be implemented in the manner specified in paragraphs 6 and 7 of this Condition.~~

~~5. RSSB's primary objective shall be to lead and facilitate the railway industry's work to achieve continuous improvement in the health and safety performance of the railways in Great Britain and thus to facilitate the reduction of risk to passengers, employees and the affected public so far as is reasonably~~

~~practicable, so aiding compliance by providers of railway services with their obligations under health and safety law.~~

~~6. In relation to the pursuit of the primary objective, the Constitution Agreement shall require RSSB:~~

~~(a) to exercise its functions in a manner best calculated to achieve an appropriate balance between the need:~~

~~(i) to protect the interests of users of railway services;~~

~~(ii) to promote the use of the rail network in Great Britain for the carriage of passengers and goods, and the development of that rail network, to the greatest extent economically practicable;~~

~~(iii) to promote efficiency and economy on the part of persons providing railway services;~~

~~(iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance;~~

~~(v) to facilitate the furtherance by the SRA of any strategies which it has formulated with respect to its purposes, including by having due regard to the appraisal criteria, expenditure priorities and budgets which form part of those strategies; and~~

~~(vi) to contribute to the development of an integrated system of transport of passengers and goods; and~~

~~(b) where it is necessary to impose restrictions on railway industry parties, to do so to the extent proportionate to the achievement of RSSB's primary objective and having regard to the criteria set out in sub-paragraphs 6(a)(i) — (vi) of this Condition.~~

~~7. The Constitution Agreement shall require RSSB to carry out its functions in a transparent and non-discriminatory way, and where appropriate to encourage and foster co-operation between railway industry parties to achieve RSSB's primary objective.~~

Health and safety leadership

8. The Constitution Agreement shall require RSSB:

~~(a) in consultation with its members, representatives of other stakeholders, the SRA and the HSE, to develop and publish the Railway Group Safety Plan;~~

~~(b) to monitor and report on the railway industry's health and safety performance and facilitate the collection and flow of information on health and safety matters in the railway industry;~~

~~(c) to maintain a current record of:~~

~~(i) recommendations of accident investigations and formal inquiries;~~

~~(ii) the responses of all the organisations to which the respective recommendations are directed; and~~

~~(iii) the state of progress towards implementation within timescales recommended or prescribed by such investigations or formal inquiries;~~

~~(d) to disseminate and encourage adoption of good practice and encourage and facilitate co-operation in each case on health and safety matters in the railway industry;~~

~~(e) in consultation with its members, to facilitate the effective representation of the railway industry (including direct representation by RSSB of one or more railway industry parties if so agreed with those parties) in subject areas relevant to RSSB's primary objective in discussions with other industries, other railway companies and organisations, public bodies and European Union institutions; and~~

~~(f) in consultation with its members, representatives of other stakeholders, the HSE and the SRA and within the constraints imposed by funding available from the SRA or other sources for this purpose, to develop and implement a programme of health and safety related research and development.~~

~~Railway Group Standards Code and standards setting~~

~~9. The Constitution Agreement shall require RSSB:~~

~~(a) to establish the Railway Group Standards Code in the form approved or determined by the Office of Rail Regulation;~~

~~(b) to comply with the provisions of the Code (as revised from time to time with the prior approval of its members in general meeting and the Office of Rail Regulation); and~~

~~(c) from time to time or when so directed by its members in general meeting or the Office of Rail Regulation and in consultation with its members and representatives of other stakeholders, to review the provisions of the Code and its implementation and propose revisions to the Code so as better to give effect to this Condition.~~

~~10. The Code shall be a code whose objectives promote the primary objective of RSSB as set out in paragraph 5 of this Condition and the principles of operation of RSSB as set out in paragraphs 6 and 7 of this Condition (subject to such transitional provisions as may be approved or determined by the Office of Rail Regulation in respect of Railway Group Standards in the course of preparation when the Code is established) and which:~~

~~(a) establishes procedures for the review and monitoring of the effectiveness of Railway Group Standards;~~

~~(b) establishes procedures for the creation of new Railway Group Standards, and the modification or abolition of existing Railway Group Standards, which are such as to:~~

~~(i) provide for a fair and balanced representation and participation in such procedures by experienced and competent persons from all classes of stakeholders likely to be materially affected;~~

~~(ii) provide for proposals for the creation, modification or abolition of Railway Group Standards to be fully and fairly considered (other than any which are trivial or vexatious), and for full and proper consultation with the HSE and the SRA;~~

~~(iii) provide for Railway Group Standards to be consistent with European Technical Specifications for Interoperability in force for the time being;~~

~~(iv)provide for an accelerated procedure for the creation, modification or abolition of Railway Group Standards in specified circumstances to remedy material non-compliance with RSSB's primary objective; and~~

~~(v)provide for any stakeholder aggrieved in any material respect by a decision in respect of the creation, modification or abolition of a Railway Group Standard to have the matter reviewed by the board of directors of RSSB and thereafter, if dissatisfied with the results of such review, to have the matter referred to the Office of Rail Regulation for determination;~~

~~(c)requires RSSB, where there are reasonable grounds for considering that the creation, modification or abolition of a Railway Group Standard is necessary or expedient, to propose such action and pursue it in accordance with the procedures referred to in sub-paragraph (b) above; and~~

~~(d)authorises the Railway Group Standards in force from time to time.~~

~~11.The Constitution Agreement shall prescribe that RSSB shall:~~

~~(a)publish the Code and any modifications to it in such form or manner and with such frequency as the Office of Rail Regulation may require;~~

~~(b)provide a copy of the Code and any modification to it to every licence holder, other members of RSSB, the SRA, the HSE and the Office of Rail Regulation;~~

~~(c)publish a catalogue of current Railway Group Standards; and~~

~~(d)provide a copy of the Code and any Railway Group Standard or proposed Railway Group Standard and of the catalogue referred to in sub-paragraph (c) above to any person requesting a copy.~~

~~The Constitution Agreement shall prescribe that RSSB may charge for the provision of copies under sub-paragraph (d) above. Such charge shall not exceed an amount which in the opinion of the Office of Rail Regulation is reasonable.~~

~~12.The Constitution Agreement shall prescribe that RSSB may publish from time to time such information as may be necessary or expedient to facilitate the comprehension and efficient and economic application of standards (including European Technical Specifications for Interoperability) falling within the scope of RSSB's primary objective.~~

Other functions

~~13.The Constitution Agreement shall provide that RSSB may, subject to the approval of members in general meeting and of the Office of Rail Regulation, propose and implement arrangements for it to carry out activities (in addition to those set out in paragraphs 8 to 12 of this Condition) related to RSSB's primary objective and its principles of operation as set out in paragraphs 6 and 7 of this Condition or which facilitate improvements in the safety, efficiency or performance of railways in the United Kingdom.~~

~~Annual Report~~

~~14.The Constitution Agreement shall require RSSB, as soon as practicable after the end of each period of 12 months ending on 31 March, or such other date determined by the Office of Rail Regulation, to produce to the Office of Rail Regulation and the HSE and publish (in such form and manner determined by the Office of Rail Regulation):~~

~~(a)a report on its activities in respect of its functions during that period, including a general survey of developments during that period in relation to health and safety on the rail network; and~~

~~(b)a report for that period in respect of the matters specified in paragraph 8(c) of this Condition.~~

~~Information~~

~~15.The Constitution Agreement shall require RSSB to provide to the Office of Rail Regulation such information relating to its activities as the Office of Rail Regulation may reasonably require for the purpose of carrying out any of its functions under Part I of the Act other than any information which it could not be compelled to produce or to give in evidence in civil proceedings in any court.~~

~~Establishment, amendment and termination~~

~~16.The Constitution Agreement and the memorandum and articles of association of RSSB, any amendments to any of them and the termination of the Constitution Agreement:~~

~~(a)shall be consistent with the requirements of this Condition; and~~

~~(b)require the prior approval of the Office of Rail Regulation before they may have effect.~~

~~Other provisions of the Constitution Agreement~~

17. ~~The Constitution Agreement and the articles of association of RSSB shall:~~

- ~~(a) establish the basis for the corporate governance of RSSB and set out the extent of the powers and authority of RSSB's board of directors to manage it;~~
- ~~(b) provide for a reasonable level of funding and resourcing of RSSB;~~
- ~~(c) permit suppliers and train operators who are not required by the terms of a licence under the Act to become members of RSSB to become parties to the Constitution Agreement on request and to be members of RSSB, subject to their agreement to be bound by the terms of the Constitution Agreement;~~
- ~~(d) permit other infrastructure controllers to become parties to the Constitution Agreement on request and to be members of RSSB, subject to the prior approval of the Office of Rail Regulation and to the agreement of such other infrastructure controllers to be bound by the terms of the Constitution Agreement;~~
- ~~(e) specify the powers reserved to the members of RSSB in general meeting;~~
- ~~(f) provide for the establishment of an advisory committee to give advice to RSSB relating to the exercise of its functions consisting of representatives of stakeholders, with the ability for other interested parties such as the HSE and the Office of Rail Regulation to attend meetings of the advisory committee;~~
- ~~(g) provide that directors of RSSB (other than those non-executive directors appointed by railway industry parties or the SRA in accordance with the Constitution Agreement) may only be removed from office with the prior approval of the Office of Rail Regulation;~~
- ~~(h) give the SRA, the HSE and the Office of Rail Regulation the right to address the board of directors of RSSB and its members in general meeting;~~
- ~~(i) provide that no relevant employee of RSSB shall have a disqualifying interest except with the approval of the Office of Rail Regulation;~~
- ~~(j) provide that RSSB shall conduct its affairs so as to ensure compliance by the licence holder with paragraphs 5 to 17 of this Condition;~~

~~(k)provide that the licence holder shall be entitled to require RSSB to take such steps as may be necessary in order to enable the licence holder to comply with any provisional or final order made by the Office of Rail Regulation under section 55 of the Act in respect of paragraphs 5 to 17 of this Condition;~~

~~(l)contain provisions which give effect to paragraphs 4 to 16 of this Condition; and~~

~~(m)(without prejudice to paragraph 16(b) of this Condition) contain arrangements for its own amendment.~~

Additional obligations of the licence holder

~~18.The licence holder shall:~~

~~(a)not waive any rights under the Constitution Agreement or the articles of association of RSSB without the prior approval of the Office of Rail Regulation;~~

~~(b)promptly notify the Office of Rail Regulation of any breach of any obligation under the Constitution Agreement or the articles of association of RSSB of which the licence holder is aware or could reasonably be expected to be aware; and~~

~~(c)co-operate with RSSB to facilitate the achievement of its primary objective and the performance of its functions.~~

~~19.The licence holder shall maintain such records concerning compliance with its obligations under this Condition as the Office of Rail Regulation may require.~~

Compliance with the Railway Group Standards Code and Railway Group Standards

~~20.6.2~~ The licence holder shall comply with the Code and such Railway Group Standards as are applicable to its licensed activities.

Turnover qualification

~~21.If the licence holder's annual turnover has never exceeded £1 million, paragraphs 1 to 19 of this Condition shall not (unless the licence holder provides services for the carriage of passengers by railway under a franchise agreement) have effect until the licence holder's annual turnover exceeds £1 million for the first time. The licence holder shall provide the Office of Rail Regulation with such~~

information in respect of its annual turnover as the Office of Rail Regulation may from time to time require.

Interpretation

~~22.6.3~~ Where the approval of the Office of Rail Regulation is required or a determination of the Office of Rail Regulation is given or a requirement or direction of the Office of Rail Regulation is made under:

(a) sub-paragraphs 10(b)(v), 11(a), 17(g), 17(i) or 18(a) of this Condition or paragraph 14 or 19 of this Condition, such approval, determination, requirement or direction may be given or, as the case may be, made only after consultation with the HSE; and

(b) paragraphs 10 (first paragraph) or 13 of this Condition or sub-paragraphs 9(a), 9(b), 9(c), 16(b) or 17(d) of this Condition, such approval, determination, requirement or direction may be given or, as the case may be, made only after consultation with the HSE and the SRA.

~~23.~~ In this Condition:

“all employee share scheme” means any Inland Revenue approved employee share scheme established by a company under which it is a condition of such approval that participation is offered generally to all employees of the company and its participating subsidiaries or to all such employees fulfilling conditions as to length of service;

“benefit” includes any payment, profit, gain or advantage however expressed, established, given or made;

“Code” means the Railway Group Standards Code ~~contemplated by paragraph 9 of this Condition and whose objectives are set out in paragraph 10 of this Condition~~ established by RSSB, ~~compliance with which by licence holders whose licences incorporate provisions dealing with the subject matter of this Condition and by RSSB is mandatory;~~

“Constitution Agreement” means the contract of that name ~~contemplated in paragraph 2~~ which sets out the purpose and governance of RSSB and to which members of RSSB must be a party; ~~and which is required to comply with paragraphs 4—17 of this Condition;~~

“disqualifying interest”	means an interest in any benefit which concerns or is determined by reference to the commercial activities or affairs of any person engaged in or likely to be engaged in the provision of services relating to railways but shall not include an entitlement to participate in an all employee share scheme established by any such person;
“funder”	means the SRA, each Passenger Transport Executive and any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) 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 in respect of the rail network;
“infrastructure controller”	has the meaning ascribed to it by the Railways (Safety Case) Regulations 2000;
“interest”	in relation to a benefit, includes the possession, receipt or expectation of or entitlement to an interest;
“publish”	in relation to any document or instrument, includes placing that document or instrument on the website of RSSB in a position and with links which enable visitors to that site to locate it quickly and without difficulty, and cognate expressions shall be construed accordingly;
“rail network”	<p>means:</p> <p>(a)the network of which Network Rail Infrastructure Limited or any successor organisation or organisations is the infrastructure controller; and</p> <p>(b)the network of which any other infrastructure controller which is for the time being a member of RSSB in accordance with sub paragraph 17(d) of this Condition is the infrastructure controller;</p>

“Railway Group”	<p>means:-</p> <p>(a) Network Rail Infrastructure Limited the licence holder and any successor organisation and any train operator or station operator which holds a railway safety case under the Railways (Safety Case) Regulations 2000 for operation on or in relation to infrastructure controlled by Network Rail Infrastructure Limited or any successor organisation;</p> <p>(b) any other infrastructure controller which is a member of RSSB and any other train operator or station operator which holds a railway safety case under the Railways (Safety Case) Regulations 2000 for operation on or in relation to infrastructure controlled by that infrastructure controller; and</p> <p>(c)(a) RSSB;</p>
“Railway Group Safety Plan”	<p>means a plan setting out the collective health and safety performance and objectives of Railway Group members and the activities planned to deliver those objectives, focusing in particular on the encouragement and facilitation of good practice and on co-operation;</p>
“Railway Group Standards”	<p>means:-</p> <p>(a) technical standards with which railway assets or equipment used on or as part of railway assets by or on behalf of Railway Group members must conform; and</p> <p>(b) operating procedures with which the operators of railway assets must comply;</p> <p>compliance with which will contribute significantly to the safe operation of the rail network and the safe operation and safe interworking of railway assets used or to be used on or in connection with the rail network in each case as authorised pursuant to the Code;</p>
“railway industry”	<p>means members of the Railway Group and suppliers;</p>
“railway industry party”	<p>means a person who is:-</p> <p>(a) a member of the Railway Group; or</p> <p>(b) a supplier;</p>

“relevant employee”	<p>means:</p> <p>(a) every director of RSSB and every other person who has decisive authority in respect of any aspect of RSSB’s activities (whether or not an employee of RSSB); and</p> <p>(b) the spouse, partner and dependent children of any such person;</p>
“RSSB”	<p>means Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675);¹²</p>
“stakeholder”	<p>means:</p> <p>(a) any member of the Railway Group and any person who notifies RSSB of its intention to become a member of the Railway Group;</p> <p>(b) any supplier and any person who notifies RSSB of its intention to become a supplier;</p> <p>(c) any funder;</p> <p>(d) any body representing rail users;</p> <p>(e) any trade union, any of whose members are employed by any persons falling within paragraphs (a) and (b) above; and</p> <p>(f) such other persons as RSSB reasonably considers are appropriate in order to help to meet its primary objective;</p>
“station operator”	<p>means any person holding a licence under section 8 of the Act or a railway safety case under the Railways (Safety Case) Regulations 2000 in respect of the operation of a station on the rail network;</p>
“supplier”	<p>means:</p> <p>(a) any person other than a train operator or infrastructure controller whose business activities or any goods which he manufactures or owns must comply, directly or indirectly, with Railway Group Standards or Technical Specifications for Interoperability; and</p> <p>(b) any person other than a train operator or infrastructure controller who supplies goods or services to the railway industry and whose business activities are, in the opinion of the board of directors of RSSB acting reasonably, pertinent to the achievement of the primary objective of RSSB; and</p>
“train operator”	<p>means any person holding a licence under section 8 of the Act or a railway safety case under the Railways (Safety Case) Regulations 2000 in respect of the operation of trains on the rail network.</p>

Condition 7: Stewardship of the Licence Holder's Network

7.1- *Purpose*

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 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.

7.2- *General duty*

The licence holder shall take such steps as are necessary or expedient so as to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.

7.3- *Criteria*

7.3.1 The licence holder shall develop and publish the criteria which it will apply to comply with the duty including its method of determining the priority and timing of different types of work, the parts of the network on which it will be carried out, the priority to be accorded to the different requirements of the persons and funders referred to in Condition 7.1 paragraph 1 and (in each case) the basis for reviewing such priority.

7.3.2 The criteria provided for in paragraph 3.1-Condition 7.3.1 shall be published on such date as the Office of Rail Regulation ORR shall specify after consultation with the licence holder.

7.3.3 The licence holder shall from time to time and when so directed by ~~the Office of Rail Regulation~~ORR -

- (a) review the criteria to determine whether they are sufficient to comply with the duty; and
- (b) revise the criteria so as to make them sufficient to comply with the duty, and shall publish any such revised criteria.

7.3A. *Route utilisation strategies*

7.3A.1 The licence holder shall establish and maintain route utilisation strategies -

- (a) in respect of the network in its entirety; and
- (b) in respect of parts of the network,

to which it will have due regard when carrying out the licensed activities.

7.3A.2 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 ~~the Office of Rail Regulation~~ORR;
- (b) in accordance with -
 - (i) the criteria provided for in ~~paragraph 3.1~~ Condition 7.3.1;
 - (ii) such other matters as ~~the Office of Rail Regulation~~ORR shall have specified in the guidelines referred to in ~~paragraph 3A.2(c)~~ Condition 7.3A.2(c); and
 - (iii) the process set out in ~~paragraph 3A.3~~ Condition 7.3A.3; and
- (c) in such format and structure, to such standard, in respect of such periods and in accordance with such other matters as ~~the Office of Rail Regulation~~ORR shall, from time to time, specify in guidelines to the licence holder.

7.3A.3 The process for establishing a route utilisation strategy shall be as follows -

- (a) the licence holder shall develop a draft route utilisation strategy in consultation with:
 - (i) providers and potential providers of services relating to railways;
 - (ii) funders and potential funders of services relating to railways;
 - (iii) the ~~Rail Passengers' Council RPC~~ ~~or such other public body or bodies as may be performing that Council's duties~~, other representatives of persons using services for the carriage of passengers by railway, and representatives of persons using services for the carriage of goods by railway; and
 - (iv) the Secretary of State and, in relation to a route utilisation strategy that involves Scotland-only services or cross-border services, the Scottish Ministers;
- (b) after concluding the consultation referred to in ~~paragraph 3A.3(a)~~ Condition 7.3A.3(a), the licence holder shall publish the draft route utilisation strategy, specifying a reasonable period within which representations or objections with respect to the draft route utilisation strategy may be made;
- (c) as soon as practicable after the period for receiving representations or objections on the draft route utilisation strategy has expired, and having taken account of any representations or objections received, the licence holder shall provide the route utilisation strategy which it proposes to establish to ~~the Office of Rail Regulation~~ORR and on the same day shall publish it and any representations or objections received under Condition 7.3A.3(b); and
- (d) the route utilisation strategy shall be established within the meaning of Condition 7.3A.1~~paragraph 3A.1~~, in the terms of the route utilisation strategy provided to ~~the Office of Rail Regulation~~ORR and published under ~~paragraph 3A.3(c)~~ Condition 7.3A.3(c), 60 days after the date on which it was so provided and published, unless ~~the Office of Rail Regulation~~ORR shall have given a notice of objection in relation to it before the end of that 60 day period.

7.3A.4 A notice of objection under ~~paragraph 3A.3(d)~~ Condition 7.3A.3(d) -

- (a) may be given if ~~the Office of Rail Regulation~~ORR considers that the proposed route utilisation strategy is deficient in either of the following ways:
 - (i) it does not fulfil the requirements of ~~paragraph 3A.2~~ Condition 7.3A.2;
 - (ii) it does not adequately promote the route utilisation objective;
- (b) shall specify the ways in which, in ~~the Office of Rail Regulation~~ORR's consideration, the proposed route utilisation strategy is deficient; and
- (c) shall be given by serving a copy on the licence holder and on the Secretary of State and, where appropriate, on the Scottish Ministers, and by publishing it.

7.3A.5 If ~~the Office of Rail Regulation~~ORR has given a notice of objection in accordance with ~~paragraph 3A.3(d)~~ Condition 7.3A.3(d) in respect of any proposed route utilisation strategy -

- (a) the licence holder shall, no later than 60 days after the notice of objection has been given, provide to ~~the Office of Rail Regulation~~ORR a revised proposal for a route utilisation strategy which:
 - (i) remedies the deficiencies specified in the notice of objection;
 - (ii) fulfils the requirements of Condition 7.3A.2(b) (i) ~~paragraph 3A.2(b)(i)~~ and (ii) and 7.3A.2(c); and
 - (iii) adequately promotes the route utilisation objective
 and shall, on the same day, publish it; and
- (b) the route utilisation strategy shall be established within the meaning of Condition 7.3A.1 ~~paragraph 3A.1~~, in the terms of that revised proposal, 30 days after the date on which that revised proposal was so provided and published, unless ~~the Office of Rail Regulation~~ORR shall have given a notice, before the end of that 30 day period:
 - (i) stating that the revised proposal has failed to remedy the deficiencies specified in the notice of objection or introduces a further deficiency in relation to which (had that deficiency been present in the proposed route utilisation strategy provided to ~~the~~

~~Office of Rail Regulation~~ORR and published under ~~paragraph 3A.3(e)~~ Condition 7.3A.3(c)) a notice of objection could have been given; and

- (ii) specifying the ways in which, in ~~the Office of Rail Regulation~~ORR's consideration, the revised proposal is deficient.

The notice shall be given by serving a copy on the licence holder and on the Secretary of State and, where appropriate, on the Scottish Ministers, and by publishing it.

7.3A.6 The licence holder shall publish each route utilisation strategy established in accordance with Condition 7.3A.3(d) ~~paragraph 3A.3(d)~~ or, as the case may be, Condition 7.3A.5(b) ~~paragraph 3A.5(b)~~, as soon as practicable after establishment and, in any event, no later than 15 days after establishment.

7.3A.7 Each route utilisation strategy shall be reviewed by the licence holder -

- (a) from time to time; and
- (b) when so directed by ~~the Office of Rail Regulation~~ORR

and, if necessary, the licence holder shall propose amendments of that route utilisation strategy to ensure that it:

- (i) promotes the route utilisation objective; and
- (ii) is in accordance with the criteria and matters referred to in Condition ~~paragraph 7.3A.2(b)(i) and (ii)~~.

The provisions of ~~paragraphs~~ Conditions 7.3A.2, 7.3A.3, 7.3A.4, 7.3A.5 and 7.3A.6 shall apply to the amendment of a route utilisation strategy under this ~~paragraph~~ Condition 7.3A.7 as to a new route utilisation strategy.

7.3A.8 Where this Condition 7 provides for anything to be done by any person within a particular period of time or on or by a particular day or date, ~~the Office of Rail Regulation~~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.

7.4- *Annual business plan*

7.4.1 The licence holder shall prepare, provide to ~~the Office of Rail Regulation~~ORR and publish a business plan in respect of the next following ten years.

7.4.2 The business plan shall—

- (a) be provided to ~~the Office of Rail Regulation~~ORR and be published no later than 31 March in each year or such other date as ~~the Office of Rail Regulation~~ORR may, after consulting the licence holder, specify;
- (b) be prepared in such level of detail, in such format and structure, to such standard and in respect of such periods (within the ten-year period to which the business plan relates) as ~~the Office of Rail Regulation~~ORR shall by notice to the licence holder specify so as to enable—
 - (i) providers and potential providers of services relating to railways to plan their businesses; and
 - (ii) funders and potential funders of services relating to railways to plan their future financial and service requirements

in each case with a reasonable degree of assurance.

7.4.3 No notice of ~~the Office of Rail Regulation~~ORR under ~~paragraph Condition~~ 7.4.2(b) shall be effective unless—

- (a) it is given on or before 31 October in the year before the year in which the business plan is to be published; and
- (b) ~~the Office of Rail Regulation~~ORR has first consulted the licence holder and taken into consideration any representations or objections timeously made and not withdrawn.

7.4.4 A notice given by ~~the Office of Rail Regulation~~ORR under ~~Condition~~ 7.4.2(b) may specify different levels of detail, different standards and different periods in respect of different parts or aspects of the business plan.

7.4.5 If ~~the Office of Rail Regulation~~ORR has not given a notice under ~~paragraph Condition~~ 7.4.2(b) in respect of any year, the notice last given under that ~~paragraph Condition~~ shall apply to that year.

7.4.6 The licence holder shall be excused from the obligation to publish any part of the business plan to the extent that ~~the Office of Rail Regulation~~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.

7.5: *Contents of business plan*

The business plan shall demonstrate the way in which the licence holder expects to carry out the duty and satisfy the criteria. In that respect and without prejudice to the generality of ~~paragraph~~ Condition 7.4.2(b), the business plan shall include—

- (a) ...;
- (b) projections of future network quality and capability requirements;
- (c) planned activities and volumes of work in respect of the carrying out of—
 - (i) relevant activities; and
 - (ii) network services in relation to the licence holder's network to be carried out by any other person;
- (d) the expected effect of relevant activities on the quality and capability of the network, the quality of network services and the ability of users to provide improved services to their customers;
- (e) the expected effect of relevant activities on the outputs required of the licence holder and established in the last access charges review;
- (f) a plan for identifying and managing the material risks which are likely to be faced in carrying out relevant activities;
- (g) a statement of the licence holder's expected expenditure in carrying out relevant activities in the format used by ~~the Office of Rail~~ RegulationORR in that respect in the last access charges review;

- (h) forecasts of cashflow, profit and loss and balance sheets, prepared on an annual basis in the same format as required in the Regulatory Accounting Guidelines established under Condition 22;
- (i) the steps which the licence holder plans to take to secure the necessary finance to enable it to carry out the relevant activities, including details of the licence holder's—
 - (i) existing and planned borrowings; and
 - (ii) liquidity management and hedging policies;
- (j) ...;
- (k) a statement of the material changes to the business plan compared with the business plan for the immediately preceding year;
- (l) such further information as ~~the Office of Rail Regulation~~ ORR may by notice to the licence holder require.

7.6- *Consultation*

The licence holder shall consult persons providing, or potential providers of, services for or in connection with services relating to railways and funders regarding their present and future proposals in the provision of such services relating to the railways.

7.7 *Records*

The licence holder shall maintain adequate information as to the actions it has taken to comply with its obligations under this Condition 7.

7.8- *Interpretation*

In this Condition—

- “business plan” means the plan provided for in ~~paragraph Condition 7.5~~;
- “criteria” means the criteria referred to in ~~paragraph Condition 7.3~~;
- “duty” means the duty set out in ~~paragraph Condition 7.2~~;

“funder”	means the Strategic Rail Authority , each Passenger Transport Executive and any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) 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;
“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;
“the purpose”	means the purpose set out in Condition 7.1;
“railway service performance”	includes, in particular, performance in securing each of the following in relation to railway services – (a) reliability (including punctuality); (b) the avoidance or mitigation of passenger overcrowding; and (c) that journey times are as short as possible;
“relevant activities”	means the activities which are necessary or expedient in order to carry out the duty;
“relevant asset categories”	means track, signalling and telecommunications, structures, electrification equipment, stations, maintenance depots, real and heritable property, information systems and such other categories of material asset as are necessary or expedient so as to facilitate compliance by the licence holder with the duty;
“relevant period”	means each of thirteen 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;
“route utilisation strategy”	means, in respect of the network or a part of the network, a strategy which will promote the route utilisation objective; and
“route utilisation objective”	means the effective and efficient use and development of the capacity available, 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.

Condition 8: Environmental Matters

- 8.1- The licence holder shall, taking due account of any relevant guidance issued to it by ~~the Office of Rail Regulation~~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 ~~paragraph~~Condition 8.1 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.
- 8.2- The licence holder shall, upon establishment and any material modification of them, promptly send ~~the Office of Rail Regulation~~ORR a copy of the policy together with a general description of the operational objectives and management arrangements.
- 8.3- The licence holder shall act with regard to the policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.

Condition 9: Timetabling

Development of the national timetable

9.1:- The licence holder shall grant to:

- (i) holders of passenger licences; and
- (ii) holders of station licences,

access to such information held by the licence holder relating to planned movements of trains on the licence holder's network as they may reasonably require for the proper carrying on of their respective operations, on such terms (including the prices charged, means of access and confidentiality) as may be agreed or (in the absence of agreement) as ~~the Office of Rail Regulation~~ORR may require.

9.2:- Subject to ~~paragraph Condition 9.47~~, the licence holder shall:

- (a) plan its renewal, maintenance and enhancement of the network in a timely and efficient manner to enable it to specify its requirements for temporary changes to the national timetable (except in respect of changes arising from emergencies or severe weather conditions) so that the procedures to revise the national timetable in respect of such changes can be completed not less than 12 weeks prior to the date of any such change; and
- (b) provide access to information in accordance with ~~paragraph Condition 9.1~~ in relation to all such changes to the national timetable not less than 12 weeks prior to the date such changes are to have effect.

9.3:- The licence holder shall:

- (a) consult with train operators in carrying out such planning;
- (b) notify ~~the Office of Rail Regulation~~ORR if the licence holder considers that any non-compliance by a train operator with its contractual or licence obligations in relation to the procedures referred to in ~~paragraph Condition 9.2~~ is wilful or persistent and is likely to prevent it complying with ~~paragraph Condition 9.2(b)~~; and

- (c) use reasonable endeavours to resolve promptly any disputes arising under such procedures so as to prevent or minimise the risk of delay in providing access to the information in accordance with ~~paragraph~~ Condition 9.2.

Provision of timetabling information

~~9.4.~~ The licence holder shall, except in so far as ~~the Secretary of State~~ ORR may otherwise consent, publish or procure the publication of a national timetable of railway passenger services.

~~9.5.~~ The licence holder shall grant to any such persons operating ~~telephone~~ enquiry bureaux relating to the operation of railway passenger services on the licence holder's network as may be designated or approved under a scheme approved by the Secretary of State, access to such information held by the licence holder relating to planned movements of trains on the licence holder's network as they may reasonably require for the proper carrying on of their operations, on such terms (including the prices charged, means of access and confidentiality) as may be agreed or (in the absence of agreement) as the Secretary of State may require.

~~9.6.~~ Subject to ~~paragraph~~ Condition 9.7, the licence holder shall provide access to information in ~~accordance with Condition 9.~~ paragraph 25 in relation to all such changes to the national timetable not less than 12 weeks prior to the date such changes are to have effect.

~~9.47.~~ The licence holder shall not be in breach of its obligation under ~~paragraphs~~ Conditions 9.2 and 9.6 to the extent that any delay in determining particular changes which are reasonable and appropriate occurs:

- (a) wholly in consequence of a train operator's delay or failure to provide information reasonably required by the licence holder to determine such changes provided always that the licence holder shall have taken all reasonable steps to obtain that information; and
- (b) the licence holder is and continues to be reasonably satisfied that, having regard to the interest of passengers in having timely and accurate information in respect of such changes, the delay will better satisfy those interests.

Condition 10: Non-Discrimination

- 10.1. Except in so far as ~~the Office of Rail Regulation~~ 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.

Condition 11: Prohibition of Cross-subsidy

11.1. The licence holder shall, except in so far as ~~the Office of Rail Regulation~~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.

11.2. 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 ~~the Office of Rail Regulation~~ORR may reasonably require for the purpose of monitoring compliance with this Condition 11.

Any accounting records maintained pursuant to this ~~paragraph~~ Condition 11.2 shall comply with such accounting policies as ~~the Office of Rail Regulation~~ORR may reasonably require. The licence holder shall, when ~~the Office of Rail Regulation~~ORR so requires, allow such records and information to be audited (at the expense of the licence holder) by a person approved by ~~the Office of Rail Regulation~~ORR for the purpose of assessing compliance with this Condition 11.

11.3. In this Condition 11, "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.

11.4. This Condition 11 shall not apply to any access charge.

11.5. Nothing which the licence holder is required to do or not do pursuant to this licence (apart from this Condition 11), or pursuant to any enactment shall be regarded as cross-subsidy for the purposes of this Condition 11.

Condition 12: Ring-fencing

Restriction of activities and financial ring-fence

12.1.1 Subject to ~~paragraphs Conditions 12.3, 12.4 and 12.5,~~ except with the written consent of ~~the Office of Rail Regulation~~ 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.

12.1.2 The licence holder shall, unless ~~the Office of Rail Regulation~~ 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 ~~paragraph 5.1 of this~~ Condition 12.5.1; or
 - (iii) any other business or activity of the licence holder for which ~~the Office of Rail Regulation~~ ORR has given written consent under this Condition 12

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 ~~sub-paragraphs (i), (ii) and (iii) of Conditions 12.1.2~~ sub-paragraph (a) (i), (ii) and (iii).

12.1.3 The undertaking or undertakings referred to in ~~paragraph Condition 12.1.2~~ may be part of a contract to which the licence holder and Network Rail Infrastructure Finance are parties.

12.2.- The licence holder shall not acquire or retain, without the written consent of ~~the Office of Rail Regulation~~ 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.

12.3 ~~[not used]~~ ~~3.1—The licence holder shall use reasonable endeavours to cease to conduct or carry on any such business or activity prohibited by paragraph 1 of this Condition which it was conducting or carrying on at the acquisition date.~~

~~3.2—The licence holder shall submit to the Office of Rail Regulation by 30 June in each year a report setting out details of the endeavours it has made to cease to conduct or carry on such business or activity in the period of twelve months ending on the preceding 31 March, provided that for so long as the licence holder is making such reasonable endeavours, it may continue to conduct any such business or carry on any such activity.~~

~~3.3—The obligations in paragraphs 3.1 and 3.2 shall not apply to discrete projects consisting of the exploitation of land (which includes the disposal of land within the meaning of Condition 26) carried on at or before the acquisition date so long as, in respect of each such project, at the acquisition date:~~

- ~~(a)—the works carried out are substantially in progress or have been completed; or~~
- ~~(b)—the licence holder is subject to a legally binding obligation substantially to carry out the works or to complete the works.~~

12.4- Nothing in this Condition 12 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 ~~the Office of Rail Regulation~~ORR has given its consent in writing.

12.5.1 Where ~~the Office of Rail Regulation~~ORR has not given its consent under ~~paragraph Conditions 12.1, paragraph 12.2 or paragraph 12.4(d)~~, the licence holder and any subsidiary of the licence holder shall, notwithstanding ~~paragraphs Conditions 12.1.1, 12.2 and 12.3~~, be entitled to conduct any business and to carry on any activity which is not for a permitted purpose (in this ~~paragraph Condition 12.5.1~~ “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 ~~the Office of Rail Regulation~~ORR under this licence.

12.5.2 The relevant other business will be “*de minimis* business” if the aggregate amount of all investments (determined in accordance with ~~sub-paragraph Condition 12.5.3~~ below) made by the licence holder or any of its subsidiaries in all the relevant other business does not exceed, in the year commencing ~~with the acquisition date on 3 October 2002~~ or in any financial year ended 31 March, the indexed amount for that financial year.

12.5.3 For the purpose of ~~paragraph Condition 12.5.2~~:

- (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.

12.5.4 ~~The Office of Rail Regulation~~ ORR may in writing designate any business or activity as not being a *de minimis* business for the purpose of the limitations in this Condition 12, ~~paragraph~~ 5. Such designation may be subject to conditions.

Ring-fence: prohibition on cross-default, encumbrances and intra-group transactions

12.6.1 From the relevant date, the licence holder shall not without the written consent of ~~the Office of Rail Regulation~~ 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.

12.6.2 ~~Paragraph Condition 12.6.1~~ shall not prevent the licence holder from giving any guarantee permitted by and in compliance with the requirements of ~~paragraph~~ Condition 12.7(a) ~~(i) of this Condition~~.

12.6.3 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 ~~the Office of Rail Regulation~~ ORR, do any of the matters referred to in Condition 12.6.1(a) and (b) ~~sub-paragraphs (a) and (b) of paragraph 6.1 of this Condition~~.

12.6.4 The undertaking or undertakings referred to in ~~paragraph~~ Condition 12.6.3 may be part of a contract to which the licence holder and Network Rail Infrastructure Finance are parties.

12.7:- Save with the written consent of ~~the Office of Rail Regulation~~ 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:

~~(i)~~ — on an arm's length basis, on normal commercial terms, for a permitted purpose and (where relevant) in accordance with Condition 26; or

~~(ii)~~ — indebtedness incurred by the licence holder to the Authority;

(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 ~~paragraph~~ Condition 12.15;

(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 ~~paragraph~~ Condition 12.7(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 26.

Sufficiency of resources

12.8. 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.

Ring-fence: credit rating

12.9. 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.

12.10. For the purpose of ~~paragraph 9 of this~~ Condition 12.9 "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 ~~the Office of Rail Regulation~~ 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

12.11- Undertaking not to put the licence holder in breach:

12.11.1 The licence holder shall, unless ~~the Office of Rail Regulation~~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.

12.11.2 The undertaking shall be in a form specified by ~~the Office of Rail Regulation~~ORR.

12.11.3 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.

12.12- Undertaking to provide information:

12.12.1 The licence holder shall, unless ~~the Office of Rail Regulation~~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 furnish information to ~~the Office of Rail Regulation~~ORR and such additional information as ~~the Office of Rail Regulation~~ORR may require about the activities of the Covenantor and its subsidiaries and the financing of them.

12.12.2 The undertaking referred to in ~~paragraph-Condition 12.12.1~~ shall be in a form specified by ~~the Office of Rail Regulation~~ORR.

12.12.3 The undertaking referred to in ~~paragraph-Condition 12.12.1~~ 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.

12.12.4 The licence holder shall, unless ~~the Office of Rail Regulation~~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 furnish information to ~~the Office of Rail Regulation~~ORR and such additional information as ~~the Office of Rail Regulation~~ORR may require about the activities of Network Rail Infrastructure Finance.

12.12.5 The undertaking referred to in ~~paragraph-Condition 12.12.4~~ shall be in a form approved by ~~the Office of Rail Regulation~~ORR. The undertaking may be part of a contract to which the licence holder and Network Rail Infrastructure Finance are parties.

12.13: The licence holder shall:

- (a) deliver to ~~the Office of Rail Regulation~~ORR evidence (including a copy of all such undertakings) that the licence holder has complied with the obligation to procure any undertaking pursuant to ~~paragraphs-Conditions 12.11 or 12.12~~;
- (b) inform ~~the Office of Rail Regulation~~ORR immediately in writing if the directors of the licence holder become aware that any undertaking procured pursuant to ~~paragraphs-Conditions 12.1.2, 12.11 or 12.12~~ has ceased to be legally enforceable or that its terms have been breached; and

- (c) comply with any direction from ~~the Office of Rail Regulation~~ ORR to enforce any of the undertakings procured pursuant to ~~paragraphs Conditions 12.1.2, 12.11 or 12.12.~~

12.14.1 The licence holder shall not, save with ~~the Office of Rail Regulation~~ 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 ~~paragraphs Conditions 12.11 or 12.12.1~~ is not in place or (b) there is an unremedied breach of such undertaking.

12.14.2 The licence holder shall not, save with ~~the Office of Rail Regulation~~ 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 ~~paragraph Condition 12.12.4~~ is not in place or (b) there is an unremedied breach of such undertaking.

Payment of dividends

12.15.1 The directors of the licence holder shall not, without ~~the Office of Rail Regulation~~ 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 ~~the Office of Rail Regulation~~ ORR a certificate complying with the following requirements of this ~~paragraph~~ Condition 12.15.

12.15.2 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 12 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.”

12.15.3 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.

12.15.4 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.

12.16.— ~~The Office of Rail Regulation~~ORR in deciding whether to give its consent under ~~paragraph 1 or paragraph 2 of this~~ Condition 12.1 or 12.2 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.

Interpretation

12.17. In this Condition:

“acquisition date”	means the date on which the licence holder becomes a subsidiary of Network Rail Holdings Limited
“corporate debt”	means any unsecured and unsubordinated borrowing of money having an initial maturity of five years or more;

“cross-default obligation”	<p>means a term of any agreement or arrangement whereby the liability of the licence holder or of Network Rail Infrastructure Finance to:</p> <ul style="list-style-type: none"> (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 <p>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:</p> <ul style="list-style-type: none"> (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 sub-paragraphs 12.1.2(a)(ii) and (iii) of paragraph 1.2 of this Condition, or for the purpose of financing the matters referred to in sub-paragraphs (a)(i) to (iii) of paragraph 1.2 of this Condition <u>12.1.2</u>;
“excluded party”	<p>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;</p>
“funder”	<p>has the meaning ascribed given to it by paragraph 8 of Condition <u>7.8</u>;</p>
“indebtedness”	<p>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 thereon on them and all costs, charges, penalties and expenses incurred in connection therewith <u>with them</u>;</p>
“information”	<p>shall include any documents, accounts, estimates, returns, forecasts or reports (whether or not prepared specifically at the request of the Office of Rail Regulation <u>ORR</u>) of any description specified by the Office of Rail Regulation <u>ORR</u>;</p>

“Network Rail Infrastructure Finance”	<p>means:</p> <ul style="list-style-type: none"> (i) Network Rail Infrastructure Finance plc; and (ii) (unless the Office of Rail RegulationORR 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”	<p>means the date 90 days after the acquisition date or, if this Condition has not come into force within 90 days after the acquisition date, the date on which this Condition comes into force;</p> <p><u>1 January 2003;</u></p>
“RPI”	<p>means the general index of retail prices published by the Office for National Statistics each month in respect of all items or:</p> <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 the Office of Rail RegulationORR 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 the Office of Rail RegulationORR, 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”	<p>means each of:</p> <ul style="list-style-type: none"> (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.

Condition 13: Restriction on interests in train operating and rolling stock companies

13.1- Subject to ~~paragraph Condition 13.2~~, the licence holder shall not, except in so far as:

- (a) at any time when the licence holder is a public sector operator, the Secretary of State;
- (b) at any other time, ~~the Office of Rail Regulation~~ ORR,

may otherwise consent, be directly or indirectly interested in the ownership or operation of any railway vehicle in Great Britain.

13.2- ~~Paragraph Condition 13.1~~ 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 Part I of this licence; or
- (b) forming part of the Royal Train.

13.3- The licence holder shall, without limitation to the generality of ~~paragraph Condition 13.1~~, 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.

13.4- The licence holder shall, without prejudice to the generality of ~~paragraph Condition 13.1~~, 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).

13.5- In this Condition 13:

“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.

13.6- 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.

**Condition 14: Co-operation with the Mayor of London and TfL~~ransport for~~
~~London~~**

14.1. The licence holder shall co-operate with the Mayor of London and TfL~~ransport~~
~~for London~~ 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 which the Mayor of London and TfL~~ransport for London~~ have responsibility.

Condition 15: Provision of Information to the Office of Rail Regulation

Provision of information

- ~~15.1-~~ Subject to ~~paragraphs-Conditions 15.3 and 15.4,~~ the licence holder shall furnish to ~~the Office of Rail Regulation~~ORR such information as ~~the Office of Rail Regulation~~ORR may reasonably require for the purpose of carrying out any of its- functions under Part I of that Act.
- ~~15.2-~~ Information required to be furnished under this Condition ~~15~~ shall be furnished in such form and manner and at such times as ~~the Office of Rail Regulation~~ORR may reasonably require.
- ~~15.3-~~ This Condition ~~15~~ shall not require the licence holder to furnish to ~~the Office of Rail Regulation~~ORR information for the purposes of any function of ~~the Office of Rail Regulation~~ORR under sections 69 and 71 of the Act.
- ~~15.4-~~ Neither this Condition ~~15~~ nor any other Condition shall require the licence holder to produce any documents or to furnish any information:
- (a) for any purpose referred to in section 58 of the Act which it could not be compelled to produce or furnish under that section; or
 - (b) which it could not be compelled to produce or to give in evidence in civil proceedings in any court.
- ~~15.5-~~ Subject to ~~paragraph-Condition 15.4,~~ nothing in this Condition ~~15~~ shall prejudice any right of ~~the Office of Rail Regulation~~ORR to require information under or pursuant to any other Condition. The right of ~~the Office of Rail Regulation~~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.

Annual return

- ~~15.6~~ ~~Without prejudice to the generality of the preceding paragraphs of this Condition, the~~The licence holder shall prepare ~~on an annual basis~~ and provide to ~~the Office of Rail Regulation-ORR~~ an annual return ~~by 1 July each year (or a later date approved by ORR)~~in a form ~~previously approved by the Office of Rail Regulation which shall (without limitation) include:-~~. ~~The annual return shall be prepared in a form that ORR shall specify by notice to the licence holder.~~

15.7 No notice of ORR under Condition 15.6 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 taken into consideration any representations or objections timeously made and not withdrawn.

15.8 If ORR has not given an effective notice under Condition 15.6 in respect of any year, the notice last given under that Condition shall apply to that year.

15.9 The annual return shall (without limitation) include:

- ~~(a) the regulatory financial statements prepared pursuant to Condition 22;~~
not used
- (b) a statement in a form compatible with the business plan published in the preceding year under paragraph 4 of Condition 7.4 (“the preceding year’s business plan”) setting out in respect of the year ending on 31 March of that year:
 - (i) the works carried out by the licence holder during the year;
 - (ii) the extent to which it has carried out the work set out in the preceding year’s business plan;
 - (iii) to the extent that it has not carried out those works or has done so in a materially different way from that set out in the preceding year’s business plan, the reasons for this;
 - (iv) the extent to which the works referred to in subparagraph Condition 15.9(i) have achieved the aims set out in the preceding year’s business plan; and
 - (v) to the extent that such works have not achieved those aims, the reasons for this and the steps that the licence holder proposes to take to remedy such failure.

- (c) information in relation to enhancements and their logging up which may from time to time be required to be prepared and published pursuant to ~~paragraph 4 of~~ Condition 22.4;
- (d) any statistical and other data specified by ORR by notice for the purpose of monitoring outcomes against the assumptions underlying the charges set by ORR; and
- (e) any statistical and other data specified by ORR by notice.

15.10 No notice given under Conditions 15.9(d) or (e) shall be effective unless:

- (a) 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; and
- (b) ORR has first consulted the licence holder and taken into consideration any representations or objections timeously made and not withdrawn.

15.11 If ORR has not given an effective notice under Conditions 15.9(d) or (e) in respect of any year, the notice last given under those Conditions shall apply to that year.

15.12 Within one calendar month of delivery to ORR, subject to any modification (including deletions on the grounds of confidentiality) approved by ORR, the annual return shall be made available to any member of the public on request except to the extent that:

- (a) the information relates to material in the preceding year's business plan; and
- (b) as a result of the application of ~~paragraph 4.6 of~~ Condition 7.4.6, that material was not published.

15.13: Without prejudice to the generality of the preceding paragraphs of this Condition 15, the licence holder shall prepare and provide to ORR monthly returns for each relevant period, in a form approved by ~~the Office of Rail Regulation~~ ORR, ~~the Office of Rail Regulation~~ as soon as reasonably practicable and in any event not later than 14 21 days after the end of the ~~month~~ relevant period ~~to which the~~

~~information relates~~ (or a later date approved by ORR). In this Condition 15.13 “relevant period” shall bear the same meaning as under Condition 7.8.

- 15.14 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. This obligation is without prejudice to ~~paragraph 6 of this~~ Condition 15.6.

~~8.1 — The annual return referred to in paragraph 6 shall be provided to the Office of Rail Regulation as soon as reasonably practicable and in any event not later than 1 July following the end of the financial year to which it relates (or a later date approved by the Office of Rail Regulation).~~

Condition 16: ~~Efficiency Audits~~

1. ~~Where the Secretary of State or Office of Rail Regulation requires the licence holder to carry out, or arranges for an auditor to carry out, on such terms as the Secretary of State or Office of Rail Regulation may specify, an audit of the efficiency of any part or aspect of licensed activities, the licence holder shall promptly carry out or (as the case may be) afford the auditor all reasonable assistance in carrying out, such audit. The licence holder shall bear the expense of any audit under this Condition.~~
2. ~~This Condition shall apply only when the licence holder is a public sector operator.~~[Deleted]

Condition 17: Payment of Fees

~~1. Within 30 days beginning with the date on which this licence comes into force, the licence holder shall render to the Secretary of State a payment of £2,740,000.~~

~~17.21.~~ In ~~respect of the~~each year beginning on 1 April ~~1995 and in each subsequent~~year, the licence holder shall render to ~~the Office of Rail Regulation~~ORR a payment which is the aggregate of the following amounts:

(a) the annual fee applicable to this licence, as determined ~~in accordance with the scale of fees published by~~ ~~the Office of Rail Regulation~~ORR;

and

(b) an amount which shall represent a fair proportion as determined by ~~the Office of Rail Regulation~~ORR of the amount estimated by ~~the Office of Rail Regulation~~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 ~~the Office of Rail Regulation~~ORR determines that this licence forms part,

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

Condition 18: Restriction on Use of Certain Information

18.1- 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 ~~thereof~~ for the effective conduct of licensed activities;
- (b) to the Secretary of State, Scottish Ministers, ~~the Office of Rail Regulation~~ORR, or the Health and Safety Executive; 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.

18.2- The licence holder shall take all reasonable steps to ensure that any such person as is referred to in ~~sub-paragraph Condition 18.1(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 18.

18.3- In this Condition 18:

“Protected Information” means any information relating to the affairs of a particular person which has been furnished 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 ~~the same-it~~ is disclosed by the licence holder) in contravention of ~~Conditions 18. paragraphs 1 and 18.2.~~

Condition 19: Change of Control

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

Condition 20: Systems Code

20.1: Requirement for a Systems Code

- (1) The licence holder shall ~~in consultation with Users likely to be materially affected,~~
 - ~~(a) prepare a Systems Code in accordance with this Condition and submit it to the Office of Rail Regulation for its approval (subject to such modifications as the Office of Rail Regulation may require); and~~
 - ~~(b) comply with the provisions of the Systems Code when so as approved by ORR.~~
- (2) The licence holder may from time to time amend the Systems Code with the prior approval of ~~the Office of Rail Regulation~~ORR.

2. Purpose

~~The Systems Code shall be a code whose purpose is to set out the arrangements for obtaining access to, using and developing Code Systems ("the Purpose") having due regard:~~

- ~~(a) to the matters as respects which duties are imposed on the Office of Rail Regulation under section 4 of the Act;~~
- ~~(b) to the requirements of the Railway Group Standards;~~
- ~~(c) to the need to facilitate, without undue discrimination, the use, planning and development of existing and new Code Systems (whether by the licence holder or otherwise) in the interest of the development of the licence holder's network and its use by existing and new Users;~~
- ~~(d) to the need to improve the quality of data used in Code Systems; and~~
- ~~(e) to the need for the licence holder in setting its charges for use of any Code System to prevent any unfair cross-subsidy as between Users or as between its activities in relation to Code Systems and any other part of the Network Business.~~

~~3. Contents~~

~~The Systems Code shall provide:~~

- ~~(a) a procedure by which the licence holder will prepare and maintain a Systems Catalogue;~~
- ~~(b) a procedure for determining whether a System is, should become or should continue to be a necessary Code System or an expedient Code System;~~
- ~~(c) a procedure for the approval of changes to a Code System;~~
- ~~(d) in relation to each of the procedures mentioned in sub-paragraphs (b)–(c), an appeals procedure in respect of any decision which shall include a right of appeal to the Office of Rail Regulation as arbitrator in specified circumstances;~~
- ~~(e) a procedure for changes to the Systems Code;~~
- ~~(f) procedures to achieve and maintain good and efficient management arrangements in respect of Code Systems including keeping under review the suitability of each Code System;~~
- ~~(g) a requirement on the licence holder to prepare each year for the benefit of Users a statement setting out an outline of the changes to Code Systems and to the Systems Catalogue which it believes may occur or need to be considered during the following twelve months;~~
- ~~(h) in respect of a Code System of which the licence holder is the System Owner, that a User shall be able to have permission to use that Code System upon terms incorporating the Systems Code and the Systems Code shall include a right of appeal in defined circumstances to the Office of Rail Regulation as arbitrator in respect of any term (including charges) to which the User objects;~~
- ~~(i) in respect of a Code System of which the licence holder is not the System Owner, that the licence holder shall:~~

~~(i) where the System is a necessary Code System, or is an expedient Code System of which an affiliate of the licence holder is the System Owner, procure; and~~

~~(ii) in any other case, use all reasonable endeavours to procure,~~

~~that the System Owner agrees with it either to comply with the Systems Code or to grant to Users on request permission to use such Code System on terms which are compatible with the Purpose and the Code including in particular the rights of appeal to the Office of Rail Regulation required by this paragraph 3.~~

20.42. Publication

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.

20.53. Derogations

The licence holder may, in so far as ~~the Office of Rail Regulation~~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 ~~the Office of Rail Regulation~~ORR may require.

20.64. Interpretation

In this Condition 20:

“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;

“Railway Group Standards”	has the same meaning as in Condition 6;
“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 <ul style="list-style-type: none"> (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 <u>a code prepared by the licence holder which sets out the arrangements for obtaining access to, using and developing Code Systems</u> a Code prepared by the licensee holder pursuant to paragraph 1 to achieve the Purpose;
“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.

Condition 21: ~~[Deleted]~~Liability of Operators to Each Other

~~1. The licence holder shall, except in so far as the Office of Rail Regulation~~ORR~~ may otherwise consent, at all times be a party to such agreements or arrangements relating to certain matters relating to the liabilities of operators of railway assets to each other, as may have been approved by the Office of Rail Regulation~~ORR~~ as at the date on which this licence came into force (as amended from time to time).~~

~~2. Except with the consent of the Office of Rail Regulation~~ORR~~, the licence holder shall not, in relation to any of the agreements or arrangements described in paragraph 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 those arrangements.~~

Condition 22: Regulatory Accounts

22.1- The purpose of this Condition 22 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 ~~the Office of Rail Regulation~~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.

22.2- In order to achieve the purpose referred to in ~~paragraph~~Condition 22.1, the licence holder shall prepare regulatory financial statements in relation to itself and, unless ~~the Office of Rail Regulation~~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 22 and any Regulatory Accounting Guidelines from time to time issued by ~~the Office of Rail Regulation~~ORR.

22.3- The financial statements referred to in ~~paragraph~~Condition 22.2:

- (a) shall be prepared in respect of the financial year ended 31 March 2002 and (save as otherwise provided in this Condition 22 or the Regulatory Accounting Guidelines) ~~thereafter~~ on a consistent basis in respect of each ~~succeeding~~ financial year;
- (b) shall be prepared such that, ~~so far as is~~ ~~insofar as~~ 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) ~~the Office of Rail Regulation~~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 the confirmation required under ~~paragraph 3 of~~ Condition 29.3.

~~22.4.-~~ 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.

~~22.5.-~~ The statement made under ~~paragraph~~ Condition 22.4 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."

22.6: The licence holder shall submit to ~~the Office of Rail Regulation~~ORR details of the main factors which the directors of the licence holder have taken into account in making the statement under ~~paragraph Condition 22.4~~. In the case of a statement of the kind contemplated by ~~sub-paragraph (b) of paragraph Condition 22.5(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 ~~therein~~within it.

22.7: The licence holder shall -

- (a) notify ~~the Office of Rail Regulation~~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 ~~paragraph Condition 22.4~~ in the terms set out in Condition 22.5(a) or (b)~~sub-paragraph (a) or sub-paragraph (b) of paragraph 5~~; 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 ~~the Office of Rail Regulation~~ORR in such form and manner as ~~the Office of Rail Regulation~~ORR may direct.

22.8: ~~The Office of Rail Regulation~~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 ~~therein 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 ~~the Office of Rail Regulation~~ 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.

22.9:- The licence holder shall procure a report by the Auditors addressed to ~~the Office of Rail Regulation~~ ORR:

- (a) stating whether, in their opinion, the regulatory financial statements (other than those referred to in ~~sub-paragraph Condition 22.9(c) of this paragraph 9~~) 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 22.8(d) sub-paragraph (d) of paragraph 8 of this Condition~~ has been prepared in accordance with the Regulatory Accounting Guidelines and is consistent with such expenditure presented in the primary financial statements.

~~22.10:~~ Each statement made under ~~paragraph 4 of this~~ Condition 22.4 shall be accompanied by a report prepared by the Auditors and addressed to ~~the Office of Rail Regulation~~ORR, stating whether the Auditors are aware of any inconsistencies between that statement and either the financial statements referred to in ~~paragraph~~ Condition 22.2 or any information which the Auditors obtained in the course of their audit work for the licence holder and, if so, what they are.

~~22.11:~~ 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 ~~the Office of Rail Regulation~~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.

~~22.12:~~ The licence holder shall deliver to ~~the Office of Rail Regulation~~ORR a copy of the financial statements together with any information provided for in the Regulatory Accounting Guidelines, the Auditors' report referred to in ~~paragraph 9 of this~~ Condition 22.9 and the statement referred to in ~~paragraph 4 of this~~ Condition 22.4 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 ~~the Office of Rail Regulation~~ORR). The financial statements, information, the Auditors' report referred to in ~~paragraph 9 of this~~ Condition 22.9 and the statement referred to in ~~paragraph 4 of this~~ Condition 22.4, subject to any modifications approved by ~~the Office of Rail Regulation~~ORR, shall be published within one calendar month of delivery to ~~the Office of Rail Regulation~~ORR and ~~thereafter then~~ made available to any member of the public on request.

~~22.13:~~ With a view to enabling the licence holder to comply with its obligations under ~~paragraph 2 of this~~ Condition 22.2, the licence holder shall, unless ~~the Office of Rail Regulation~~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 ~~the Office of Rail Regulation~~ORR.

~~22.14.~~ The licence holder shall:

- (a) deliver to ~~the Office of Rail Regulation~~ORR evidence (including a copy of all such undertakings) that the licence holder has complied with the obligation to procure any undertaking pursuant to ~~paragraph Condition 22.13~~;
- (b) inform ~~the Office of Rail Regulation~~ORR immediately in writing if the directors of the licence holder become aware that any undertaking procured pursuant to ~~paragraph Condition 22.13~~ has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from ~~the Office of Rail Regulation~~ORR to enforce any of the undertakings procured pursuant to ~~paragraph Condition 22.13~~.

~~22.15.~~ In this Condition ~~22~~:

“Auditors”	means the person appointed by the licence holder for the purpose of reporting on the regulatory financial statements referred to in this Condition 22 ;
“Determination Assumptions”	means any assumptions (including their definitions and bases of measurement) from time to time notified to the licence holder by the Office of Rail Regulation ORR as assumptions that have been used for determining access charges;
“Network Rail Infrastructure Finance”	has the meaning given ascribed to it by paragraph 17 of Condition 12.17 ;
“Regulatory Accounting Guidelines ”	means any guidelines issued by the Office of Rail Regulation ORR from time to time in accordance with paragraph 8 of this Condition 22.8 ; and
“Regulatory Asset Base”	means the asset values as from time to time notified to the licence holder by the Office of Rail Regulation ORR as being asset values that have been or are to be used for determining access charges.

Condition 23: Appointment and Role of Reporter

23.1. The function and purpose of the Reporter is to provide ~~the Office of Rail Regulation~~ ORR with independent, professional opinions and advice on data relating to the licence holder's provision or contemplated provision of railway services, with a view to ~~the Office of Rail Regulation~~ ORR relying upon those opinions or advice (after, where appropriate, affording the licence holder an opportunity to make representations ~~on them~~ thereon, and having taken account of those representations) in the discharge by ~~the Office of Rail Regulation~~ ORR of its functions under, or in consequence of, the ~~Railways Act 1993~~.

23.2. Subject to ~~paragraph Condition 23.3~~, ~~the Office of Rail Regulation~~ ORR may require the Reporter at any time and from time to time to inquire and report:

- (a) into any matter considered by ~~the Office of Rail Regulation~~ ORR as material to the setting by ~~the Office of Rail Regulation~~ ORR of access charges;
- (b) into any matter in respect of which the licence holder shall be required to make an annual return pursuant to Condition 15; 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.

23.3. The scope and content of any inquiry proposed to be undertaken by the Reporter in accordance with ~~paragraph Condition 23.2~~ shall be:

- (a) discussed with the licence holder;
- (b) defined and costed in a written proposal made by the Reporter; and
- (c) approved by ~~the Office of Rail Regulation~~ ORR, subject to such modifications (if any) as it may reasonably require, having first taken account of any representations made by the licence holder and not withdrawn.

~~23.4.~~ The contract between the licence holder and the Reporter shall make provision for payment by the licence holder to the Reporter in respect of any inquiry conducted and report produced pursuant to this Condition ~~23~~.

~~23.5.~~ ~~The Office of Rail Regulation~~ORR may from time to time draw up and notify to the licence holder Reporter Guidelines which may (without limitation) contain provisions:

- (a) establishing criteria regarding:
 - (i) the suitability (in terms of expertise, experience or otherwise) of persons for appointment or re-appointment as Reporter; and
 - (ii) grounds for the removal of the Reporter;
- (b) establishing procedures for the licence holder to appoint the Reporter including procedures for:
 - (i) the licence holder to put forward a shortlist of persons which it considers to be suitable for the purpose;
 - (ii) ~~the Office of Rail Regulation~~ORR to require the licence holder to include alternative persons in the shortlist; and
 - (iii) ~~the Office of Rail Regulation~~ORR to require the licence holder to appoint a particular Reporter from the shortlist;
- (c) specifying any particular terms to be contained in the contract of appointment of the Reporter by the licence holder (including, without ~~limitation prejudice to the generality of the foregoing~~, terms setting out necessary qualifications of the Reporter, limitations or exclusions of liability of the Reporter, duration of appointment, addressing possible conflicts of interest, and obligations regarding confidentiality of data provided to the Reporter by the licence holder); and
- (d) establishing procedures for specification and approval of the scope and content of any inquiry to be undertaken by the Reporter pursuant to ~~paragraph 2 of this~~ Condition ~~23.2~~.

23.6- The licence holder shall comply with any Reporter Guidelines from time to time notified to it by ~~the Office of Rail Regulation~~ ORR pursuant to ~~paragraph Condition 23.5 above insofar so far~~ as they concern:

- (a) co-operation in the process leading to appointment by the licence holder of one or more persons to act as Reporter;
- (b) establishing the terms of the contract of appointment (including without limitation terms under which the contract may be terminated). The terms of the contract of appointment between the licence holder and the Reporter shall be subject to approval by ~~the Office of Rail Regulation~~ ORR;
- (c) co-operating with the Reporter in the undertaking by it of any inquiry it is required by ~~the Office of Rail Regulation~~ ORR to undertake pursuant to ~~paragraph Condition 23.2 above~~; and
- (d) ~~insofar so far~~ as it is able to do so, procuring the co-operation of any affiliate of the licence holder or of the Auditors from time to time of the licence holder in the undertaking by the Reporter of any inquiry it is required by ~~the Office of Rail Regulation~~ ORR to undertake pursuant to ~~Condition 23.2 paragraph 2 above~~.

23.7- It shall be a term of any contract entered into by the Reporter with the licence holder that in the carrying out of any inquiry that ~~the Office of Rail Regulation~~ ORR may require the Reporter to undertake, the Reporter shall owe a duty of care to ~~the Office of Rail Regulation~~ ORR.

23.8- The licence holder shall (and shall procure, ~~insofar so far~~ as it is able to do so, that any affiliate of the licence holder and its Auditors shall) co-operate fully with the Reporter so as to enable it to carry out, complete and report on any inquiry it is called upon to undertake. The duty of co-operation shall include without limitation, and ~~insofar so far~~ as necessary or expedient for such purpose, subject to reasonable prior notice to the licence holder and at reasonable hours, allowing the Reporter:

- (a) reasonable access to directors, employees, agents or independent contractors (including sub-contractors) of the licence holder to make such inquiries and to discuss any matters reasonably considered by the Reporter as relevant to the carrying out by it of any inquiry or the

drawing up of any report which ~~the Office of Rail Regulation~~ORR may have required the Reporter to undertake;

- (b) reasonable access to any premises occupied by the licence holder in relation to the provision of railway services by the licence holder and allowing the Reporter:

~~(iv)~~(i) to carry out inspections, measurements and tests on or in relation to any such premises; and

~~(v)~~(ii) —to take onto such premises such other persons and such equipment as may be necessary or expedient for the purposes of carrying out its inquiry and preparing and completing its report; and

- (c) to inspect and make copies of, and take extracts from, any data comprising documents or other records in the possession, custody or control of the licence holder maintained in relation to its railway services other than data which the licence holder could not be compelled to disclose in any judicial proceedings before the High Court.

23.9: In this Condition 23:

“data”	includes information recorded or transmitted in any form (whether oral or otherwise) and the ability to inspect and make copies shall, in relation to information recorded electronically or otherwise than in legible form, include the ability to require production of a copy of such information in the manner in which it is recorded or in a legible form, or both;
“Reporter”	means one or more persons appointed from time to time in accordance with the procedures referred to in <u>Condition 23, paragraph 5(b)</u> ; and
“Reporter Guidelines”	means any guidelines notified by the Office of Rail Regulation <u>ORR</u> in accordance with paragraph <u>Condition 23.5</u> .

Condition 24: Asset Register

Primary obligation

~~24.1-~~ The licence holder shall establish and maintain a register of relevant assets in accordance with the provisions of this Condition ~~24~~.

Purpose of asset register

~~24.2-~~ The purpose of the asset register is to ensure that the licence holder holds, and has appropriate access to and records of, knowledge of the relevant assets, including knowledge of their condition, capability and capacity, in the manner and to the extent and standard which best achieves:

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

Guidelines

~~24.3-~~ The licence holder shall prepare guidelines in accordance with ~~paragraph Condition 24.4~~, specifying the detail and form of the asset register, the information contained in it, the methods (including criteria of measurement) to be used in it, and dealing with the matters specified in ~~paragraphs Conditions 24.18 and 24.19~~.

General

~~24.4-~~ The guidelines provided for under this Condition ~~24~~:

- (a) shall be in writing;
- (b) shall be submitted to ~~the Office of Rail Regulation~~ ORR for its approval not later than 60 days from the effective date of this Condition;
- (c) shall satisfy the purpose set out in ~~paragraph Condition 24.2~~; and

- (d) shall state the extent to which the asset register shall be up to date in relation to assets or descriptions or classes of asset.

24.5: ~~The Office of Rail Regulation~~ORR may approve the guidelines as submitted to it by the licence holder or, after consultation with the licence holder and such other persons as it considers appropriate and having regard to the result of such consultation, approve them with such modifications as it considers necessary or expedient for the licence holder to comply with the purpose set out in ~~paragraph~~ Condition 24.2.

24.6: Any modifications to the guidelines made by ~~the Office of Rail Regulation~~ORR under ~~paragraph~~ Condition 24.5:

- (a) shall be in writing;
- (b) shall satisfy the purpose set out in ~~paragraph~~ Condition 24.2; and
- (c) shall be given to the licence holder by serving a copy of them on it.

24.7: If the licence holder fails to submit guidelines to ~~the Office of Rail Regulation~~ORR as provided for in ~~paragraph~~ Condition 24.4, ~~the Office of Rail Regulation~~ORR may prepare guidelines in place of the licence holder. Any guidelines prepared by ~~the Office of Rail Regulation~~ORR shall accord with the provisions set out in Conditions 24.6~~sub-paragraphs (a) to (c) of paragraph 6~~ and shall come into effect on such date, or the happening of such event, as shall be specified in the guidelines.

Derogations and exclusions

24.8: ~~The Office of Rail Regulation~~ORR may:

- (a) grant relief from the obligation to comply with any part of this Condition 24 or any part of the guidelines; and
- (b) permit the licence holder to exclude from the definition of “relevant assets” assets of such descriptions or classes as shall be specified in the guidelines.

~~24.9:~~ Without ~~prejudice to the generality limiting the effect of paragraph Condition~~ 24.8, derogations or exclusions under ~~paragraph Condition~~ 24.8 may be granted:

- (a) as to the assets or descriptions or classes of assets to which this Condition 24 applies; and
- (b) for such time and subject to such conditions as ~~the Office of Rail~~ RegulationORR may specify by notice in writing to the licence holder.

Circumstances in which derogation or exclusion may be granted

~~24.10:~~ ~~The Office of Rail Regulation~~ORR may grant a derogation or an exclusion:

- (a) on its own initiative or on the application of any person; and
- (b) after consulting the licence holder and such other persons as it considers appropriate.

Power to vary and power to require variation

~~24.11:~~ Subject to the approval of ~~the Office of Rail Regulation~~ORR, the licence holder may vary and, if the circumstances so require, shall vary in the appropriate manner any part of the guidelines.

~~24.12:~~ A variation made under ~~paragraph Condition~~ 24.11:

- (a) shall be in writing;
- (b) shall be submitted to ~~the Office of Rail Regulation~~ORR for its approval not less than 30 days before it is to come into effect; and
- (c) shall satisfy the purpose set out in ~~paragraph Condition~~ 24.2.

~~24.13:~~ In relation to a variation submitted to it by the licence holder, ~~the Office of Rail~~ RegulationORR may:

- (a) approve the variation as submitted;
- (b) disallow the variation; or

- (c) after consultation with the licence holder and such other persons as it considers appropriate and having regard to the result of such consultation, approve it with such modifications as it considers necessary or expedient so as to satisfy the purpose set out in ~~paragraph Condition~~ 24.2.

~~24.14:~~ Any modifications to a variation made by ~~the Office of Rail Regulation~~ ORR under ~~paragraph Condition~~ 24.13:

- (a) shall be in writing;
- (b) shall comply with the purpose set out in ~~paragraph Condition~~ 24.2; and
- (c) shall be given to the licence holder by serving a copy of them on it.

~~24.15:~~ If ~~the Office of Rail Regulation~~ ORR fails to approve (with or without modifications) a variation submitted to it under ~~paragraph Condition~~ 24.12 before the date it is intended to have effect, the variation shall come into effect on that date unless ~~the Office of Rail Regulation~~ ORR disallows the variation, in which case it shall not come into effect.

~~24.16:~~ The guidelines shall have effect with such variations as ~~the Office of Rail Regulation~~ ORR shall determine to be necessary or expedient and specify in a notice given by it to the licence holder. Any such variation must comply with ~~paragraph Condition~~ 24.4(c) and shall not have effect unless:

- (a) it appears to ~~the Office of Rail Regulation~~ ORR that the guidelines are no longer sufficient to satisfy the purpose; and
- (b) ~~the Office of Rail Regulation~~ ORR has first consulted the licence holder and such other persons as it considers appropriate.

Compliance

~~24.17:~~ The licence holder shall comply with the guidelines as approved by ~~the Office of Rail Regulation~~ ORR or, where no such approval has been given, as prepared by ~~the Office of Rail Regulation~~ ORR under ~~paragraph Condition~~ 24.7 or 24.16 or as varied and having effect pursuant to ~~paragraph Condition~~ 24.15. Guidelines which have not been approved or authorised, under this Condition 24, been

~~approved or authorised under paragraph 15 (as the case may be)~~ shall have no effect.

Records and compliance monitoring

Notification of changes

~~24.18.~~ The licence holder shall, in accordance with the guidelines, give notice to ~~the Office of Rail Regulation~~ORR of any deletions, additions or modifications of or to the asset register.

Records

~~24.19.~~ The licence holder shall, in accordance with the guidelines, establish and maintain, for such time as shall be specified in the guidelines, records of the actions it has taken to comply with its obligations under this Condition 24 and upon request the licence holder shall provide ~~the Office of Rail Regulation~~ORR with those records.

Definitions and interpretation

Definitions

~~24.20.~~ In this Condition 24:

“asset”	in relation to the licence holder: <ul style="list-style-type: none">(a) means property, real and personal, heritable and moveable, tangible and intangible, in which the licence holder has a relevant interest; but(b) does not include anything in respect of which it is neither necessary nor expedient for the licence holder to hold knowledge in order best to achieve the objectives of the activities specified in in Condition 24.<u>paragraph 2(a) – (d) of this Condition;</u>
“asset register”	means the register referred to in paragraph 1 of this Condition <u>24.1;</u>
“derogation”	means relief from the obligation to comply with this Condition <u>24</u> , granted by the Office of Rail Regulation <u>ORR</u> under paragraph 8 of this Condition <u>24.8;</u>
“excluded assets”	means assets which are the subject of an exclusion granted under paragraph 8 of this Condition <u>24.8;</u>

“guidelines”	means guidelines prepared in accordance with this Condition <u>24</u> ;
“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;
“relevant assets”	means assets in which the licence holder has a <u>relevant</u> interest, but does not include excluded assets; and
“relevant interest”	in relation to an asset, means an interest of the licence holder in that asset (including as owner, licensee, occupier, operator, lessee (of whatever rank) or the holder of any other right), legal or beneficial.

Interpretation

24.21: In this Condition 24:

- (a) the words “including” ~~and “in particular”~~ shall be construed as being by way of illustration or emphasis and shall not limit ~~or prejudice~~ the generality of any ~~foregoing preceding~~ words; and
- (b) references to an asset of, or belonging to, the licence holder include a relevant interest of that person in that asset.

Condition 25: Code of Practice on the licence holder's dealings with dependent persons

Purpose

General

25.1:- The purpose of this Condition 25 is to ensure that, in its dealings with relevant persons, the licence holder shall, to the greatest extent reasonably practicable:

- (a) act with due efficiency and economy and in a timely manner;
- (b) including in all respects with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced network facility owner and operator.

Exception

25.2:- ~~Paragraph-Condition 25.1~~ does not apply to the performance by the licence holder of a contract or the exercise of any discretion conferred by a contract.

Code of practice

Obligation to comply

25.3:- The licence holder shall, in accordance with the following paragraphs of this Condition 25:

- (a) prepare and at all times have in force; and
- (b) subject to ~~paragraph-Condition 25.1420~~, comply with

a code of practice containing principles and procedures (including as to timing) which, if implemented, will satisfy the purpose in respect of the categories of dealings and categories of relevant persons established in accordance with this Condition 25.

Regulatory approval

25.4:- The code of practice must be approved by ~~the Office of Rail Regulation~~ ORR, and may be modified, in accordance with Conditions 25.paragraphs 86 - 25.128.

Organisation of code

25.5:- The code of practice may contain more than one part, with different parts applying to different types of dealing and different classes of relevant person.

~~Preparation of list, timetable and criteria~~

~~6. In relation to the preparation of the code of practice which is first to have effect under this Condition, the licence holder shall, not later than 60 days after this Condition comes into effect, draw up and submit to the Office of Rail Regulation for its approval:~~

- ~~(a) a list of categories of dealings and of relevant persons in respect of which and in respect of whom it will prepare the code of practice;~~
- ~~(b) a timetable for the establishment of the code of practice, which may provide for different parts of the code of practice to be prepared in accordance with different timetables; and~~
- ~~(c) the criteria which the licence holder has used and intends to use in devising and reviewing the lists and timetable specified in subparagraphs (a) and (b).~~

~~Compliance with list, timetable and criteria~~

~~7. Once the list, timetable and criteria have been approved, the licence holder shall prepare the code of practice in accordance with them.~~

Approval mechanism

General

8. The Office of Rail Regulation ORR may:

- ~~(a) approve a relevant document submitted to it by the licence holder for its approval; or~~
- ~~(b) after consultation with the licence holder and such other persons as it considers appropriate and having regard to the result of such consultation, approve it with such modifications as it considers necessary or expedient for the achievement of the purpose.~~

Requirements for modifications

~~9. Any modifications to a relevant document made by the Office of Rail Regulation~~ORR ~~under paragraph 8:~~

- ~~(a) shall be in writing;~~
- ~~(b) shall satisfy the purpose; and~~
- ~~(c) shall be given to the licence holder by serving a copy of them on it.~~

Right of Office of Rail Regulation to prepare relevant document

~~10. If the licence holder fails to submit a relevant document to the Office of Rail Regulation~~ORR ~~for its approval:~~

- ~~(a) within such time as is specified in this Condition or in a relevant document established in accordance with this Condition; or~~
- ~~(b) if no time is specified, such time as the Office of Rail Regulation~~ORR ~~shall determine and notify to the licence holder,~~

~~the Office of Rail Regulation~~ORR ~~may prepare a relevant document in place of the licence holder.~~

Requirements for regulatory preparation of relevant document

~~11. Any relevant document prepared by the Office of Rail Regulation~~ORR ~~under paragraph 10 shall accord with the provisions set out in sub-paragraphs (a) to (c) of paragraph 9 and shall come into effect on such date, or the happening of such event, as shall be specified in the relevant document.~~

Power to vary and power to require variation

General

25.612. With the approval of ~~the Office of Rail Regulation~~ORR, the licence holder may vary and, if the circumstances so require, shall vary in the appropriate manner, any part of the code of practice~~a relevant document~~.

Requirements for variation

~~25.713.~~ A variation made under ~~paragraph Condition 25.612:~~

- (a) shall be in writing;
- (b) shall be submitted to ~~the Office of Rail Regulation~~ORR for its approval not less than 30 days before it is to come into effect; and
- (c) shall satisfy the purpose.

Regulatory approval of variations

~~25.814.~~ In relation to a variation submitted to it by the licence holder, ~~the Office of Rail Regulation~~ORR may:

- (a) approve the variation as submitted;
- (b) disallow the variation; or
- (c) after consultation with the licence holder and such other persons as it considers appropriate and having regard to the result of such consultation, approve it with such modifications as it considers necessary or expedient so as to satisfy the purpose.

Requirements for regulatory modification

~~25.915.~~ Any modifications to a variation made by ~~the Office of Rail Regulation~~ORR under ~~paragraph Condition 25.814:~~

- (a) shall be in writing;
- (b) shall satisfy the purpose; and
- (c) shall be given to the licence holder by serving a copy of them on it.

Effectiveness of variations

~~25.106.~~ If ~~the Office of Rail Regulation~~ORR fails to approve (with or without modifications) a variation submitted to it under ~~paragraph Condition 25.713~~ before the date it is intended to have effect, the variation shall come into effect

on that date unless ~~the Office of Rail Regulation~~ ORR disallows the variation, in which case it shall not come into effect.

~~25.117.~~ ~~The code of practice~~ Each relevant document shall have effect with such variations as ~~the Office of Rail Regulation~~ ORR shall determine to be necessary or expedient and specified in a notice given by it to the licence holder. No such variation shall have effect unless:

- (a) it appears to ~~the Office of Rail Regulation~~ ORR that the code of practice ~~relevant document~~ is no longer sufficient to satisfy the purpose; and
- (b) ~~the Office of Rail Regulation~~ ORR has first consulted the licence holder and such other persons as it considers appropriate.

~~25.128.~~ ~~Insofar as~~ To the extent that the code of practice or a variation of it ~~relevant document~~ has not been approved, made by ~~the Office of Rail Regulation~~ ORR or authorised under ~~paragraph Condition 25.106~~ (as the case may be), it shall have no effect.

Miscellaneous provisions

Publication

~~25.139.~~ The licence holder shall publish the code of practice ~~each relevant document~~ or cause it to be published on its website.

Derogations

~~25.1420.~~ ~~The Office of Rail Regulation~~ ORR may from time to time (following consultation with the licence holder and such persons as ~~the Office of Rail Regulation~~ ORR believes may be materially affected ~~thereby~~) issue directions relieving the licence holder of its obligations to comply with the code of practice in respect of such parts of the licence holder's business and to such extent as may be specified in the directions.

Interpretation

~~25.1524.~~ In this Condition 25—

“code of practice”	means the code of practice provided for in paragraph <u>Condition 25.3</u> (including every revision thereof of it) as approved from time to time by the Office of Rail Regulation <u>ORR</u> ;
“purpose”	means the purpose of this Condition <u>25</u> , set out in paragraph <u>Condition 25.1</u> ;
“relevant document”	means, as the context requires: <div style="margin-left: 20px;"> (a) the list, timetable and criteria provided for in paragraph 6; or (b) the code of practice; </div>
“relevant person”	means any person who has expressed in writing to the licence holder a serious and credible: <div style="margin-left: 20px;"> (a) interest in providing or intention to provide; or (b) interest in providing or intention to provide finance for or in connection with </div> either or both of: <div style="margin-left: 20px;"> (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; </div>

Condition 26: Disposal of land

26.1- The licence holder shall not dispose of any land otherwise than in accordance with the following paragraphs of this Condition 26.

26.2- Save as provided in ~~paragraph Condition 26.3~~, the licence holder shall give to ~~the Office of Rail Regulation~~ ORR not less than three 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 ~~the Office of Rail Regulation~~ 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 ~~in regard thereto~~ 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 ~~the Office of Rail Regulation~~ ORR.

26.3- Notwithstanding ~~paragraphs Conditions 26.1 and 26.2~~, the licence holder may dispose of any land:

(a) where:

(i) ~~the Office of Rail Regulation~~ 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 ~~paragraph Condition 26.3(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 ~~paragraph Condition 26.3(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.

26.4: Notwithstanding ~~paragraph Condition 26.1~~, the licence holder may dispose of any land specified in a notice given under ~~paragraph Condition 26.2~~ in circumstances where:

- (a) ~~the Office of Rail Regulation~~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 ~~the Office of Rail Regulation~~ORR may specify and the licence holder shall ensure that any such disposal shall be subject to those conditions); or
- (b) ~~the Office of Rail Regulation~~ORR has not, within the notice period referred to in ~~paragraph Condition 26.2~~, issued a direction for the purpose of this Condition 26 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 ~~the Office of Rail Regulation~~ORR issuing a direction under this ~~paragraph Condition 26.4(b)~~.

26.5: In this Condition 26:

“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 <u>the date when this Condition came into effect</u>) or any other disposition to a third party, and “dispose”
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shall be construed accordingly;

“excluded land”

means any land which is specified as such in directions issued under ~~paragraph 3 of this~~ Condition 26.3; and

“land”

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

Condition 27: Corporate governance

27.1- 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.

27.2- Without ~~prejudice to limiting~~ the generality of ~~paragraph Condition 27.1 of this Condition 27:~~

(a) the licence holder shall ensure that each of its directors discloses to the licence holder and ~~the Office of Rail Regulation~~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 ~~paragraph Condition 27.1 of Condition 27,~~ the licence holder shall have regard, among other matters, to the dividend policy adopted by the licence holder in the light of ~~paragraph 20 of Condition 12, 2015.~~

27.3- 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.

27.4.1 Subject to ~~paragraph Condition 27.4.2 below,~~ 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 ~~the Office of Rail Regulation~~ORR that he or she has substantial relevant experience of working in the railway industry.

27.4.2 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 Condition 27.4.1,~~ 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.

Condition 28: Management Incentive Plan

28.1.1 The licence holder shall send to ~~the Office of Rail Regulation~~ ORR a plan (a “Management Incentive Plan”) under which the level of remuneration of the executive directors of the licence holder and such other persons as ~~the Office of Rail Regulation~~ ORR shall 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 ~~paragraphs Conditions 28.2 and 28.3~~, the Management Incentive Plan shall be aligned with the incentive policy referred to in ~~paragraphs Conditions 28.4 and 28.5~~.

28.1.2 The licence holder shall send the Management Incentive Plan to ~~the Office of Rail Regulation~~ ORR at least once a year and a new Management Incentive Plan shall be sent to ~~the Office of Rail Regulation~~ ORR whenever there is any material change to the Management Incentive Plan’s contents during the course of the year to which it relates.

28.2- Every time that the licence holder sends a Management Incentive Plan to ~~the Office of Rail Regulation~~ ORR under ~~paragraph Condition 28.1~~, the licence holder shall, at the same time, send to ~~the Office of Rail Regulation~~ ORR and publish a statement summarising the principal terms of the Management Incentive Plan and the principles underlying it. The statement shall, without limitation~~Without prejudice to the generality of the foregoing, the statement shall~~ include:

- (a) details of the categories of persons to whom the Management Incentive Plan applies;
- (b) the maximum entitlement of any such category of persons; and
- (c) an indication of the criteria which are applied in determining the level of remuneration (with particular regard and making express reference to each of the objectives set out in ~~paragraph Condition 28.3~~) and the relative weighting given to each such criterion.

Without prejudice to ~~paragraph 7 of~~ Condition 15.7, the obligation in this ~~Condition 28.2~~paragraph does not entail an obligation to publish the levels of remuneration paid to specified individuals.

28.3- When formulating a Management Incentive Plan, the licence holder shall have regard in particular to:

- (a) achievement of the purpose in ~~paragraph 1 of~~ Condition 7.1 and any statement issued by ~~the Office of Rail Regulation~~ORR in connection with Condition 7, including in particular operational performance, asset serviceability and condition, efficiency and economy, and safety;
- (b) achievement of the purpose of Condition 25 and compliance with any code of practice approved by ~~the Office of Rail Regulation~~ORR and in force in connection with Condition 25;
- (c) the extent to which the licence holder is subject to orders made under section 55 of the Act and to statements by ~~the Office of Rail Regulation~~ORR on non-compliance with the licence;
- (d) the extent to which the licence holder has infringed any conditions in its access agreements; and
- (e) without prejudice to the generality of ~~paragraphs Conditions 28.3(a)~~ and (b), any other objectives that ~~the Office of Rail Regulation~~ORR may specify from time to time, after consulting the licence holder, specifically in connection with the Management Incentive Plan.

28.4- The licence holder shall:

- (a) implement and comply with; and
- (b) 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 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.

- 28.5.1 Unless ~~the Office of Rail Regulation~~ORR otherwise consents, the licence holder shall not amend, supplement or replace the incentive policy referred to in ~~paragraph Condition 28.4~~.
- 28.5.2 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 shall not, except with the written consent of ~~the Office of Rail Regulation~~ORR, amend, supplement or replace that incentive policy.
- 28.6- The licence holder shall maintain and implement and comply with an incentive scheme (an “Employee Scheme”) for employees other than those to whom the Management Incentive Plan applies. Without prejudice to ~~paragraph Condition 28.7~~, the Employee Scheme shall be aligned with the incentive policy referred to in ~~paragraphs Conditions 28.4 and 28.5~~.
- 28.7- When formulating the Employee Scheme, the licence holder shall have regard in particular to the considerations described in ~~paragraph Condition 28.3~~.
- 28.8- The licence holder shall send the Employee Scheme to ~~the Office of Rail Regulation~~ORR at least once a year and a new Employee Scheme shall be sent to ~~the Office of Rail Regulation~~ORR whenever there is any material change to the Employee Scheme’s contents during the course of the year to which it relates.
- 28.9- Information required to be sent to ~~the Office of Rail Regulation~~ORR under this Condition 28 shall be provided in such form and manner and on such dates as ~~the Office of Rail Regulation~~ORR may require.

Condition 29: Level of Financial Indebtedness

29.1:- Except with the written consent of ~~the Office of Rail Regulation~~ORR, the licence holder shall ensure that as at the end of the financial year to which the financial statements prepared under Condition 22 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.

29.2:- Without prejudice to ~~paragraph Condition 29.1~~:

- (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 ~~the Office of Rail Regulation~~ORR may notify as being appropriate in the circumstances:
 - (i) provide to ~~the Office of Rail Regulation~~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 ~~the Office of Rail Regulation~~ORR evidence that it has taken those steps.

29.3:- The licence holder shall provide, from time to time as requested by ~~the Office of Rail Regulation~~ORR and in any event every year in the regulatory financial statements it prepares pursuant to Condition 22, 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 ~~paragraph Condition~~

29.1 and (where applicable) with ~~paragraph Condition 29.2(b) of this Condition~~ and, if so requested by ~~the Office of Rail Regulation~~ ORR, evidence in support of that confirmation.

Interpretation

29.4. In this Condition 29:

“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 29:

- (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;

<p>“Network Rail Infrastructure Finance”</p> <p>“Regulatory Asset Base”</p>	<p>has the meaning ascribed <u>given</u> to it by paragraph 17 of Condition 12.<u>17</u>; and</p> <p>has the meaning ascribed <u>given</u> to it by paragraph 15 of Condition 22.<u>15</u>.</p>
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Schedule - Terms as to 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 Office of Rail Regulation, 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.